



**IN THE DISTRICT COURT OF NAURU**  
**CRIMINAL JURISDICTION**

Criminal Case No. 8 of 20

**THE REPUBLIC**

-v-

**JONATHAN GADEANANG**

**JUDGMENT**

*For the Prosecution:* Ms. Susan Serukai  
*For the Defendant:* Mr. Vinci Clodumar with Joshua Scotty  
*Hearing:* 16 June, 21 July, 1<sup>st</sup> September, 2 September, 11 September, 21-22  
September, 12 February 2021  
*Submission received:* 09 April 2021  
*Judgment:* 27 April 2021

**Introduction**

1. The accused stands charged with 1 count of damaging property and one count of theft relating to a pig which are alleged to have taken place on 17<sup>th</sup> April 2020. He faces a third count of obstructing a public official and escape from custody on 25<sup>th</sup> February 2020. The charges were filed on 26 February 2020.
2. This trial started on 16 June 2020 when only the complainant came. The other witnesses that were summoned, including several police officers failed to turn up. Bench warrants were issued and the matter was set for continuation on 1-2 September. On 1<sup>st</sup> September, only 1 witness turned up and bench warrants were issued for 6 witnesses for the prosecution. This included 4 police officers. On 2 September several witnesses turned up but the key prosecution witnesses, Janboy Tagamoun and Jayjay Heinrich did not appear. The matter was set for continuation on 21-22 September. On 21 September, the accused failed to turn up and a bench warrant was issued for his arrest. On 22 September he turned up with his counsel and said he got the date wrong. On 22 September, the prosecution said Janboy Tagamoun and Jayjay had refused to give evidence. These are the two who allegedly saw the accused taking away the pig. On 12<sup>th</sup> November when the matter was again set down for continuation, Jayjay could not testify as he was seriously injured in a motorbike accident.
3. The next available date for continuation was on 12<sup>th</sup> February as the court was closed from 9 December to 29 January to allow prosecutors and the magistrate to take leave to Fiji during the covid-19 epidemic.
4. On 12<sup>th</sup> November, Janboy Tagamoun appeared on a summons but refused to testify. The provisions of section 102 of the CPA were explained to him and he agreed to testify, though unwillingly.
5. At the end of the prosecution case, I found that the accused had a case to answer and I put him to his defence. He elected to give an unsworn statement and called witnesses 3 witnesses on his behalf.
6. Because of the length and the breaks in the trial, I considered it prudent that parties make written submissions. Both counsels had problems with their notes of the evidence at the trial and prosecution submissions were not filed until Friday 9<sup>th</sup> April. Defence counsel lost his notes while having to move house twice during the course of the trial.

## **Background**

7. On or about 17 February 2020, the accused was seen by a witness driving from the direction of Robert Oberta's house in Ijuw on a motorbike with a passenger holding a pig. The witness recognized the pig as belonging to his uncle Robert Oberta and after playing volleyball went looking for and reported the theft to Roberta at a shop in Anibare by about 8:30 p.m. Roberta had fed his pigs at about 6:00 pm and all four were there but when he checked after the report, he found 1 missing and fresh blood near the sty. The matter was reported to police. This is the subject of the first and second counts.
8. On 25<sup>th</sup> February, a group of officers led by Senior Constable Marvin Junior Tokaibure went to arrest the accused from his residence on instructions from Superintendent Imran Scotty. The accused refused to go with police and set his 2 bulldogs loose on them. This is the subject of count 3. The police returned to the station after the accused's mother told them that she will bring her son to the station.
9. At the station, the accused is alleged to have left the station without being released. He was arrested and taken back to the station. That is the subject of count 4 of the charges.
10. The offences took place at different times and different locations and to be able to understand the matter, they will be dealt with in chronological order.
11. The offences took place on different days against different victims. They should have been filed separately. The order in which witnesses are called in a trial should be logical and follow a chronological order. Here, it was not and so the court was listening to evidence about the fourth count from the second witness way before PW7 testified about the first and second counts.

