IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 357/2024

BETWEEN: **STATE**

PROSECUTION

AND: **RAVINESH VIKASH LAL**

ACCUSED

Counsel: Sergeant 4971 Veni Vunaki for Police Prosecution
Mr. A. Barinisavu for the Accused

Date of Hearing: 17 September 2025
Date of Ruling: 19 December 2025

RULING
[NO CASE TO ANSWER]

Introduction

1. Mr. Ravinesh Vikash Lal ("the Accused") is charged with 1 count of Theft contrary to section 291(1) of the Crimes Act 2009. The particulars of the offence are:

Statement of Offence

Theft: *Contrary to Section 291(1) of the Crimes Act 2009.*

Particulars of Offence

Ravinesh Vikash Lal *between 20th day of December 2023 and 20th day of January 2024 at Ba in the Western Division dishonestly appropriated a treadmill machine valued at $2,500.00 the property of* ***Avinesh Sharma*** *with intent to permanently deprive the said* ***Avinesh Sharma*** *of his property.*

2. The Accused entered a plea of Not Guilty on 3 December 2024 with the matter then proceeding to Trial.

3. On 17 September 2025, the date of Trial, Prosecution called 1 witness and thereafter concluded its case. The Learned Counsel for the Accused then made an application pursuant to section 178 of the Criminal Procedure Act stating that a case was not sufficiently made out against the Accused to require him to make a defence.

4. Submissions were filed by the counsel for the Accused on 22 September 2025 and Prosecution filed submissions on 22 October 2025.

5. Having heard the evidence presented by Prosecution and the submissions filed by parties, I now pronounce my Ruling.

Law on No Case to Answer

6. Section 178 of the Criminal Procedure Act states:

> *Acquittal of accused person where no case to answer*
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> *178. If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.*

7. In the recent case of ***Dirabici v State;*** *Criminal Appeal Case No. HAA 023 of 2023 (15 February 2024)* His Lordship Justice Rajasinghe succinctly discussed the test for no case to answer in the Magistrates' Court where he referred to the case of ***R v Galbraith*** *[1981] 2 All ER 1060* which stipulated the two-fold test that should be adopted in respect to a no case to answer submission which also discussed in the case of ***Sahib v State*** *[2005] FJHC 95; HAA0022J.2005S (28 April 2005)* where Her Ladyship Justice Shameem adopted and applied the test in the Magistrates' Court of Fiji. In doing so Her Ladyship held:

> *"The test at no case stage in the Magistrates' Courts, is different from the test at no case stage in the High Court. The test in* ***R v. Galbraith*** *(1971) 73 Cr. App. R. 124 is two-pronged, first whether there is no evidence that the accused committed the offence, and second if there is evidence, whether it is so discredited that no reasonable tribunal could convict on it. In the High Court, only the first test applies because of the specific wording of section 293 of the* Criminal Procedure Code *(****Sisa Kalisoqo v. R*** *Crim. App. 52 of 1984;* ***State v. Mosese Tuisawau*** *Cr. App. 14 of 1990). In the latter case, the Court of Appeal said that in assessing whether there was "no evidence", the court was entitled to ask whether the evidence was relevant, admissible and inculpatory of the accused.*
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> *In the Magistrates' Courts, both tests apply. So the Magistrate must ask himself or herself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether on the prosecution case, taken at its highest, a reasonable tribunal could convict. In considering the prosecution case at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission of no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case."*

8. Thus, the Magistrates' Court ought to apply both limbs with respect to an application for no case to answer under section 178 of the Criminal Procedure Act:

   i. whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence; and
   ii. whether the evidence is so discredited that no reasonable tribunal could convict on it.

9. Moreover, the aforementioned limbs of the no case to answer test need to be tested objectively by the Court by analysing the evidence as a whole and not subjectively evaluating the testimonial trustworthiness of the witnesses based on credibility and reliability at this stage (vide ***Dirabici*** [supra]).

