

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

Juvenile Case No. 03/2023

BETWEEN: **STATE**

PROSECUTION

AND: **Z.K.V.K**

JUVENILE

Counsel: Acting Sergeant 3443 Vaciseva Marawa for Police Prosecution
 Mr. A. Barinisavu for the Juvenile.

Date of Trial: 21 May 2025
Date of Judgment: 1 September 2025

JUDGMENT

Introduction

1. The names of the Juvenile and Complainant are suppressed for the purpose of recording and publication.
2. The Juvenile 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

Z.K.V.K between 22nd day of October 2022 to 23rd day of October 2022 at Backline, Koronubu, Ba in the Western Division dishonestly appropriated 1 x pregnant mare, greyish white in colour valued at \$900.00, the property of R.T with intent to permanently deprive the said R.T of his property.

3. On 29 September 2023, the Juvenile entered a plea of Not Guilty with the matter then proceeding to Trial on 21 May 2025. Prosecution called 2 witnesses and thereafter concluded its case. The Court found that there was a case sufficiently made out against the Juvenile to require him to make a defence. The procedure under section 179 of the Criminal Procedure Act was explained to the Juvenile. It was also explained to the Juvenile that he had a right to remain silent. The Juvenile chose to give evidence and call 1 witness.
4. The Juvenile and his witness then gave evidence and thereafter Defence closed its case. Both Prosecution and Defence counsel informed the Court that they would rely on the Court record.
5. Having considered the evidence presented by both parties, I now pronounce my Judgment.

Burden of Proof

6. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.
7. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt. If there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

Summary of Evidence

8. On 22 October 2022 at about 5pm, the Complainant testified that he was going to tether his horse but when he reached the place where the horse was tied, his horse wasn't there. The Complainant stated that he went and reported the matter to Koronubu Police Post. Thereafter, he had been informed that a boy named Zolton had taken his horse.
9. The Complainant explained that his horse was brownish white in colour and its forehead was white as well as the lower parts of its legs. The Complainant stated that his horse was branded but he could not recall the brand.
10. Prosecution's second witness was Sepeteo Naisua ('Sepeteo') testified that the Complainant is the owner of the horse and that sometime in October 2022 he was coming back from the shop from Koronubu when he met the Juvenile who had told him that he was going to Nailaga to get his clothes. Sepeteo testified that the Juvenile told him that he wanted to use Isoa's horse. Sepeteo stated that they each went their way and after a few days the Complainant came to ask if anyone had seen the horse. It was then that Sepeteo stated that he told the Complainant that the Juvenile had taken the horse to Nailaga.
11. Sepeteo stated after telling the Complainant, he went on facebook and told the Juvenile to bring back the horse.
12. The Juvenile's Caution Interview was tendered by consent as 'PEX2'.
13. The Juvenile denies stealing the Complainant's horse and states that between 20-22 October 2023, Isoa informed that he was wanting to sell the horse for \$250 but Isoa never mentioned to whom the horse belonged to. The Juvenile explained that he told Isoa that he did not have the money but would have the same on Friday.
14. The Juvenile then explained that he and Isoa met on Friday and the Juvenile gave \$250 which consisted of his and his father money, to Isoa. After handing the money to Isoa, the Juvenile was told that he could untie the horse. The Juvenile acknowledged in his evidence that Sepeteo had messaged him and informed him that the horse did not belong to Isoa and that after 2-3 weeks he took the horse back to Koronubu because he was told that the horse belonged to the Complainant.
15. The Juvenile's father – Joseph testified that between 20-22 October 2022, he had been at home when the Juvenile informed him that Isoa was selling a horse. He testified that the Juvenile told him that Isoa was selling a horse and asked if they could buy it which he agreed to but on the proviso that they each contribute towards the purchase. Joseph then testified that he and the

Juvenile each contributed \$125 each after they each received their cane payment, and he maintained that he was never informed that the horse did not belong to Isoa.