## **First & Second Counts.**

12. The accused is charged with damaging property contrary to section 201(a) of the Crimes Act 2016 in count 1 and theft contrary to section 154 of the same act in count 2.

## **Burden and Standard of Proof**

13. The burden of proof is on the prosecution to prove each element of the offence beyond reasonable doubt. There is alibi evidence and the burden of proof is on the prosecution to disprove the alibi evidence beyond reasonable doubt: *R v Johnson*<sup>1</sup>

## **Prosecution Witness 1 (PW1)—Robert Oberta**

14. Robert Oberta is 79 years old and lives in Ijuw in a house about 80 meters to the left of the coastal road. It is on the slopes of the hill. A road from his home enters the main coastal road near the shop at Ijuw. He kept 4 pigs in metal enclosure raised about 1 meter above the ground near his home. He feeds them in the morning and in the afternoon.
15. On Monday 17<sup>th</sup> February 2020, he fed his pigs at about 6:00 p.m. Between about 7:30—8:00 pm, he went to the shop at Ijuw but it was closed so he walked to the shop at Anibare near the Australian workers' camp. He was there when Batard and another man told him one of his pigs had been stolen so he returned home. He then discovered that one of his pigs was missing and with blood on the ground near his sty. The missing pig was black and white and about 2 feet high and 30-40 cm wide. Roberta said the blood was not there when he went to feed the pigs at about 6 pm so he assumed that the blood is from the missing pig. He went and told his son-in-law, Jerry about the missing pig and Jerry reported the matter to Police. PW1 said the stolen pig belongs to him and is valued at \$1,000.00

## **Prosecution Witness 7 (PW7)—Janboy Tagamoun**

16. Janboy Tagamoun is 23 years old and lives in Ijuw next to the house of Robert Oberta. He explained that his house is about 10 paces or steps from the maid road. On the seaside opposite his house is a volleyball court.
17. On 14<sup>th</sup> of February 2020, he said he was in Ijuw. He states:

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<sup>1</sup> [1961] 3 All E.R. 969 per Ashworth J at 970E

At about 8:00 p.m, I don't remember. I was at home. I was with Jay-jay Heinrich. We were just hanging around our house. We saw.... I really don't recall that time.

18. Janboy later said that he went to the volleyball court with Jayjay and that they had to travel downhill to do this. He said while walking downhill, he saw a car and a motorbike travelling in the opposite direction. He recognized the person driving the motorbike. It was Jonathan. He did not know Jonathan's surname. Jonathan was with a friend, Dougal. They were headed towards Anibare. He went immediately to inform his uncle to tell him they took a pig. His uncle is Robert (PW1). Jonathan and Dougal took a pig. He saw it. They were taking it in the motorbike. The pig is several colours. Colour is predominantly white. He knew the pig belonged to his uncle because he recognized it. He showed the court the height of the pig and its length.

19. He continued:

I was walking on the road, me and my friend Jayjay Heinrich. This was about early evening. The source of light was a street light. I was about 5 steps from the light. I was about 4 meters away from them. They were travelling quite fast. The light was as bright as the court room (Court 2 with tube lights.) I reported this the moment I saw them. My uncle was in the store where I met him. The store at Anibare. After we played volleyball, then I went to the store and told him. There was nothing blocking my view. The pig—I don't know whether it was alive or dead. Dougal was holding it. They were coming with the pig from the road coming out of my uncle's house. His house is further up. The road leads to his house.

I know Jonathan. He was a friend some time ago. Have known each other a long time, since we were young. Can recognize him if I see him.

