

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Criminal Appellate Jurisdiction)

Criminal Appeal
Case No. 24/3390 COA/CRMA

[2025] VUCA 6

BETWEEN: **ESROM LOUGHMANI**
Appellant

AND: **PUBLIC PROSECUTOR**
Respondent

Coram: *Hon. Chief Justice V. Lunabek*
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice D. Aru
Hon. Justice V M Trief
Hon. Justice E Goldsbrough
Hon. Justice M A MacKenzie

Counsel: *MG Nari for the Appellant*
T. Karae for the Respondent

Date of Hearing: *5 February 2025*
Date of Judgment: *14 February 2025*

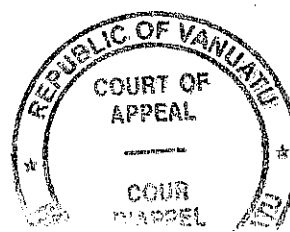
JUDGMENT OF THE COURT

Introduction

1. This appeal is against the sentence imposed for offences of forgery. It has the unusual feature of being based solely on a challenge to the convictions for the offences for which the sentence was imposed.

The circumstances

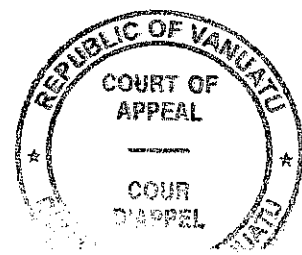
2. Mr Loughmani was formerly employed in the Department of Immigration. He was charged with two counts of forgery, contrary to s. 140 of the Penal Code, and one count of obtaining money by deception, contrary to s. 130B(1) of the Penal Code. He pleaded not guilty to each count.



3. The prosecution case in substance was that on 55 occasions between January 2017 and December 2021, Mr Loughmani had received from a Ms Grace Malas, applications for resident visas and the fees relating to those applications. Ms Malas had, in turn, received the applications and the fees from Ms Sun Zhe who was acting on behalf of the applicants for the visas. In each case, the applicants were Chinese nationals. The prosecution alleged that Ms Malas had, after receiving the applications and the fees from Ms Sun Zhe, arranged to meet Mr Loughmani behind the City Motel and had provided the applications and the fees to him; that subsequently Mr Loughmani had, in relation to each application, provided to Ms Malas resident visas for the 55 foreign nationals; that the visas were forgeries as they had not been processed in accordance with the Departmental systems; that Mr Loughmani was the forger; and that he had retained the application monies for himself.
4. The first count of forgery in the Amended Information related to the conduct alleged in the three year period between 1 January and 31 December 2019 and the second related to the conduct alleged in the two year period between 1 January 2020 and 31 December 2021.
5. After a substantial trial, which included rejection of a defence submission of No Case to Answer, the trial Judge found in the judgment delivered on 18 April 2024 (*Public Prosecutor v Loughmani* [2024] VUSC 190) that Ms Malas had given the applications for the visas and the associated fees to Mr Loughmani; that he had not accounted for the money to the Department of Immigration; that he had later provided the residential visas to Ms Malas to pass on to the applicants; and that those visas were forgeries. However, the Judge was not satisfied that the Prosecution had proved beyond reasonable doubt that Mr Loughmani was the forger and accordingly acquitted him on Counts 1 and 2. However, the Judge returned a verdict of guilty on Count 3 (the obtaining of money by deception). The Judge imposed a sentence of imprisonment for 3 years for that offence: *Public Prosecutor v Loughmani* [2024] VUSC 131.
6. Both the Public Prosecutor and Mr Loughmani then appealed to this Court: the Prosecutor against the acquittals and Mr Loughmani against the sentence imposed on Count 3. The prosecution appeal succeeded: *Public Prosecutor v Loughmani* [2024] VUCA 38, delivered on 16 August 2024. This Court ruled that the overwhelming inference from the facts accepted by the trial Judge (that Mr Loughmani had been given the visa applications and the money for them; that he had not accounted to the Department for the money; and that he had provided as genuine visas which were forged) was that Mr Loughmani had known that the visas were forgeries, at [29] – [30]. The Court of Appeal concluded at [30]:

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.

7. The Court also dismissed Mr Loughmani's appeal against his conviction on Count 3 (the offence of obtaining money by deception) (at [34] – [36]) and his appeal against the sentence imposed for that offence, at [37].
8. Because of the unusual nature of this appeal, we set out the orders of the Court of Appeal:



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.