Evaluation of Evidence

16. 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.
17. From the outset, there was no dispute regarding the Juvenile's identity and that he had taken the horse. The issue herein is whether the Juvenile had dishonestly appropriated the horse as alleged by Prosecution with the intention to permanently deprive the Complainant of his property.
18. The Court will now need to evaluate the evidence presented to determine the testimonial trustworthiness of the evidence which will be done by evaluating the credibility – the correctness or veracity of the evidence and the reliability of evidence – the accuracy of the evidence - vide ***State v Prasad Criminal Case No. HAC 72 of 2021 (20 June 2024)***. In doing this, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide ***State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)***).
19. Prosecution's case as per the Complainant is that on 22 October 2022 at about 5pm, he had gone to tether his horse at his farm which was about 10 meters from his home when he realised that his horse wasn't there. The Complainant explained that his horse was brownish white in colour and its forehead was white as well as the lower parts of its legs. The Complainant stated that his horse was branded but he could not recall the brand.
20. When shown a photograph, the Complainant confirmed that it was a photograph of his horse which had been returned to him after 2-3 weeks from the time he reported the matter. The photograph was tendered as 'PEX1'.
21. The Complainant further testified that he had been informed by Pate that a boy named Z – the Juvenile had taken his horse. When questioned if he knew Z, the Complainant answered yes as he had been living in the area for 5 years now.
22. Sepeteo testified that sometime in October 2022 he had met the Juvenile who had told him that he was going to Nailaga to get his clothes. The Juvenile then asked Sepeteo about Isoa. Sepeteo testified that the Juvenile told him that he wanted to use Isoa's horse.
23. After a few days, Sepeteo stated the Complainant came to ask if anyone had seen his horse. It was then that Sepeteo stated that he told the Complainant that the Juvenile had taken the horse to Nailaga.

24. Sepeteo stated after telling the Complainant, he saw the Juvenile online on Facebook and so he told the Juvenile to bring the horse back. The horse was then brought back by the Juvenile a few days after.
25. Prosecution relies on the Caution Interview of the Juvenile which was tendered as 'PEX2'. The Juvenile in his Caution Interview stated that he met Isoa who was the Complainant's step son (Questions & Answers 29-30) to discuss the horse as Isoa had sold the horse to the Juvenile (Questions & Answers 31 & 33) and that the Juvenile paid and Isoa received \$250 (Questions & Answers 34-36). The Juvenile went on further to explain that he took the horse from where it was tethered as indicated by Isoa, that he took the horse home and that at the time of the interview, the horse had been returned to the Complainant as he had heard that the Complainant reported the matter (Questions & Answers 38-41 and 45-47)
26. In the case of **Vodo v State Criminal Appeal Case No. HAA 31 of 2023 (19 April 2024)** His Lordship Justice Rajasinghe succinctly outlined the relevant case authorities that have set forth the principle of evaluating a caution interview in detail. After considering the relevant case authorities, His Lordship stated:

"Applying the guidelines adverted in the above authorities mutatis mutandis to the hearing in the Magistrate's Court, which is referred to as bench trial, the trial Magistrate, even though he had already ruled in the voire dire hearing that the admissions in the Caution Interview were made voluntarily and under fair and just circumstances, could still consider whether he still holds the same view of the voluntariness and fairness at the end of the trial proper if the Accused again presented or pointed out any evidence challenging the voluntariness and fairness of the recording of the caution interview. Suppose the learned Magistrate remains of the same view of voluntariness and fairness. In that case, the learned Magistrate must then proceed on to evaluate the truthfulness and probative value of the admission made by the Accused in his caution interview. In doing that, the learned Magistrate must consider all the circumstances surrounding the making of the confession and all other evidence presented during the hearing."

27. Considering **Vodo** [supra] I will decide whether the admission is credible and reliable which in turn will allow the Court to determine its truthfulness by ascertaining whether there is independent evidence to support the admission.
28. Prosecution relies on the evidence of the Complainant who testified that he realised his horse had been stolen on 22 October 2022 and that a Pate had informed him that the Juvenile had taken his horse with the evidence of Sepeteo who testified that the Complainant had been asking about his horse and he had informed the Complainant that the Juvenile had taken the horse as the Juvenile has been asking about the same.
29. Considering the evidence by Prosecution, Prosecution is relying on the evidence that as the Juvenile had been seen with the horse that he had dishonestly appropriated the horse with the intention to permanently deprive the Complainant of the same.
30. 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.

31. 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.

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."

32. 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.