20. Janboy Tagamoun identified the accused in court as Jonathan.
21. In cross-examination, PW7 affirmed his identification of the accused as the person he saw on the motorbike; that only 1 vehicle and the motorbike went past them; that when he saw the accused on his motorbike, he told Jay-jay Heinrich, who was with him to hide in the bushes; and that Jay-jay hid in the bushes while he, Janboy, remained on the footpath of the main road.
22. Defence Counsel showed a google map of the area and after identifying his residence and others in the area, he marked with the letter X and Y respectively where he was and the accused's position when he first saw him. When it was put to him that it was quite far, the witness said he could clearly see and recognize the accused. Further, when it was put to him that the accused was not there at the time, PW7 said, "I saw him for myself and my friend saw him."
23. In re-examination, Janboy said he was about 10 paces away from the accused when he first saw him and at that time, the accused and his friend had the pig.
24. The accused elected to give an unsworn statement and claimed that he knows nothing about the theft of the pig. He called Jayjay Heinrich as a witness about the theft of the pig. Jayjay Heinrich is 15 years old and lives with his parents in Anibare. He was asked about the 14<sup>th</sup> of February 2020 and he says he couldn't remember where he was.

### **Notice of Alibi**

25. The accused gave an unsworn statement and called alibi witnesses. They are relevant to the first two counts above.
26. The accused was arrested and charged on 26th February 2020. He was then represented by the Public Defender. He changed his counsel on 3 March. His new counsel filed the alibi notice on 12<sup>th</sup> May 2020, nearly 3 months after he was arrested. The notice is required under s. 148 (1) and (8) of the Criminal Procedure Act 1972 to be given to the prosecution by the defence within the prescribed period, which in the Supreme Court is 7 days after the preliminary enquiry. Since there is no longer any preliminary enquiry, the period should be worked out from the time the information is filed in the Supreme Court. Applying the necessary changes for the District Court, the period should run from the time the charges are read to the accused in Court.
27. Section 148 of the Criminal Procedure Act 1972 deals with alibi evidence and is almost an exact copy of the section 11 of the UK Criminal Justice Act 1967. The English Court of Criminal

Appeal considered this issue in the case of R v Sullivan and said that the purpose of the 7 day period from the end of the preliminary inquiry was:

*In the view of this court the period of seven days was inserted in the Criminal Justice Act 1967 because normally (although, of course, by no means always) a trial comes on within a reasonably short time after the termination of committal proceedings. Therefore, if the prosecution obtains information within the seven days, it gives them time in which to investigate the information. The legislature however, fully realised that there may be circumstances when it would not be possible to give the information, or when there may be some reason why the information is not given within the seven days, but nevertheless, justice demands that the alibi evidence shall be heard at the trial.*

*The court has a discretion to allow alibi witnesses to be called in such circumstances. The discretion must be exercised judicially. The mere fact that the necessary information has not been given within the seven days does not by itself, as a general rule, justify the court in exercising its discretion by refusing permission for the evidence to be called.<sup>2</sup>*

28. I allowed the alibi notice to be accepted as the accused changed his defence counsel at the beginning and he had been in remand for some time. This limited the time available for the accused to meet his counsel. The alibi notice was filed on the day first set down for trial. I adjourned the trial to allow police to investigate the alibi but no statements of the alibi witnesses were ever taken by the police. It is vital for the prosecution to obtain the statements of the alibi witnesses and carry out investigations as these may reveal the offence was committed by someone else.
29. Alibi notices should be given within 7 days of the charges being read to the accused for the first time by the Court and strict adherence to this rule will be enforced by this court in future.

#### **DEFENCE EVIDENCE**

30. The accused elected to give an unsworn statement. Before he gave the statement, Court read the charges aloud. The first two counts allegedly took place on 17<sup>th</sup> February 2020. The relevant statement about counts 1 & 2 are:-

I do not know anything about the stealing of the pig. When I finished work, I went to see Rendell to go drinking. After I finished drinking, I finished about 11, I went home and slept. That's where my whereabouts were. That's it. That's the last thing I remember. 17<sup>th</sup> February.

#### **Defence Witness 2—Rendell Enos**

31. Rendell Enos is 38 years old and he testified for the defence. He lives in Denig District. He stated:

I remember 17<sup>th</sup> February 2020. It was a Friday. I was outside my house drinking. 4:00 p.m. I was with Jonathan. We were just drinking and sitting down outside the house. No one else was present. Riona my sister and my mother Nerida were in the house. Jonathan joined me at 4:00. I was there earlier and Jonathan joined me at 4:00 p.m. We drank until 11:00 p.m. Jonathan never left the house that night. He came to my place in a motorbike.