Analysis of Evidence

10. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for theft, which are:

i. the accused
ii. dishonestly appropriates
iii. property belonging to another
iv. with the intention of permanently depriving the other of the said property.

11. Regarding the first limb of whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, the court is only required to determine whether the prosecution has presented evidence to prove the elements of the offence and not that the evidence presented have proved the essential elements of the offence at this stage.

12. The Complainant testified that he had been in possession of a treadmill that belonged to an Arvind Chand ('Mr. Chand'). The Complainant asserts that he had been in possession for the purposes to repair the treadmill, however, due to family issues, he had to move into his neighbour's, namely Monto's home with his personal belongings and the treadmill.

13. Thereafter, the Complainant testified that he had to leave Monton's home but when he asked for his items including the treadmill, Monto refused and stated that the treadmill had been stolen.

14. The Complainant then went onto testify that Mr. Chand had taken out a claim at the Small Claims Tribunal and thereafter the Complainant was ordered to pay Mr. Chand the value of the treadmill which was $2,500.00. The Complainant explained that Mr. Chand had informed him that he could keep the treadmill but pay the value of the treadmill.

15. The Complainant described the treadmill being black in colour and being a 'Top Kit' brand. The Complainant was shown a photo and he confirmed that it was a photo of the treadmill which he had physically identified at the Police Station. The photograph of the treadmill was then tendered as 'PEX1'.

16. The Complainant then testified that he had gone to his de-facto partner's father who had informed that Ravinesh Vikash, the Accused had taken the treadmill from Monto.

17. The Court is mindful of sections 290, 292 and 293 of the Crimes Act 2009 which discusses the meaning of dishonest, the special rules of dishonest and appropriation of property respectively. These sections state:

Meaning of dishonest

290 For the purpose of this Part, dishonest means –

(a) dishonest according to the standards of ordinary people; and
(b) known by the Defendant to be dishonest according to the standards of ordinary people.

Special rules about the meaning of dishonest

292 (1) For the purposes of this Division, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) Sub-section (1) does not apply if the person appropriating the property held it as trustee or personal representative.

(3) For the purposes of this Division, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Appropriation of property

293 (1) For the purposes of this Division, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property.

(2) Sub-section (1) applies to a case where a person obtains possession of property (innocently or not) without committing theft, and there is a later assumption of rights without consent by keeping or dealing with it as owner.

(3) For the purposes of this Division, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

18. Further, for the Court to be satisfied that a person has dishonestly appropriated property, it also needs to turn its mind to whether the accused was dishonest or not. The case of *Regina v Ghosh* [1982] 1 QB 1053 at page 1058 established a two-way test to determine whether a defendant is dishonest or not, in that:

> *"In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails.*
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> *If it was dishonest by those standards, then the jury must consider whether the defendant himself must have realised that what he was doing was by those standards dishonest."*

19. The Court is also mindful of the case of ***Keshwan v State***; *Criminal Case HAA 30 of 2015 (23 October 2015)* where it was stated:

> *45 ...it appears that the determination of the element of dishonest is a question of fact. The learned Magistrate is first required to decide the conduct of the accused is dishonest according to the standard of ordinary people. If he satisfies, he then needs to determine whether the accused had realised that what he was doing was dishonest according to those standards of ordinary people.*

20. Turning to the evidence of the Complainant that he had been informed that the treadmill had been stolen. The Court finds that this evidence was hearsay given that Prosecution failed to adduce any evidence to show that the treadmill was kept at this Monto's home and that the treadmill had been stolen from there.

21. Further, the Complainant stated that his partner's father had informed him that the Accused had the treadmill, however, the Court finds that this evidence is also hearsay evidence. Prosecution failed to adduce any evidence to confirm that the Accused had the treadmill in his possession.

22. The Court has observed that Prosecution has failed to adduce evidence that the Accused had been the person to dishonestly appropriate the treadmill and that he did so with the intention to deprive the Complainant.

