

**IN THE MATTER OF**      **AN APPEAL FROM THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

**BETWEEN:**      **PUBLIC PROSECUTOR**  
*Appellant and Respondent in Cross Appeal*

**AND:**      **ESROM LOUGHMANI**  
*Respondent and Cross Appellant*

**Dates of Hearing:**      **5 & 6 August 2024**

**Coram:**      **Hon Chief Justice V. Lunabek**  
**Hon Judge J. Mansfield**  
**Hon Judge R Young**  
**Hon Judge D. Aru**  
**Hon Judge V. Trief**  
**Hon Judge E. Goldsborough**

**Counsel:**      **T. Karae for the Appellant**  
**M. G. Nari for the Respondent**

**Date of Decision:**      **16 August 2024**

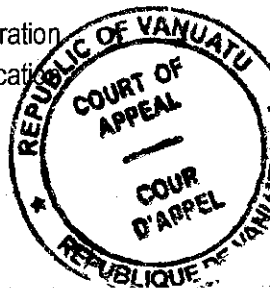
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## **REASONS OF THE COURT**

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### **Introduction**

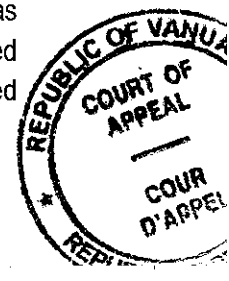
1. Mr Loughmani, who was a Vanuatu Immigration official, faced trial in the Supreme Court on two counts of forgery and one of obtaining money by deception. The judge in the Supreme Court acquitted Mr Loughmani of the two forgery charges, convicted him of obtaining money by deception and sentenced him to 3 years imprisonment. The Public Prosecutor appeals against the acquittals and sentence, Mr Loughmani appeals against his conviction on Count Three.
2. The prosecution case was that on 55 occasions, between January 2017 and December 2021, Mr Loughmani received applications and money (VT 17,436,400) through an agent seeking resident visas for the 55 foreign nationals. Subsequently Mr Loughmani provided the resident visas through the agent, to the 55 foreign nationals.
3. The Public Prosecutor alleged that the visas supplied by Mr Loughmani were forgeries, Immigration Vanuatu had not authorised the issuing of the visas and he had dishonestly kept the visa application fees.



4. The judge concluded, in acquitting Mr Loughmani on the two forgery counts, that the signatures on the forged visa cards had not been proved to be Mr Loughmani's, nor was there evidence to establish that he signed or altered the visa cards knowing they were false. The judge concluded that there were other visa officers in the Immigration Department who could have committed the forgeries.
5. As to count three, the judge concluded the agent for the visa applicants gave the applications and money to Mr Loughmani. Sometime later Mr Loughmani provided what were forged residential visas to the agent for the 55 foreign nationals. The judge concluded a total of VT 16,362,800 had been received with the visa applications by Mr Loughmani, that he had not accounted to the Immigration Department for the money and had received the money dishonestly.

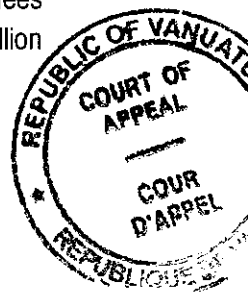
### **Forgery Appeal**

6. The Public Prosecutor's appeal with respect to the two forgery counts, is based on the proposition that the evidence accepted by the judge as proven in count three, in fact established the Public Prosecutor's case in the forgery counts and the trial evidence in any event established that Mr Loughmani was guilty as a principal or as a party to the forgery offending.
7. The task of the prosecution at trial was to prove the basic facts of the allegations and then relate those facts to the elements of the crime of forgery. Their case was that Sun Zhe was an agent for a number of Chinese citizens who wished to obtain Vanuatu residential visas. Given the Chinese applicant's language limitations they needed assistance in processing their applications. Ms Zhe knew Ms Grace Malas who had previously helped her with a visa application. Ms Zhe asked Ms Malas to assist her in making the applications for residential visas. Ms Malas in turn had a relationship with Mr Loughmani, who she knew worked at Immigration Vanuatu. She asked for his help. He arranged for her to provide the visa applications with documentation and the relevant application fee to him. He said he would process the applications. A few weeks after receiving the application and money, Ms Malas said that Mr Loughmani would return the residential visas. Ms Malas would in turn provide the visas to Ms Zhe for the applicants.
8. The prosecution evidence was that the visas provided to Ms Malas and in turn to the applicants were forgeries. The evidence called at trial showed with respect to the visas that: there was no record of Immigration ever receiving such applications at their office; the numbers recorded on the visas did not match Immigration's sequential numbering system; Immigration used a sequential numbering system for each approved visa but in many cases the numbers on the forged visas were identical to the numbers on legitimately issued visas to other persons; no fees for the 55 visa applications had been received by Immigration. This evidence, the Public Prosecutor said, established that the visas were not issued by Immigration Vanuatu, they were forgeries and Mr Loughmani was either the forger of the visas, or had been a party to the forgery of the visas given his involvement in receiving the applications and returning the forged visas to Ms Malas.
9. The judge in his conclusion regarding count three accepted as established the essential prosecution evidence in support of this count when he convicted Mr Loughmani on that count. The judge found as a fact that Ms Zhe had provided the visa applications and money to Ms Malas, who in turn provided the application and money to Mr Loughmani. A few weeks later Mr Loughmani returned the completed