32. In cross-examination, Rendell Enos said that Jonathan is a close friend whom he has known for many years; that he started drinking at 3 p.m. and Jonathan came at 4; that they drank 24 cans of VB beer that someone had given to him. He denied that Jonathan stole the pig to sell it to get more money to continue drinking. I was not impressed with the demeanour of this witness. In addition, he states that he was drinking with the accused on Friday 17<sup>th</sup> February 2020. A check of the calendar shows 14<sup>th</sup> February is a Friday. 17<sup>th</sup> February is a Monday.

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<sup>2</sup> [1970] 2 All ER 681 at 684 b-d.

### Defence Witness 3—Riona Hubert

33. Riona Hubert is Defence Witness 3. She is 27 years old and has 4 children. She lives in NPC quarters. On 17<sup>th</sup> February, she was at home with her siblings and her mother. No one else was there. Rendell Hubert is her brother. She said she did not recall him being there. She then says her brother Rendell was there. She was asked the name of the person who was with her brother at her place that day and she said with a nervous smile, "I don't know." When asked what her brother Rendell was doing, she said he was sitting outside, just sitting there; that there was someone with him; she could not recall who it was; that she was inside the house; that she could not see her brother and the other person outside; and that she could not hear their voices.
34. She said she recalled giving a statement to Defence Counsel and that she could recognize it if shown and she did recognize it. It was a statutory declaration. She said she could not read but that everything in the statement is correct. After objections from the prosecutor, I allowed the statement to be tendered as Defence Exhibit 2.
35. In cross-examination, Riona said she was with defence counsel Joshua Scotty when the statement was typed but not when it was printed. She signed the document and she recognized her signature. The statement was in English and she agreed that she signed it. It was translated to her in Nauruan and she agreed with it.
36. The statement is titled, "Affidavit of Riona Hubert." She identifies herself as the younger sister of Rendell Enos. She knows the accused Jonathan for many years as he regularly visits her brother. She recalled that on the 17<sup>th</sup> day of February 2020 she was at home. She stated:

"At around 5pm in the afternoon, I saw my brother Rendell Hubert and the accused Johnathan Gadeanang drinking alcohol outside in the front of our house. Jonathan and my brother regularly drink alcohol together on many occasions. On that particular day, I was home the whole time. I saw the accused arrive and stayed with my brother until late at night. I saw him left. Afterwards I saw my brother came in the house fully drunk and went to his room to sleep."

37. The affidavit was sworn before a commissioner for oaths.

### ANALYSIS

38. Riona was not a credible witness. Her demeanour showed that she was very uncomfortable and reluctant when she was giving evidence on oath. Her reluctance is consistent with a person who has been asked to lie under oath. She said in her oral testimony that she was alone with her family, her mother and her siblings on the 17<sup>th</sup> February and that there was no one else from outside her family there. Later, she said her brother was outside with someone. She could not recollect who was with her brother, yet later, she said her brother was with the accused. In her "affidavit," she said she had known the accused for several years and that he was with her brother on the afternoon of the 17<sup>th</sup> of February 2020. She has contradicted herself and I do not believe she was telling the truth.
39. Defence counsel relied on her affidavit for the truth of what was in it. Riona's affidavit is an out of court statement in the English language and she could not read English. In any case, the Court of Criminal Appeal in the UK dealt with the issue in R v Golder.<sup>3</sup> Lord Parker CJ traced the law on inconsistent statements and said at 459:

*"In the judgment of this court, when a witness is shown to have made a previous statement inconsistent with the evidence given at the trial, the jury should not merely be directed that the evidence given at the trial should be regarded as unreliable; they should be directed that the previous statements, whether sworn or unsworn, do not constitute evidence on which they can act."*

*(emphasis mine)*

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<sup>3</sup> [1960] 3 All ER 457.

