

**IN THE MAGISTRATES COURT
AT NADI
CRIMINAL JURISDICTION**

Traffic Case No.: 9 of 2022

**STATE
V
AISAKE RARATABU**

FOR THE PROSECUTION: PC Solomone

FOR THE ACCUSED: TIA

DATE OF HEARING: 27th June 2025

DATE OF JUDGMENT: 9th July 2025

TIA JUDGMENT

BACKGROUND

1. The Accused was charged with the following charge:

Charge

Statement of Offence [a]

CARELESS DRIVING: contrary to Section 99 (1) and 114 of the Land Transport Act No: 35 of 1998.

Particulars of Offence [b]

AISAKE RARATABU on the 29th day of January 2021 at Nadi in the Western Division drove a motor vehicle registration number HD 483 at Nadi College Road without due care and attention.

2. Prosecution filed the affidavit of service and the matter was fixed for formal proof after the accused failed to come to court. The court has entered a not guilty plea on behalf of the accused.
3. Matter was fixed for hearing on 27th June, 2025 where the prosecution called 1 witness and closed its case.
4. At the end of the prosecution case, having heard all the witnesses and seen the exhibits tendered, the court adjourned the matter to see and assess the evidence before it.

EVIDENCE

Summary of Prosecution Case

5. PW1 was Mohammed Ameer Khan and he stated that on 29/1/2021 it was heavily raining that day and he came to check his stall at the market as he was a market vendor then. He drove in one of his vehicles namely the Hybrid Toyota Camry KI038. He has a class 2 and class 6 license and has had over 25 years of driving experience. At around 2.45pm there was a flood in Nadi town and after checking his stall and as he was going home, he went along the back road and was involved in an accident with a fire truck. The accident occurred after Nadi Hospital near the Nadi College school at the end. His vehicle was in front and he tried to avoid a big pot hole so he slowed down and then just as he slowed down the fire truck hit him from the back and bumped his vehicle. He was driving at 20-30km speed and the road was busy. It was raining on this day and there was flooding at Nadi town.

He called the police after the accident and charged the driver of the fire truck namely Sake. He doesn't know Sake and had met him only once on one other occasion when he came to his stall at the market. The fire station also called him and they took his statement and asked him what he wanted after the accident. He asked them to repair his vehicle. Sake had also thanked him for saving him. He would have met Sake on a total of two occasions. The police charged the accused after the accident and then he was able to move his car. The accused then left to attend to an emergency flooring and he waited with another staff. The police came and took measurements of the scene. The police sketched the plan. His name is on the sketch plus his details and the accused and his signature. He didn't draw the sketch but only signed. It was drawn in front of him. The accident was quite a long time ago and his not sure if he would remember or recall how the accused looked like. He only remembers a slim, tall and fair male with no beard and neatly cut hair. He would not be able to identify him now and he may have changed his appearance or gained weight. Aisake was not in court. However, they both sat in the police car together for about 20.30 minutes. When a photograph was shown to the accused to identify if it was the accused, PW1 stated that he could not identify the photograph as it was in black and white. He also said no that he couldn't identify the same.

6. There was nil cross examination.
7. This was the end of prosecution case.

LAW

8. In *Khan v State, High Court of Fiji Criminal Appeal No. 1 of 1994 (21 October, 1994)*, the High Court held that the test for Careless Driving is:

"In order to determine whether the offence of careless driving is committed, the test, as LORD GODDARD C.J. said in SIMPSON v PEAT (1952 1 AER 447 at p.449) is: "was D exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances?"

9. The accused is presumed innocent until proven guilty. The burden of proof rest with the prosecution to prove each element of the offence beyond reasonable doubt. *Woolmington v DPP [1935] A.C 462*.

ANALYSIS

10. The elements to be proved are as follows:
 - i. The accused;
 - ii. Drove a motor vehicle;
 - iii. On a public road;
 - iv. Without due care and attention.
11. The issue this court has to decide is whether the standard of driving by the accused was of a reasonable and prudent driver in the circumstances of the case.

12. From the outset, I must state that the burden to prove the offence against the accused lies with the prosecution on the standard of prove of beyond reasonable doubt. The evidence before this court is of the person involved in the accident only. The accused did not have to prove anything.
13. The Court accepts PW1's account of how the accident occurred. His evidence was consistent and not challenged. Based on his version, the collision was caused when the fire truck, following behind, failed to stop in time as PW1 slowed down for a pothole during heavy rain. This conduct would suggest that the driver of the fire truck did not exercise proper care and attention, particularly considering the adverse weather and road conditions.
14. However, PW1 candidly admitted in court that the accident had occurred a long time ago and that he would not be able to identify the accused at present. He described the driver of the fire truck as a slim, tall, and fair-skinned male with neatly cut hair and no beard, but acknowledged that the person's appearance may have changed. When shown a black-and-white photograph in court, PW1 was unable to positively identify the accused, stating that he could not confirm whether the photograph was of the same person.
15. In summary, prosecution has not produced sufficient evidence to prove that the accused was the person driving the fire truck at the time of the incident. PW1 was unable to identify the accused in court or through a photograph, and no other witness — including any police officer, eyewitness, or investigating officer — was called to confirm the identity of the driver.
16. The law is clear that identity of the accused is an essential element of any criminal offence, and in the absence of evidence identifying the accused as the driver,
17. In my judgment, based on the evidence submitted, it cannot be proved beyond reasonable doubt that the accused drove without due care and attention.
18. I find that prosecution has not proved the offence of careless driving against the accused beyond reasonable doubt.

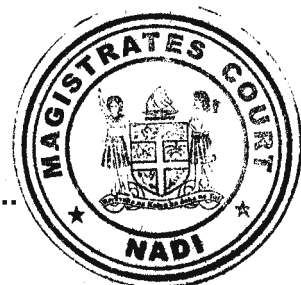
ORDERS

19. The Accused, **Aisake Raratabu** is acquitted from the charge of Careless Driving.

28 days to appeal.



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Talei Kean
Resident Magistrate



9th July, 2025, Nadi MC