33. Turning to the evidence of the Juvenile, he testified that Isoa informed him that he - Isoa was wanting to sell the horse for \$250 but Isoa never mentioned to whom the horse belonged to. The Juvenile expressed his interest in buying the horse and was told by Isoa that if the Juvenile was late with the money, he would sell the horse to another person. The Juvenile then testified that he paid Isoa the agreed sum of \$250 which was contributed by him and his father.
34. The Juvenile's evidence with respect to purchasing the horse was supported by the evidence of his father, Joseph who testified that the Juvenile told him that Isoa was selling a horse and asked if they could buy it which he agreed to but on the proviso that they each contribute towards the purchase. Joseph then testified that he and the Juvenile each contributed \$125 each.
35. The Court is mindful of when Sepeteo was cross examined and it was suggested that Isoa had made a deal with the Juvenile to sell the horse for \$250. Sepeteo stated that maybe because Isoa had been telling them that the horse was given to him and that he was wanting to sell it off as he wanted to go back to his village in Vanua Levu. The Complainant also stated in cross examination that Isoa - his son would sometimes use the horse, however, he stated that Isoa never informed him about the sale of the horse.
36. Even in cross examination, the Juvenile maintained that he did not know that the horse belonged to the Complainant because Isoa had told him that the horse belonged to him - Isoa.
37. When cross examined about his answer at Question & Answer 32 of his Caution Interview when he was questioned about what horse he was talking about and the Juvenile answered the Complainant's horse, the Juvenile explained that his answer in the interview was based on when Sepeteo had messaged him and informed him that the horse belonged to the Complainant. The Juvenile went on to state that as he did not know that the Complainant was the owner of the horse, he did not go and enquire with the Complainant after the dealing with Isoa.
38. The Court notes that in the Juvenile's subsequent answers in his Caution Interview, he spoke about purchasing the horse from Isoa and paying Isoa. The Court notes that the Interviewing Officer failed to question the Juvenile why he had purchased the horse from Isoa if he - the Juvenile said that the horse belonged to the Complainant. The Juvenile was not even asked how he had come to find out that the horse belonged to the Complainant.
39. The Court has observed that Prosecution has failed to disprove the evidence of the Juvenile and his father's evidence with respect to whether the Juvenile had dishonestly appropriated the Complainant's horse with the intention to deprive the Complainant. Prosecution failed to bring any evidence to show that there was no agreement to sale the horse between Isoa and the Juvenile, that no money had been exchanged between the Juvenile and Isoa for the purchase of the horse and that at the time the Juvenile took the horse he knew the horse belonged to the Complainant and had intended to permanently deprive the Complainant.
40. Additionally, Prosecution's own witness, Sepeteo had stated that the agreement to sale could have been possible because he had heard Isoa wanted to sell the horse to go back to his village.
41. Moreover, the Court is mindful that even in his evidence, the Juvenile stated that when Sepeteo had messaged him and informed him that the horse did not belong to Isoa, he - the Juvenile

took the horse back to Koronubu because he was told that the horse belonged to the Complainant.

42. In *Keshwan* [supra] Rajasinghe J. stated:

27. Another notable change brought in by the Section 291 of the Crimes Decree is that, unlike Section 259 of the Penal Code, it has not limited the existence of the intention of permanently depriving the other of the property. Under the previous regime of Penal Code, such intention was required to be exist at the time of taking the property. However, Section 291 does not require such intention at the time of appropriation. Thus extending the criminal responsibility to an innocent acquisition followed by dishonest decision of keeping or disposing of the property without the consent of the owner.

43. Thus, 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.
44. Considering the Juvenile's evidence that he returned the horse upon being informed by Sepeteo that it belonged to the Complainant in conjunction with Sepeteo's evidence who was Prosecution's witness that once he had informed the Juvenile that the horse belonged to the Complainant, the Court finds that Prosecution has even failed to adduce evidence that even after the Juvenile discovered that the horse belonged to the Complainant that he intended to permanently deprive the Complainant of his property. It is evident that the Juvenile's conduct of returning the horse highlights his position that he was unaware that the horse belonged to the Complainant especially when he purchased it from Isoa and upon finding out the same, the Juvenile returned the horse.
45. Thus, considering the evidence in totality, the Court finds that Prosecution failed to satisfy beyond a reasonable doubt that the Juvenile dishonestly appropriated the Complainant's horse with the intention to permanently deprive the Complainant of his horse.

Determination

46. I find that Prosecution has failed to discharge its burden in proving all the elements of the offence of Theft beyond reasonable doubt.
47. I, therefore, find the Juvenile, Z.K.V.K, not guilty of 1 count of Theft as charged and hereby acquit him forthwith of 1 count of Theft.
48. Any party aggrieved with this decision has 28 days to appeal to the High Court.


N. Mishra
Resident Magistrate