visas to Ms Malas, who in turn distributed them to Mrs Zhe, to be given to the applicants. The judge concluded that the visas were "invalid as faked or forged". The money paid for the visa applications had never been received by Immigration Vanuatu. The judge concluded that Mr Loughmani had deceitfully taken the money accompanying the visa applications.

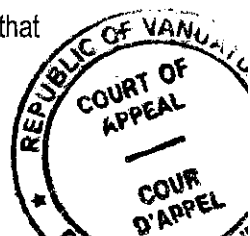
10. Mr Loughmani gave evidence at trial. He said that he did not know Ms Zhe. He agreed that he knew Ms Malas and accepted he had been given some money by her which was his "personal money". Beyond that he denied receiving any applications for visas or money from Ms Malas. He denied knowing anything about the 55 visas obtained and denied that he had given Ms Malas any visas. Mr Loughmani claimed that the 55 visas were in fact all validly issued visas. He said that he had been absent from Vanuatu for significant periods when the offending was alleged to have occurred. His evidence was rejected by the judge.
11. Mr Loughmani supported the Supreme Court judgment. Counsel submitted that there was no evidence that Mr Loughmani had access to the stamps and visa cards used to complete the forged visas.
12. Mr Loughmani worked regularly in the Immigration office in Port Vila where the stamps and blank visa cards were kept. There is no direct evidence as to how he, or another, accessed the stamps and the blank visa cards. However, at times the forger used out of date Immigration stamps on the forged visas illustrating a lack of knowledge of the up-to-date immigration processes. Importantly, whoever completed the forged visas, had access to the Immigration stamps and blank visa cards given their use in the forged visas. Given the conclusion of the trial judge, with which we agree, that Mr Loughmani possessed the forged visas and provided them to Ms Malas to be used by the foreign nationals, how he or another obtained access to the stamps and cards is not essential to the proof of forgery.
13. Counsel for Mr Loughmani submitted that Mr Loughmani had an alibi for the offending in that he was overseas between 2017 and 2020, when much of the offending occurred.
14. We are satisfied Mr Loughmani did not have an alibi. He did not give notice to the Public Prosecutor that he was relying on alibi evidence before trial. He did not give evidence connecting the timing of the alleged offences with any claimed absences overseas. The only substantive evidence produced at trial relating to Mr Loughmani's absences, was a chart prepared by the Public Prosecutor which showed that between 2017 and 2020, Mr Loughmani was out of the country from time to time. However, the chart showed that for most of that time he was resident in Vanuatu. In those circumstances, no alibi defence could be mounted.
15. Counsel submitted that the financial evidence produced by the Public Prosecutor showing deposits into Mr Loughmani's accounts that were said to be unexplained did not total anywhere near the amount of the alleged funds obtained by deception. This lack of evidence counsel said, undermined the prosecution case.
16. The prosecution did not have to prove where the money obtained from the deception went. Mr Loughmani's bank account information and other financial evidence, which showed deposits of money outside of Mr Loughmani's income, were used to support the claim that he kept the application fees dishonestly. However, the prosecution was not obliged to prove where every Vatu of the VT17 million deception, went.