40. ***R v Golder***<sup>4</sup> was decided in 1960 by the English Court of Criminal Appeal before independence in Nauru. It is part of the common law of Nauru pursuant to section 4 of the Customs and Adopted Laws Act 1971. Based on this decision and the fact that I have found the oral testimony of Riona Hubert to be unreliable, the contents of the affidavit is not evidence in this Court.

#### **Conclusion on alibi**

41. I have carefully considered the alibi evidence of Riona Hubert, of her brother Rendell Enos and my findings above on the credibility of their evidence is that they are not credible witnesses. The unsworn evidence of the accused is that he knows nothing of the theft of the pig but I put little weight on it because he has a good reason to lie as he is facing serious jail terms if convicted. I therefore conclude that the accused was not at the home of Riona Hubert and Rendell Enos on the 17<sup>th</sup> of February when the pig was stolen. It follows that he had the opportunity to commit the offences in counts 1 and 2 on the 17<sup>th</sup> of February 2020.

#### **The evidence of Jayjay Heinrich**

42. Jayjay Heinrich is 15 years old and he testified for the defence after the prosecutor said that she did not wish to call him to testify because his evidence mirrored that of Janboy. A lot of the delay in this case is due to him not answering the summons to come and give evidence on more than one occasion, turning up in court but leaving before he was to give evidence and escaping from the court premises before he was to give evidence. A lot of time was wasted adjourning the case because he was not present and then in the end, when he finally turned up, the prosecutor decided not to call him.
43. Jayjay does not recall the 14<sup>th</sup> of February 2020. He said he was at home. He does not recall seeing Janboy (PW7) that day. He said he didn't see the accused on that day, 14<sup>th</sup> February 2020; that he was not with Janboy; didn't recollect going to the shop that day and that he didn't see the accused on 14<sup>th</sup> of February. Jayjay recollects making a statement to police on that day but his parents did not go with him when he made the statement; he does not remember what language was used; he does not remember signing the statement and repeated that he did not see the accused on that day.
44. In cross-examination, Janboy said he was not with PW7 on 14<sup>th</sup> February 2020 and thereafter, it was clear he was being very evasive. He was asked several times if he remembered being summoned to come to court and being brought to court by his mother. He answered that he does not remember those incidents. When he was asked about the time he fled from court, he said he does not remember it. When asked about the second time he fled from court with PW7, he said he does not remember it. When it was put to him that the reason he was avoiding coming to court was because he did not want to give evidence for the prosecution, he answered, "I don't even know the story."
45. In re-examination, he disagreed with defence counsel that he came with PW7 to court on the day that PW7 gave evidence but he said he came one time to give evidence for the prosecution but the prosecutor did not call him to the stand.
46. I found this witness to be not a credible witness. He was asked about the 14<sup>th</sup> of February when the charges clearly stated that counts 1 and 2 took place on 17<sup>th</sup> of February 2020.
47. He was evasive and selective about what he said he remembered. His answers to most questions were that he could not remember and at one stage, he asked, "what should I say?" This leads me to believe he had been told what to say in court by someone. He had repeatedly avoided giving evidence for the prosecution and went so far as to escape from police custody in the court premises. His behaviour throughout the trial and his evidence would lead the reasonable observer, conversant with the facts to suspect that he was afraid to give evidence.
48. I find the evidence of Jayjay Heinrich to be unreliable and I disregard it.

#### **The Alleged Error in the Date of the Offence for Counts 1 & 2**

49. On 10<sup>th</sup> June 2020, Ms. Serukai said that date in the charge is 17<sup>th</sup> of February whilst the allegation put to the accused was that the offence took place on the 14<sup>th</sup> of February. No application was made to amend the charge. Unfortunately, the Caution Interview statement was

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<sup>4</sup> [1960] 3 All ER 457.

not tendered by either side as an exhibit. Section 93 of the Criminal Procedure Act deals with the framing of charges. Section 93(f) and (i) state:-

*(f) General rule as to description:*

*Subject to any other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or information in ordinary language in such a manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to;*

.....

