

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 561 of 2014*

**STATE**

v

**VILIAME ROKOLEWENIVESI**

**Counsel:** **CPL Monish** for the Prosecution  
**Accused** in person

Judgment : **16 March 2018**

**JUDGMENT**

1. The accused, Viliame Rokolewenivesi was charged for *Damaging Property*, contrary to *section 369(1)* of the *Crimes Decree 2009*.
2. The particulars of the offence are ;-  
*"Viliame Rokolewenivesi on the 28<sup>th</sup> day of November 2014, at Labasa in the Northern Division, willfully and unlawfully damaged the show glass valued at \$160.00 the property of MH Supermarket."*
3. On 25 March 2015, the Accused waived his rights to counsel and pleaded not guilty to the charge on the same day. On 30 April 2015, the Prosecution informed the court that there is no admission in the caution interview. The case proceeded to trial on 29 September 2016.

4. At the trial, the Prosecution called two witnesses. The Accused wish to give evidence after his rights to remain silent was explained to him and he is the only witness for his case.
5. *Section 369(1) of the Crimes Decree 2009, state ; -*

*"A person commits a summary offence if he or she willfully and unlawfully destroys or damages any property."*
6. The elements of the offence that the prosecution must proved beyond reasonable doubt are ; -
  - a. *the accused,*
  - b. *willfully and unlawfully,*
  - c. *destroy or damage,*
  - d. *the victim's property.*

### **Prosecution Evidence**

7. Rajendra Lal (Rajendra) is the first prosecution witness. He stated in his evidence that on 28 November 2014, at about 1.30, he went to MH food court for lunch. While waiting for his friends at the front door of MH, he saw two Fijian men talking and arguing. He was about 3 meters away from them and was observing them. All of a sudden the accused punched and broke the big window show glass of the shop. The accused was wearing a blue vest and a three quarter pant and was holding an atlas liquor on his hand. There was no obstruction on his view when he saw the accused punch the show glass. He went and informed the security of the broken glass. He identify the accused in court as the person who punch the show glass.
8. PC 3708 Robert is the prosecution second witness. He is the arresting officer and the investigating officer. He visited the scene where he saw the broken glass on the floor. He arrested the accused from the manager's room at MH Supermarket. The accused was drunk and heavily smelt of liquor, abusive and not co-operative



as he did not want to go to the Police Station. The Accused was wearing a blue vest and a blue three quarter pants. He notice the blood on the Accused fist. The Accused was charged.

### **Defence Evidence**

9. The Accused stated in his evidence that on 28 November 2016, he had a few drinks and he went to MH Supermarket to give money to Epeli the boat owner. He was talking to Epeli in front of MH Supermarket and they did not argue. He was drunk but he was controlling himself. While he was there, the security came and forcefully pulled him to go and see the camera. They went to see the camera and the camera did not show any broken glass. His hand was injured from the sea and he did not break the glass.

### **Analysis and Determination**

10. The Accused stated that he did not damage the glass at MH Supermarket. Rajendra stated that he saw the Accused punched and broke the show glass and he informed the security. The Accused stated that the security came and took him into the supermarket to see the camera. He was still with the security when the police arrived. Robert stated that he arrested the Accused from the office of the manager of MH Supermarket. Robert stated that he saw the broken glass shattered around the floor when he visited the scene.
11. Rajendra is the eye witness who saw the Accused punched and damaged the show glass. He identified the Accused in court. The description of the Accused clothes on that day by Rajendra and Robert are consistent. From the evidence, it was the Accused who was seen by Rajendra, and pulled by the security officer. That was the same person that was arrested by Robert and charged in this case.
12. In assessing the witness credibility and with the advantage of observing the witnesses demeanour, I find that the prosecution witnesses are more credible. Their evidence are consistent on the identification of the Accused. I therefore, will

accept the evidence of the prosecution witnesses. I reject the evidence of the Accused as it was self serving and was offered to protect himself.

13. Considering the evidence in totality, I find that the Prosecution has established all the elements of the offence and has proven his case beyond reasonable doubts.
14. As a trier of facts, I am satisfied that it was the Accused who punched and damaged the show glass of MH Supermarket on 28 November 2014.
15. In my judgment, I find the Accused guilty as charged and I convicted the Accused accordingly.

**28 days to appeal**



C. M. Tuberi  
RESIDENT MAGISTRATE