17. Counsel submitted there was evidence that others were involved in the criminal offending. Counsel referred to Ms Zhe's statement that she had given VT300,000 to a female immigration officer. Whether that statement is or is not true, it is not relevant to these proceedings. Whether another immigration officer may or may not have been taking money unlawfully, does not affect Mr Loughmani's liability.
18. Counsel submitted that an analysis of the phone calls between Ms Zhe and Ms Malas and Mr Loughmani, did not support the evidence of Ms Malas that each time there was to be a provision of applications and money, there would be a telephone discussion between Ms Zhe and Ms Malas.
19. It is correct that there were times when they said that applications and money were provided by Ms Zhe to Ms Malas and there was no evidence of telephone contact between them immediately prior to the arrangement. However, what is important is that there were very frequent calls, in total 173, between 2018 and 2021, between Ms Zhe and Ms Malas. This evidence supported the prosecution case that there was in fact a close relationship between Ms Zhe and Ms Malas, denied by Mr Loughmani.
20. In terms of Ms Malas' contact with Mr Loughmani, Ms Malas kept a diary where she recorded a significant number of contacts between her and Mr Loughmani relating to the provision of applications and receipt of the visas.
21. We are satisfied the evidence established Mr Loughmani forged or was a party to the forgery of the relevant visa cards. We are therefore satisfied that Mr Loughmani was wrongly acquitted of the two forgery counts.
22. Section 139 of the Penal Code defines forgery as follows:

**S139 Forgery defined:**

- (1) *Forgery is making a false document knowing it to be false with the intent that it shall in any way be used and acted upon as genuine, whether within the Republic or not or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything whether within the Republic will not.*
  - (2) *For the purpose of this section the expression "making a false document" includes making any material alteration in the genuine document, whether by addition, insertion, obliteration, eraser, removal or otherwise.*
  - (3) *(as relevant) For the purposes of this section the expression "false document" means a document*
    - (a) *Of which the whole or any material part purports to be made by any person who did not make it or authorise its making;*
    - (b) *Of which the whole or any material part purports to be made on behalf of any person who didn't authorise its making*
23. We are satisfied that the visas were false documents. We are satisfied that Mr Loughmani, when he gave the visas to Ms Malas for the use of the 55 foreign nationals, knew they were false. He gave the documents to Ms Malas so that the applicants could use the visas as genuine. We are satisfied that



Mr Loughmani either personally or by instructions to another made the false visas (Section 139(1)). Finally we are satisfied that the visas were not authorised by the Director of Immigration (see section 139(3)).

24. There are two reasons why we have reached these conclusions. First, we consider that the judge's assessment of the evidence undertaken when considering count three, in fact also established the elements of the crime of forgery in counts one and two and secondly, our analysis of the evidence is that the prosecution evidence called at trial, which we accept, established the forgery counts.
25. As we noted at paragraph nine above the judge's analysis of the facts established all the elements of the forgery charges except the question of who faked or forged the visas.
26. To return to the trial judge's decision to acquit on the forgery counts. The judge rejected the case for the Public Prosecutor because at [17]:

17. *"However, despite the volume of evidence produced none of it pointed directly to the defendant to show that the signature on the 55 Visa cards were the defendant signatures, or that he had signed the cards knowing they were false and forged, or that he made alterations in the cards and that he did them with intent to be used or acted as genuine."*

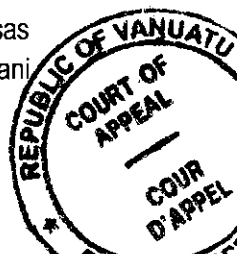
27. And further at [18]:

18. *"There was the evidence of some of those witnesses, that stamp number 960, which appeared on some of the visa cards, were kept only in the visa section of the Department with either the Visa Officer or Director, and usually in a locked drawer. The defendant was not a Visa Officer, but a Border Control Officer who worked mainly at the airport. If the stamps were kept only in the Visa section in a locked drawer, how did the defendant have access to it? And none of these stamps were removed from the defendant's residence and included as exhibits".*

28. and [20]:

20. *"With these questions in mind as a Judge of both fact and Law, there are doubts in my mind as to the guilt of the defendant in relation to the charges of forgery in counts one and two. The doubt is reasonable due to the fact that there were other visa officers and the defendant was not one of them. The stamps used were not kept at the defendant's office, that had no access to the printing room to print prepaid cards."*