*(j) Gross sum may be specified in certain cases of stealing:*

*Where a person is charged with stealing, it shall be sufficient to specify the gross amount of property alleged to have been stolen and the dates between which the stealing is alleged to have been committed without specifying particular times or exact dates.*

50. Police should take care that the dates of the alleged offence are correct or within as narrow a time frame as possible. The Court is in no position to know which date the offence is alleged to have taken place before the trial. This is a matter that should have been sorted out by counsels before the trial or for evidence to be adduced via witnesses at the trial. The allegation is that the accused damaged and stole the pig. Whether it happened on a Friday or the following Monday has been excused by section 93 of the Criminal Procedure Act 1972. The section recognizes that quite often, people forget the exact dates when offences take place. Where theft is alleged, section 93 of the CPA clearly does not require particular times or dates because such things might only be known to the thief.

### Applying the law to the facts

51. Count 1 is damaging property contrary to section 201 of the Crimes Act which provides:-

#### **201 Damaging property**

*A person (the 'defendant') commits an offence if the person:*

*(a) causes damage to property belonging to another person, or to the defendant and another person; and*

*(b) is reckless about causing damage to the property.*

*Penalty: 5 years imprisonment*

52. Property is defined in section 198 of the Crimes Act 2016 to include killing or harming the animal.
53. The elements of the offence for count 1 are:
- That the accused;
  - Harmed or killed the pig;
  - Belonging to Robert Oberta.
54. Section 154(a) of the Crimes Act 2016 states:-
- #### **154 Theft**
- (1) A person (the 'defendant') commits an offence if the defendant:*
- (a) dishonestly takes or carries away property belonging to another person, or to the defendant and another person, with the intention of permanently depriving the other person of the property;*
55. The elements of the offence for count 2 are:
- That the accused;
  - Took a pig belonging to Robert Oberta or Robert Oberta and another person;
  - With the intention of permanently depriving the owner thereof at the time of the taking.

### Was it the accused?

56. The evidence of PW7, Janboy Tangamoun is clear cut. He saw the accused driving a motorbike with his Dougal as a passenger. Dougal was holding a pig. He did not know whether it was alive or dead. He saw the accused and Dougal from about 4 meters away at their closest. The lighting was good—he said it was about the same as the lights in Court 2 on the day of the trial. He knows the accused very well as they used to be friends. He recognized the driver as Jonathan whom he identified in Court as the accused.

57. The leading authority on identification is *R v Turnbull*<sup>5</sup>, where Widgery LCJ:

*"First, whenever the case against an accused depends wholly or substantially on one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms, the judge need not use any particular form of words. Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as, for example, by passing traffic or a press of people? Had the witness seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent observation to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? ... Finally he should remind the jury of any specific weakness which had appeared in the identification evidence.*

*Recognition may be more reliable than identification of a stranger but, even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made."*

58. I have warned myself of the dangers highlighted above by the Lord Chief Justice and the fact that the accused had called alibi witnesses but I am satisfied in the circumstances that the identification of the accused as the person on the motorbike on the day in question was the accused because:-
- a. Janboy Tagamoun had been friends with the accused and had known him since they were children;
  - b. The distance between them when identification was made was short;
  - c. Janboy observed the accused approaching and passing within 4 meters of him;
  - d. The lighting was good and there were no obstacles between the accused and the witness; and
  - e. It is not a normal occurrence to see a big pig being carried by a person on a motorbike and such a scene would draw the attention of a witness to pay attention to the details including who were involved.