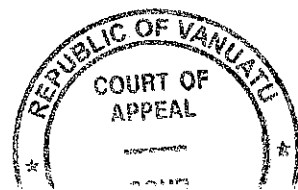
9. As is apparent, it was this Court, and not the trial judge, which convicted Mr Loughmani on the two counts of forgery. Mr Loughmani's appeals with respect to Count 3 were dismissed. The only matter remitted to the trial Judge was the sentencing for the two forgery offences (Counts 1 and 2).
10. After submissions, the trial Judge imposed sentence for Counts 1 and 2 on 18 October 2024. The Judge took as starting point a sentence of imprisonment for 5 years for each offence, to be served concurrently; reduced those starting points by 2 years on account of the impact on Mr Loughmani of delays in the prosecution of the charges; and by a further 1 year on account of Mr Loughmani's personal circumstances. That meant that Mr Loughmani was sentenced to concurrent sentences of 2 years, which the Judge ordered to be consecutive on the sentence of three years previously imposed for Count 3. After allowance for time in custody, the Judge noted that the period to be served in custody was 4 years and 11 months.

The Appeal to this Court

11. The Notice of Appeal to this Court states that Mr Loughmani appeals against the sentence imposed on 18 October 2024.
12. However, the grounds of appeal do not allege any error in the trial Judge's sentence. Instead, they allege a "*miscarriage of justice*" in the convictions of Mr Loughmani.
13. By way of relief, Mr Loughmani seeks that the verdict and sentence on Count 3, the convictions entered by the Court of Appeal on 16 August 2024 and the sentence imposed on 18 October 2024 be "*set aside*", and that there be an order for re-trial of all counts.
14. To support these claims and purporting to relying on s. 210 of the Criminal Procedure Code (the CPC), Mr Loughmani asked this Court to receive fresh evidence.

Consideration

15. Although nominally an appeal against the sentence imposed on 18 October 2024, Mrs Nari, counsel for Mr Loughmani, acknowledged that his sole complaint concerned the underlying convictions. No other submission was advanced to impugn the sentence.
16. These circumstances make it plain that the appeal must be dismissed.
17. First, Mr Loughmani has exhausted his appeal rights with respect to Count 3. His appeal against the conviction on that Count and against the sentence imposed for that offence was dismissed



by this Court on 16 August. The CPC does not contemplate two or more appeals in respect of the one conviction or in respect of the one sentence. To the contrary, s. 212 provides expressly:

APPEALS TO BE FINAL

212. Every appeal from a trial court to an appeal court shall be final.

18. Secondly, s. 200(2) of the CPC does not provide any right of appeal in respect of convictions entered by the Court of Appeal, as has occurred in this case. That subsection provides only for an appeal by a person "convicted of a trial by the Supreme Court". Mr Loughmani cannot therefore appeal against the convictions entered by this Court on 16 August 2024.
19. Thirdly, and in any event, an appeal against sentence is an appeal against the exercise of the sentencing discretion in respect of the offence for which the defendant has been convicted. It is not the means by which a verdict following a trial may be impugned. Of course, there are occasions on an appeal against sentence when it becomes apparent that there is, or may be, some defect in a conviction and amendment of the notice of appeal is allowed in order to allow that matter to be agitated. However that is not this case as, for the reasons set out above, as Mr Loughmani has no further right to appeal his convictions.
20. As there can be no further appeal against the convictions, it is not necessary to address Mr Loughmani's application to adduce fresh evidence. We indicate however our doubt that the proposed evidence could be characterized as evidence which was unavailable to Mr Loughmani in relation to the sentencing on 18 October 2024. Even if it was, we doubt that the proposed evidence is of a kind which, if believed, may have led to Mr Loughmani being acquitted of the charges. That is to say, we doubt that the proposed evidence had the characteristics required for the admission of fresh evidence discussed in the authorities - see for example *Adams v Public Prosecutor* [2008] VUCA 20.

Disposition of the Appeal

21. For the reasons set out above the appeal is dismissed. Mr Loughmani is to present himself to Correctional Services Officers immediately upon the delivery of this Judgment. Section 50 of the Penal Code does not apply to Mr Loughmani as he spent 29 days in custody in 2021.
22. A fresh Warrant of Commitment will issue.

DATED this 14th day of February 2025.

BY THE COURT



Hon. Chief Justice Vincent Lunabek

