

IN THE MAGISTRATES COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 308 of 2014

STATE

v

MOHAMMED SAMSOOD

Appearance : **WSGT Musuqawa** for the prosecution
Mr Kholi. A for the accused

Ruling : **28 February 2020**

RULING

NO CASE TO ANSWER

1. Mohammed Samsood you stand tried for the offence of *Theft* contrary to *section 291* of the *Crimes Act*.
2. The particulars of the offence are that between 30 May 2014 to 2 June 2014, at Labasa in the Northern Division, stole sawn timber valued at \$635.00 the property of Irshaad Nadim Hussein.
3. The accused pleaded not guilty to the charge on 20 January 2020.
4. The case proceeded to trial on 20 January 2020. The Prosecutor called three witnesses and closed her case. The defence makes an application for no case to answer. Direction

was issued for filing of submission. Prosecutor informed the court that she will rely on the court record. This ruling is prepared without any submission filed by the defence.

Application

5. There was an oral application for no case to answer but no submission filed to support the application.

Law

6. Section 178 of the Criminal Procedure Act provides for such application to be made.
7. Section 291 of the Crimes Decree, state;-
 “(1) A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.”
8. The elements of the offence are;-
 - a. the accused,
 - b. dishonestly appropriated the victim's property,
 - c. with intent to permanently deprive the victim.
9. The test for no case to answer in the Magistrate Court was stated in **Shabib v The State** [2005] FJHC 95; HAA0022J.2005S (28 April 2005) as :-
 - a. Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.
 - b. Whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.
10. The burden of proof is on the prosecution to establish the above test.

Analysis and determination

11. Irshaad Nadim (Irshaad) the first witness for the prosecution case and Nazim Shah (Nazim) the second witness for the prosecution case have identified the accused in court as Mohammed Samsood.
12. Before the trial proceed on 20 January 2020, the Counsel for the defence informed the court that the crux of the case is whether the victim, Irshaad, had authorised the accused to sell the timber. From this submission, it viewed that the accused admitted that he sold the timber on the consent and authority of the accused.
13. Irshaad stated in his evidence in chief that he did not give any consent to the accused to sell his timber to Jim. This evidence has answered the issue of concern of the defence. As it is, it shows that there are relevant and admissible evidence on dishonesty appropriation with intention to permanently deprive.
14. With the evidence above, I find that that there are sufficient relevant and admissible evidence that requires the accused to put his defence.
15. The application is dismiss, and will set hearing date for the defence case.

28 days to appeal



C.M. Tuberi

Resident Magistrate