23. The Court is also mindful that at the time of a person appropriating the property, there may be no intention of dishonestly keeping or disposing of the property without the consent of the owner, however, such intention can follow after acquisition which will then form the element of intention to permanently deprive the owner of his/her property (vide ***Keshwan*** [supra]).

24. However, no such evidence was adduced by the Prosecution regarding this to allow the Court to ascertain whether the Accused had allegedly formed an intention after allegedly acquiring the treadmill to permanently deprive the Complainant of the treadmill.

25. Further, there was evidence adduced with respect to the treadmill being recovered. However, the Court is unaware if Prosecution intended to rely on the principle of recent possession. In the case of ***Boila v State***; *Criminal Appeal No. AAU 049 of 2015 (4 May 2021)* His Lordship Justice Prematilaka referred to the following cases when discussing recent possession

> *[17] In Wainiqolo v The State [2006] FJCA 49; AAU0061.2005 (28 July 2006) the Court of Appeal said:*
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> > *'19] 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 really 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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> *[18] The 'doctrine of recent possession' may be applied in appropriate cases [see* ***David Kio v R*** *[Unreported Criminal Appeal Case No. 11 of 1977; Davis CJ; at page 3]. In* ***Trainer v R*** *[1906] HCA 50; (1906) 4 CLR 126 Griffith CJ explained the 'doctrine of recent possession' at page 132:*
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> > ***'It is a well-known rule that recent possession of stolen property is evidence either that the person in possession of it stole the property or received it knowing it to have been stolen according to the circumstances of the case.***
> >
> > ***Prima facie the presumption is that he stole it himself, but if the circumstances are such as to show it to be impossible that he stole it, it may be inferred that he received it knowing that someone else had stolen it.*** *' (emphasis added)'*
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> *[19]* ***R v Langmead*** *[1864] EngR 47; (1864) Le & Ca 427; 169 ER 1459 Blackburn J stated at pages 441 and 1464 respectively:*
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> > *'I do not agree ... that recent possession is not as vehement evidence of receiving as of stealing. When it has been shown that the property has been stolen, and has been found recently after its loss in the possession of the prisoner, he is called upon to account for having it, and, on his failing to do so, the jury may very well infer that*

his possession was dishonest, and that he was either the thief or the receiver according to the circumstances.'

[20] Dickson C.J. and McIntyre, Le Dain and La Forest JJ. said in ***R v Kowlyk*** *[1988] 2 SCR 59:*

> *'The doctrine of recent possession may be succinctly stated. Upon proof of the unexplained possession of recently stolen property, the trier of fact may--but not must--draw an inference of guilt of theft or of offences incidental thereto. This inference can be drawn even if there is no other evidence connecting the accused to the more serious offence.* ***Where the circumstances are such that a question could arise as to whether the accused was a thief or merely a possessor, it will be for the trier of fact upon a consideration of all the circumstances to decide which, if either, inference should be drawn. The doctrine will not apply when an explanation is offered which might reasonably be true even if the trier of fact is not satisfied of its truth.'***

[21] In ***Beumazi Ndoro Chaila*** *- Appellant* ***and Republic*** *- Respondent [2016] eKLR the Court of Appeal at Mombasa (Kenya) summarized the following principles relating to 'recent possession':*

'.....The inference is drawn from possession of recently stolen property rather than recently taking possession of stolen property.
However, before the court can draw the inference from the accused's possession of recently stolen property, it must be satisfied of five matters: ***i.*** *That the accused was in possession of the property;* ***ii.*** *That the property was positively identified by the complainant;* ***iii.*** *That the property was recently stolen;* ***iv.*** *That the lapse of time from the time of its loss to the time the accused was found with it was, from the nature of the item and the circumstances of the case, recent;* ***v.*** *That there are no co-existing circumstances, which point to any other person as having been in possession and;*

The doctrine being a rebuttal presumption of facts is rebuttable with an accused being called upon to offer an explanation, which if he fails to do an inference is drawn that he either stole or is guilty receiver.