**Was the pig killed or harmed by the accused?**

59. The defendant has denied any knowledge of the stolen pigs at all. I do not accept his alibi evidence. He therefore has the opportunity to commit the offences in counts 1 and 2.
60. The evidence of Roberta Oberta is not disputed. He lost a pig. He said it cost \$1,000.00. He was a credible witness. He found blood near where his pig was kept but there is no direct evidence that the blood belonged to his pig or that the accused killed or harmed the pig.
61. The prosecutor submitted that I should use circumstantial evidence and infer from the facts that the blood at the scene was that of the pig and that therefore the accused would have injured the pig by killing it before taking it away.
62. Circumstantial evidence is explained in *Shepherd v The Queen (1990)*<sup>6</sup> by Dawson J as:-

*Circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts. It is traditionally contrasted with direct or testimonial evidence, which is the*

<sup>5</sup> [1977] 63 Criminal Appeal R 132

<sup>6</sup> 170 CLR 573 at 579



*evidence of a person who witnessed the event sought to be proved. The inference which the jury may actually be asked to make in a case turning upon circumstantial evidence may simply be that of the guilt of the accused. However, in most if not all cases, that ultimate inference must be drawn from some intermediate factual conclusion, whether identified expressly or not. Proof of an intermediate fact will depend upon the evidence, usually a body of individual items of evidence, and it may itself be a matter of inference....*

*For example, with most crimes it is a necessary fact that the accused was present when the offence was committed. But it may be possible for a jury to conclude that the accused was guilty as a matter of inference beyond reasonable doubt from evidence of opportunity, capacity and motive without expressly identifying the intermediate fact that the accused was present when the crime was committed.*

63. There is no proof before this court that the blood belonged to a pig. There is no evidence, apart from the blood that the pig was injured or killed. Dougal was seen holding onto the pig behind the accused in the motorbike. The pig as described by Robert was quite big and it would be unlikely that such a big animal would allow a stranger to carry it docilely away in a motorbike. Some of the inferences we can draw is that either the accused or Dougal or both killed the pig. Another inference is that Dougal or someone else killed the pig before it was taken away by the accused and Dougal. For the accused to be convicted on circumstantial evidence, there must be only one inference we can draw from the evidence. Since there is more than one inference that can be drawn as to who killed the pig, we cannot rely on circumstantial evidence to find the accused guilty of count 1 of damaging the pig. I therefore find him not guilty of that charge and acquit him of it.

### **Count 2--Theft**

64. The accused is charged with theft contrary to section 154(a) of the Crimes Act 2016:-

#### ***154 Theft***

*(1) A person (the 'defendant') commits an offence if the defendant:*

*(a) dishonestly takes or carries away property belonging to another person, or to the defendant and another person, with the intention of permanently depriving the other person of the property; or*

.....

65. The facts as I have found from the evidence of PW1 and PW7 are that the accused carried away a pig worth \$1,000, the property of Robert Oberta on the 17<sup>th</sup> of February 2020. The pig was never returned or found and I can infer from this that the accused intended at the time he took the pig to permanently deprive Robert Oberta of his pig.
66. I therefore find the accused guilty of Theft.

### **Count 3—Obstructing a public official**

67. In Count 3, the accused is charged with obstructing a public official contrary to section 242 of the Crimes Act. The section states:

#### ***242 Obstructing public official***

*A person commits an offence if:*

*(a) the person obstructs, hinders, intimidates or resists another person in the exercise of the other person's functions as a public official; and*

