

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Criminal Case No. 437/2021

BETWEEN: STATE

PROSECUTION

AND: JONE TIRAU

ACCUSED

Counsel: Sergeant 5341 Barbara Salele for Police Prosecution
Ms. L. Naikawakawavesi for the Accused

Date of Hearing: 17 February 2026
Date of Ruling: 10 March 2026

VOIR DIRE RULING

Introduction

1. Mr. Jone Tirau ("the Accused") and another were charged and produced in Court on 13 September 2021 for 1 count of Theft contrary to 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

Jone Tirau and Aisake Natago on the 5th day of September 2021 at Ba Town, Ba in the Western Division dishonestly appropriated (stole) loose cables valued at \$9,000.00, the property of Team Energy Electrical with intent to permanently deprive the said Team Energy Electrical of its properties.

2. On 26 May 2022, the Accused pleaded Not Guilty to the above charge. Voir Dire Grounds were filed by the Accused's counsel on 12 July 2022 with the following grounds, which has been copied *verbatim*:
 - i. He was assaulted at Lomolomo Police Post at the time of his arrest before being taken to Lautoka Police Station. He was kept for 24 hours at Lautoka Police Station without being informed the reasons for his detainment.
 - ii. He sustained injuries on his mouth. He suffered from a broken jaw and tooth as a result of the above mentioned assault.
 - iii. He was assaulted during his caution interview. His hands were cuffed and he was punched. Thereafter, he was hit with leg of broken wooden chair. This was done to him whenever he denied the allegations and was told to admit as the other people who he was arrested with blamed him.
 - iv. He requested for medical attention but was never taken.
 - v. He was forced by the officers to sign his record of interview.

- vi. As such the admissions in the caution interview and charge statement were made out of fear that he would be subjected to further assault.
3. At the time of the hearing, Prosecution called 3 witnesses and thereafter closed its case. The Accused elected to remain silent and not call any witnesses.
4. Both Prosecution and Defence informed the Court that they would rely on the Court record. Having considered the evidence presented by Prosecution and Defence, I now pronounce my Ruling.

The Law

5. In the case of ***State v Hazelman***; Criminal Case No. HAC 255 of 2019 (19 February 2021) His Lordship Justice Rajasinghe succinctly discussed the applicable test regarding the admissibility of a caution interview of an accused person in evidence at Trial. After referring to the test discussed in ***Shiu Charan v R*** (F.C.A. Crim. App. 46/83) and ***Fraser v State*** Criminal Appeal No. AAU 0024 of 2010 (30 November 2012) His Lordship stated:

8.The test enunciated in Shiu Charan (supra) and Fraser (supra) constitutes two components. The first component is the test of oppression. The Court is required to satisfy the caution interview was recorded without any form of force, threats, intimidation, or inducement by an offer of any advantage. The second component is that, even though the Court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation, or inducement, it is still required to satisfy that no general grounds of unfairness existed before or during the recording of the caution interview.

9.The Prosecution has the onus to prove beyond a reasonable doubt that the accused's caution interview was recorded voluntarily and fairly.

6. Thus, when determining admissibility of a caution interview, the Court needs to look at:
 - i. whether the caution interview was recorded without any form of force, threats, intimidation, or inducement by an offer of any advantage; and
 - ii. even though the Court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement, it is still required to satisfy that no general grounds of unfairness existed before or during the recording of the caution interview.

Analysis of Evidence

7. Considering the evidence led by Prosecution through its witnesses, PC Timoci testified that he was the Interviewing Officer of the Accused and that the interview took place on 10 September 2021 at the Ba Police Station bure. He explained that the bure was an open space with him, the witnessing officer – PC Samisoni and the Accused present.
8. PC Timoci explained that the Accused was sitting in the middle with him and PC Samisoni on each side of the Accused. PC Timoci testified that the interview was conducted in English as requested by the Accused and that the Accused was fit as he had a good rest and was mentally and physically fit.