29. We consider the judge essentially ignored what was overwhelming evidence that pointed to Mr Loughmani as either the person who forged the documents, or as a party to the forgery. The judge accepted Mr Loughmani was given the applications for visas and the money for the applications. He did not account for the money that he received for the visa applications to Immigration Vanuatu as he was required. Shortly after receiving the applications, he provided the residential visas. The residential visas as the evidence established, were not genuine. They were forgeries. They were not authorised by Immigration Vanuatu. Mr Loughmani gave those residential visas to Ms Malas, to give to the applicants claiming that they were genuine. They were not.
30. The overwhelming inference from those facts was that Mr Loughmani would have known that the visas were forgeries. If the intention had been to obtain valid visas for the applicants then Mr Loughmani

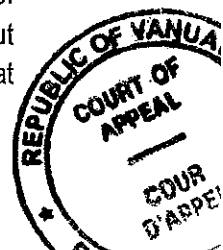


would have tendered the applications through the normal process of Immigration Vanuatu. The applications would then have been processed and would have been accounted for in the Immigration system. The application fees would have been accounted for by Mr Loughmani and the lawful visa process would have been used to consider, and if appropriate grant, the residential visas. None of that happened. All of the evidence therefore, showed that either Mr Loughmani himself forged the residential visas, or he had someone else do so knowing that they were forged and intending ultimately, that they be used by the foreign nationals as genuine for his financial gain.

31. Part of the decision of the Judge in rejecting the Public Prosecutor's case, was based on the proposition that it wasn't evident how Mr Loughmani had obtained access to the stamps and the blank visa forms. That remains the case. However, that does not affect our conclusion that he was either the forger or a party to the forgery. It is evident, by the fact that an Immigration departmental stamp and visa card were used on the forged visas, that someone had access to the stamps and forms. The evidence was that some of the stamps on the forged visas were old stamps no longer in use at Immigration and the forger may not have known of a change in the format of the stamp. The visas Mr Loughmani gave to Ms Malas used the appropriate card and had Immigration stamps (either current or out of date) applied. Somehow therefore he or another person had obtained access to the stamp and the visa form. Given his involvement in the forged visa application process, the fact that it is not clear how he or another gained access to the relevant documents and stamp does not detract from the clear evidence of forgery. The prosecution case is to establish what was done and who did it rather than necessarily prove how it was done.
32. As to the question of who forged the documents, we are satisfied that either Mr Loughmani did so or he arranged another to do so. As to the latter in terms of Section 30 of the Penal Code Mr Loughmani would be guilty as someone who had "*aided counselled or procured*" the forgery.
33. For those reasons therefore, we allow the appeal and enter convictions with regard to counts one and two of forgery.

### **Obtaining by Deception**

34. As to count three, Mr Loughmani's counsel accepted that if we allowed the appeal with respect to counts one and two and entered convictions on those counts, we would likely dismiss the appeal with respect to count three. We agree. We have found as relevant to count three, that Mr Loughmani received the money given to him by Ms Malas with the applications for residential visas. We have found that he dishonestly kept those application fees when they should have been accounted to for the Government. These actions were therefore established the crime as charged, obtaining money by deception (section 130(B)(1) of the Penal Code).
35. We accept that there is no clear evidence why the judge reduced the amount obtained from the deception from VT17,436,400 to VT16,362, 800. The evidence of the higher figure came from the evidence provided by Ms Malas as to the funds she received from Mr Loughmani. We acknowledge the criticism of how this figure was arrived at by counsel for the appellant. She submitted that the assessment of how much Mr Loughmani had deceitfully received was based on Ms Malas' memory of the transactions and therefore could not be relied upon. The only information before the court about the amount of the money received was the evidence from Ms Malas. For this purpose we accept that



evidence of Ms Malas however for the purpose of sentencing it does not seem to us to be significant.

36. We therefore dismiss the appeal against conviction with respect to count three.

### Appeal against sentence


37. Mr Loughmani filed an appeal against sentence. Given our conclusion that Mr Loughmani should have been convicted of counts one and two, we refer the question of sentencing on those counts to the trial judge in the Supreme Court. In those circumstances we formally dismiss the appeal against sentence with regard to count three.

### Result

38. The appeal against the acquittals on counts one and two are allowed and Mr Loughmani is convicted on both counts. The appeal against conviction on count three is dismissed. The appeal against sentence is dismissed. The question of sentence on counts one and two is referred to the Supreme Court for sentencing.

DATED at Port Vila, this 16<sup>th</sup> day of August, 2024

BY THE COURT

  
Hon. Chief Justice Vincent Lunabek