*(b) the person believes the other person is a public official.*

*Penalty: 2 years imprisonment.*

68. Senior Constable Marvin Tokaibure testified that he went with several police officers to the accused's residence with an arrest warrant for the accused. They got there at 2:00 p.m on 25<sup>th</sup> February 2020 and he told the accused that they were there to arrest him for stealing a pig. The accused told the police officers he will come to the station on his own and refused to go with them. He then released two large pit bull dogs from where they were secured but held on to the leashes, forcing the officers to retreat to the police vehicle they had come in. It also prevented them from arresting the accused. Senior Constable Tokaibure said they had to use their batons to protect themselves if the dogs became aggressive. The accused released his dogs from their leashes when the officers were close to their vehicle. The police officers then got into their vehicle and returned to the station to make preparations to neutralize the dogs and arrest the accused.
69. The Police officers were on duty at the time and were authorized by an arrest warrant to arrest the accused. Prosecution Witness 3, Police Constable Kinte Harris corroborated the evidence of Senior Constable Tokaibure that the accused set his bull dogs on them to prevent the police officers from arresting him.
70. The accused in his unsworn statement said this:  
 "That's not what happened. They came. They came for me. I never released my dogs on them. I told them I can come in by myself or turn myself in. They were saying they wanted to take me but I told them I can come in by myself and I went to the station voluntarily. When I turned myself in, they said they were going to take me in and they lied. Myself and my mother went in there voluntarily. We went to the station to take my statement. The first person there was Imran and he was saying, 'Get him, get him or capture him.'"
71. I believe the evidence of Senior Constable Marvin Tokaibure. His demeanour was good and I see no reason why they would have to lie about the attempted arrest of the accused. The accused himself admitted that he went with his mother to the police station and surrendered.
72. The police officers who went to arrest the accused were in uniform and went in a police vehicle. It was broad daylight and the accused could see this. Senior Constable Tokaibure told the accused that they were there to arrest him and that they had an arrest warrant to do so. The police officers were therefore public officials carrying out their official function legally. The accused refused to go with them and set his two pit bulls free to intimidate the police. I find that that the accused resisted the arrest. The fact that he came to the station voluntarily with his mother is immaterial for the charge.
73. I find that the prosecution has proved all the elements of the offence and I find him guilty of obstructing a public official contrary to section 242 of the Crimes Act 2016.

**Count 4—Escaping from Custody contrary to section 229 of the Crimes Act 2016.**

74. Constable Scott Pulvera was on duty on 25<sup>th</sup> of February. He went with Senior Constable Marvin Tokaibure and other officers to arrest the accused. When they returned to the station, he was told to write his statement about what happened. He was writing his statement when the accused came in with his mother. The accused was brought in and he heard Inspector Imran tell the officers to put the accused in Cell 2. While he was writing his report, he heard a loud noise in the cell, like a cell door being banged. He went to check and found the door to cell 2 open and the garage door partly open. He immediately went to the Patrol front desk and reported the matter to Senior Sergeant Lambrusco. He then saw 2 police officers apprehend the accused at the front of the station. They were holding the accused by both arms as he was acting aggressively.
75. Senior Constable Dunstal Ika was on duty on the 25<sup>th</sup> of February. He had been delivering summonses for traffic matters and when he returned to the police station, he saw the accused running from the station to the Dental Clinic outside the station. Senior Constable Ika got off his vehicle and chased the accused. He caught him at the container. He was assisted by Constable Pulvera. Constable Ika said the accused was very aggressive, telling him to let him go. The accused said if Constable Ika did not let him go, he was going to kill himself. Both Constable Pulvera and Senior Constable Ika had known the accused for some time before this and they identified him in court as the person whom they re-captured.
76. The accused said in his unsworn statement:

“When I went inside, I went to sleep and when I woke up, the door was open. There were people there but I did not see their faces and then I was..... there were 2 of them. That’s the other thing. When I went out the first time they then put me back inside and the door was left open and I stayed there until I was taken to court.”

77. I believe the evidence of the police officers who arrested the accused.

78. Section 229 of the Crimes Act provides:-

***229 Escape from custody***

*A person commits an offence if the person escapes from lawful custody.*

*Penalty: 5 years imprisonment*

79. The accused was in lawful custody at the police station. He had resisted an arrest at his home and had surrendered at the police station where he was put under arrest. He was put in the cell and it was clear that he was under arrest. An arrest is a continuing event. The arrest was legal and it remained legal until he was released by the police or brought to the custody of the court. The accused escaped and he was running away. The act of running away is the act of a guilty person, not an innocent person.

80. I find the accused guilty of the escaping from lawful custody as charged in count 4.

**Conclusions**

81. For the reasons given, I find the accused:

- a. Not guilty of the first count of damaging property;
- b. Guilty of the second count of theft;
- c. Guilty of the third count of obstructing a public official; and
- d. Guilty of the fourth count of escaping from lawful custody.

82. I will deal with the issue of conviction at the sentencing phase.

  
.....  
**Penijamini R Lomaloma**  
**Resident Magistrate**