In proving possession, the prosecution must establish that the accused had possession of the property in question, i.e. had custody of or control over that property and intended to have custody or exercise control over it. The fact that a third party has physical possession of the property does not mean it could not have been possessed by the accused. In this regard, the prosecution does not need to prove that the accused was actually caught with the property in his or her possession. It is sufficient to prove that the accused possessed the property at the relevant time.

Again, the term "recent" depends, as already stated, on the nature of the property. Frequently circulated property such as bank notes remain "recently stolen" for a shorter period than less frequently traded objects like cars, books, clothes, electronic appliances etc.'

26. In ***State v Anderson***; *Criminal Case No: HAC 31 of 2018* (26 July 2019) His Lordship Justice Rajasinghe succinctly discussed the principle of recent possession wherein he stated:

> *"17. In order to established the principle of recent possession of stolen property, the prosecution is required to prove the following elements that:*
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> *1. The two accused possessed the goods,*
> *2. The goods were recently stolen items,*
> *3. The said goods are the subject matter of the complaint by the complainant,*

(the good found in possession of the accused are the same goods that were stolen from the complainant),
4. There are no reasonable explanations by the accused in regards to their possession of the said goods.

27. The above principles stated in ***Anderson*** [supra] is consistent with the principles stated in the plethora of cases referred to in ***Boila*** [supra].

28. Whilst the Complainant testified that he had identified the treadmill at the Police Station and Prosecution tendered a photograph of the treadmill, there was no evidence elicited to show that the Accused had been in possession or even in control of the treadmill and that the treadmill the Accused was in possession or control of was the treadmill that the Complainant had alleged to be stolen. Given that Prosecution failed to elicit such evidence, the Court will not be able to ascertain whether the Accused had any reasonable explanation with respect to the treadmill allegedly being in his possession.

29. Consequently, the Court finds that there no relevant and admissible evidence has been adduced by Prosecution that the Accused had dishonestly appropriated the Complainant's treadmill and that he had done so with the intention to permanently deprive the Complainant of his property.

30. Thus, Prosecution has failed to present relevant and admissible evidence to prove the elements that between 20 December 2023 and 20 January 2024, the Accused had dishonestly appropriated a treadmill valued at $2,500.00 from the Complainant with the intention to permanently deprive the Complainant of his property.

31. I now turn to the second limb regarding whether the evidence is so discredited that no reasonable tribunal could convict on it.

32. In ***Dirabici*** [supra], His Lordship Justice Rajasinghe went on to examine the scope of the second stage of the no case to answer and stated:

> *"In assessing whether a reasonable tribunal could convict the Accused, it is necessary to make an assessment of the evidence as a whole and not to evaluate the credibility of individual witnesses or evidential inconsistencies between the witnesses. (**vide Archbold Ed 2023 4-365 pg 481**).*
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> *.....the Magistrate must approach an objective test, from the eyes of a reasonable tribunal, in assessing the evidence as a whole. The Magistrate is not required to adopt a subjective evaluation of the testimonial trustworthiness of the witnesses based on the credibility and reliability at this stage of the proceedings."*

33. Thus, at this juncture, the Court is not to look into the credibility and reliability of witnesses or the evidential inconsistencies or even the accuracy between witnesses.

34. As discussed at paragraphs 17-28 herein, the evidence of adduced by the Prosecution, I find that the evidence before the Court has been so discredited to the level that no reasonable tribunal could convict on it.

Determination

35. I am satisfied that Prosecution has failed to present relevant and admissible evidence to prove the elements of theft and that the evidence presented by the Prosecution has been so discredited to the level that no reasonable tribunal could convict on it.

36. I, therefore, allow the application for no case to answer and hold that at the conclusion of Prosecution case, it appears to the court that a case has not been made out against the Accused to sufficiently require him to make a defence in respect of the charge of theft.

37. The Accused, Ravinesh Vikash Lal is therefore found not guilty for 1 count of Theft and is acquitted forthwith.

38. Any parties aggrieved with this decision has 28 days to appeal.

N. Mishra
Resident Magistrate