9. PC Timoci explained that the interview commenced at 3:58pm with the Accused making admissions from Questions & Answers 24-58 and that he did so on his own free will with no promises or inducements by him or any other Police Officers.
10. PC Timoci further testified that the Accused was given his rights from Questions & Answers 10-15 in his interview, and that it was explained to him in itaukei as the Accused was an itaukei man and that he understood his rights. He further stated that the witnessing officer, him and the Accused then signed the interview. He also stated that when he had explained the allegation to the Accused, he had cautioned him and explained the meaning of the caution to the Accused in itaukei.
11. PC Timoci then went on to explain that a reconstruction of scene was done on 11 September 2021 from 10:40am to 11:20am and thereafter the interview was recommenced. He stated that before the reconstruction, the Accused was alright and that the Accused co-operated with no force, assault or threats. He explained that the Accused was taken to the scene and asked to show them the scene and that the Accused then pointed voluntarily where they had taken the copper and where they had hidden before the car came.
12. PC Timoci explained that the Accused was cautioned and that the cautionary words were the same as the cautionary words in the interview. PC Timoci further explained that the Accused's interview took 2 days given that the Accused was given time to rest, because they were still gathering more information and especially as it was the weekend and there was no special court sitting.
13. PC Timoci maintained that the Accused made no complaints to him before, during or after his interview and that he did not see any other Police Officers threaten the Accused or induce him or make any false promises.
14. In cross-examination, PC Timoci agreed that the Accused had been brought from Lautoka Police Station where he had been kept overnight. When it was suggested that PC Josefa was present with PC Timoci before the Accused's interview, PC Timoci stated that all crime men were present and that maybe PC Josefa was present as well.
15. When it was suggested that the Accused was handcuffed before his interview, PC Timoci stated that he could not recall. When question if it were procedure to handcuff an accused during an interview, PC Timoci stated that it would depend on how aggressive the suspect was. PC Timoci confirmed that the Accused was not aggressive during the interview and after PC Timoci's Police Statement recorded on 2 August 2022 was shown to him, PC Timoci confirmed that the Accused had been handcuffed as per Police procedures and that this was done because there were a lot of reports of escaping at the time even though suspects were not aggressive.
16. PC Timoci also agreed that as per the Force Standing Orders when a confession is made, the person needs to be produced to a more senior Police Officer at the Station. However, when it was suggested, this was not done with the Accused, PC Timoci stated that he could not recall. When it was suggested that the Accused had requested to be taken for a medical, PC Timoci stated that he could not recall and when it was suggested that this request was made because PC Timoci, PC Samisoni and PC Josefa had assaulted the Accused, PC Timoci stated that he could not recall. PC Timoci also stated that he had read out the interview to the Accused once it was concluded.

17. DC Samisoni testified that he was the witnessing officer for the Accused's interview which took place at the Police bure. He maintained that only he, PC Timoci and the Accused were present during the interview and that there had been no one had forced or assaulted the Accused to make the admissions in his interview. He explained that the Accused was very calm and co-operative during his interview and all answers were given on his own free will. DC Samisoni also confirmed that given the reconstruction, no one had assaulted, forced or pressured the Accused. The Accused's caution interview was tendered as 'PEX1'.
18. In cross-examination, DC Samisoni maintained that the Accused was never assaulted by anyone during his interview. He also confirmed that the Accused had been handcuffed given that it was their procedure. DC Samisoni also stated that the Accused read his own interview and that it was not read by the Interviewing Officer to the Accused.
19. DC Samisoni also confirmed that as per the Force Standing Order, any confession made during an interview, the accused was to be produced before the most senior Police Officer and he confirmed that this was never done with the Accused as there was no senior to PC Timoci at the time.
20. PC Josefa testified that he was the charging officer of the Accused and that he had charged the Accused in the Station Crime Office. He maintained that the Accused did not complain to him before the charge and that before he had charged the Accused, the Accused looked very well. PC Josefa confirmed that the Accused made a statement during his charge and that he had willingly given it and that the Accused had signed to acknowledge the statement he had given. He maintained that no one had assaulted or threatened the Accused, before, during and after his charge. The Accused's charge statement was then tendered as 'PEX2'.
21. In cross examination, PC Josefa informed that the Crime Officer was the more senior officer at the Station and that she had been present at the time. He also confirmed that she was more senior to PC Timoci. He confirmed that the statement that the Accused had made was an apology.
22. In the Full Court decision of the Court of Appeal case of *Temo & Anor v State* Criminal Appeal No. AAU 117 of 2016 (26 May 2022) Dayaratne JA stated:

[25] The Standing Orders will have the same effect as 'judges' rules' and it is well recognized that they do not have the force of law and hence their noncompliance by itself would not render a particular act or conduct illegal or incapable of being acted upon. Nevertheless, it is important to bear in mind that their compliance is most desirable since they play a crucial role in determining fairness and breaches of them are generally not condoned. The second appellant has also stated that both he and the first appellant were in the same room when the confessions were recorded. This too is not an acceptable practice and smacks of procedural unfairness.
23. The Court acknowledges that the Police Force Standing Orders are not rules of law but they are guides to the Police Force to ensure fairness and that any breach to any such order should not be accepted lightly (vide *State v Hazelman*; Criminal Case No. HAC 255 of 2019 (19 February 2021)).
24. PC Timoci and DC Samisoni both agreed that the Accused had not been referred to a senior most officer at the Police Station as per the Force Standing Orders after the Accused's

admissions to allow the senior most officer to record a statement whether the Accused's admissions were voluntary or not. It was their evidence that there was no senior officer present at the time and DC Samisoni stated that there was no one more senior than PC Timoci. However, the Court is mindful that PC Josefa stated that the Crime Officer had been present at the time and she was more senior to PC Timoci.

25. In *Hazelman* [supra] His Lordship Justice Rajasinghe found that by not referring the Accused to the senior most officer at the Police Station after the Accused's confession denied the Accused to raise any complaint about any improper conduct of the Interviewing and Witnessing Officer.
26. Further, the Court notes the inconsistency between PC Timoci's and DC Samisoni's evidence with respect to the Accused reading his interview. PC Timoci maintained that he had read the same to the Accused and he confirmed that it took him 5 minutes to read out 93 Questions and Answers. DC Samisoni, on the other hand stated that the Accused read his own interview and that PC Timoci read the same to him.
27. Upon perusing the Accused's Caution Interview, the Court notes that after the it depicts that the interview was read to the Accused, after confirming that he did not want to add or alter anything, that his statement was true and made on his own free will with there being no force or threat, the Accused has signed to acknowledge the same. This is then witnessed by the PC Timoci and DC Samisoni. Prosecution failed to clarify this with DC Samisoni especially as he was adamant that the Accused read his own interview and that it was never read back to by PC Timoci.
28. Given the inconsistency between PC Timoci's evidence and DC Samisoni's evidence, had the Accused been referred to the most senior officer at the Station after his admission then perhaps the Court would not have any doubts as to whether the interview was read by the Accused or read to the Accused by PC Timoci and whether the Accused had voluntarily signed his interview or not after confirming it was a true statement. This in turn raises a reasonable doubt in the Court's mind whether procedural fairness was afforded to the Accused during the time of his Caution Interview.
29. Consequently, given the above, Prosecution has failed to prove beyond a reasonable doubt that no general grounds of unfairness existed during the Accused's Caution Interview conducted between 10 September 2021 and 11 September 2021.
30. With respect to the supposed admissions in the charge statement. The statement that Prosecution is stating is an admission is as follows:

"I wish to state that I wanto to apologise to the owner of team Energy for what I had done and if he can forgive me and I wish to say here that I won't do it again."

31. The Court is mindful of the cross-examination undertaken by the Accused's counsel of DC Timoci, who had agreed that the Accused had been brought from Lautoka Police Station where he had been kept overnight. The Accused's interview commenced on Friday 10 September 2021 and concluded on Saturday 11 September 2021 at 11:42am.
32. The Court notes that the Accused's charge statement does not have a date to reflect as to when he was charged, however, the timing depicts it commenced at 10:13am and concluded

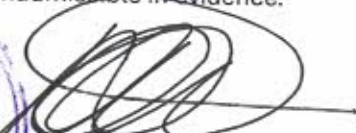
at 10:30am. However, when Prosecution led the evidence of PC Josefa with respect to 12 September 2021, he stated that he had been instructed to process a suspect for theft and that he was the charging officer.

33. In the case of **State v Prasad**; *Criminal Case No. HAC 63 of 2019 (13 September 2022)* His Lordship Justice Sharma found that although it was not raised as a ground of voir dire that the Accused had been kept in custody more than 48 hours, His Lordship made reference to Article 13(1)(f) of the Constitution of Fiji which provides that an arrested person is to be brought before a court no later than 48 hours after the time of arrest. As His Lordship found that the Accused had been arrested on Thursday 21 March 2019 at about 4:20pm and that the 48 hours expired on Saturday 4:20pm with the Accused's charge statement being taken at 6:30pm on Saturday 23 March 2019 which was in excess of 48 hours.
34. For the above reason, in **Prasad** [supra] the charge statement was ruled as inadmissible as it was obtained in breach of the Accused's constitutional right not to be kept in custody for more than 48 hours after the time of arrest without being produced in court. His Lordship found that the constitutional provisions prevailed over the evidence of the charging officer whose evidence he had preferred.
35. Although, no evidence was elicited by Prosecution as to the exact timing of the Accused's arrest, from PC Timoci's evidence it can be inferred that the Accused was arrested on Thursday 9 September 2021 and kept overnight at Lautoka Police Station before being brought to Ba Police Station where his interview was conducted between Friday 10 September 2021 and Saturday 11 September 2021 when it concluded at 11:42am.
36. Given that PC Josefa testified that he had been instructed to charge the Accused on 12 September 2021, the Court can safely infer that when the Accused was charged, it was in excess of the 48 hours.
37. Thus, considering **Prasad** [supra] the Court finds that the Accused's constitutional right not to be kept in custody more than 48 hours had been breached and thus the statement that Prosecution is attempting to rely on in the Accused's charge statement is, therefore, inadmissible.

Determination

38. I am satisfied that Prosecution failed to prove beyond a reasonable doubt that no general grounds of unfairness existed during the recording of the caution interview and charge statement.
39. I accordingly hold the Caution Interview of the Accused dated 10 September 2021 and the undated Charge Statement to be inadmissible in evidence.




N. Mishra
Resident Magistrate