

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Criminal Jurisdiction)*

**Criminal  
Case No. 22/96 SC/CRML**

**BETWEEN: Public Prosecutor**

**AND: Esrome Loughmani  
Defendant**

**Before: Justice Oliver A. Saksak**  
**Counsel: Mr Josiah Naigulevu, Public Prosecutor, for the State**  
**Mrs Mary Grace Nari for the Defendant**

**Dates of Hearing: 22, 23, 24, 30 November on to 2023 to 1, 4, 6, 7, 12 and 14 December 2023 and  
6<sup>th</sup> March and 10<sup>th</sup> April 2024.**

**Date of Judgment: 18<sup>th</sup> April 2024**

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**JUDGMENT AS TO VERDICT**

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**Introduction**

1. The trial of this case extended over 12 days from 22, 23, 24, and 30 November 2023, onto 1, 4, 6, 7, 12, and 14 December 2023 with the defence making a no case submission.
2. The Court however on 19<sup>th</sup> December 2023 found the Prosecution had established a prima facie case which required the defendant to put up a defence.
3. The trial continued for the defence case on 6<sup>th</sup> March 2024 and closing addresses and submissions were heard from Counsel on 10 April 2024 and adjourned for the Court to consider its verdict.



## The Charges

4. Prosecutions charged the defendant with 2 counts of Forgery under section 140 and with 1 count of Obtaining Money by Deception under section 130 (B) (1) of the Penal Code Act [CAP 135] (the PC Act).

## The Law

5. Section 140 of the Penal Code Act states:

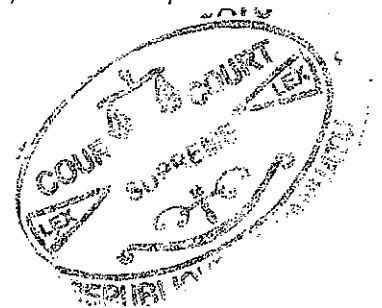
*"140. Prohibition of forgery  
No person shall commit forgery.*

*Penalty: Imprisonment for 10 years."*

6. Section 139 of the Penal Code Act defines Forgery-

***"139. 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 or 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 or not.*
- (2) *For the purposes of this section, the expression "making a false document" includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise.*
- (3) *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 did not authorise its making;*
  - (c) *in which, though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making, whether either is material, or any number or distinguishing mark identifying the document, whether either is material, is falsely stated;*
  - (d) *of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or which is made in the name of an existing person, either by him or by his authority, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.*
- (4) *It is immaterial in what language a document is expressed or in what country or place and whether within or beyond the Republic it is expressed to take effect.*
- (5) *The crossing of any cheque, banker's draft, post office money order, postal order or other document the crossing of which is authorised or recognized by law, is a material part of such document."*



7. Section 130B of the Penal Code Act states:

**"130B. Obtaining money, etc., by deception**

(1) A person must not by any deception dishonestly obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever.

*Penalty: Imprisonment for 12 years.*

(2) In subsection (1) –

"deception" means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:

(a) a deception as to the present intentions of the person using the deception or of any other person; and

(b) an act or thing done or omitted to be done with the intention of causing –

(i) a computer system; or

(ii) a machine that is designed to operate by means of payment or identification,

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make."

8. The Amended Information dated and filed on 29<sup>th</sup> September 2023 read as follows-

**A. Count 1- Statement of Offence**

Forgery contrary to section 140 of the Penal Code Act [Cap 135]

Particulars of the offence

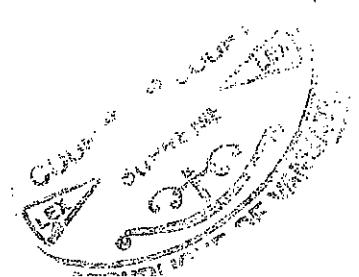
That sometimes between 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2019 at Port Vila ESROME NAMKA LOUGHMANI by making additions and insertions forgery residency visa cards for 40 Chinese nationals knowing that they were false, with intent that they be used or acted upon as genuine, or that some person be induced by the belief that they were genuine.

**B. Count 2- Statement of Offence**

Forgery contrary to section 140 of the Penal Code Act [ Cap 135]

Particulars of the Offence

That sometimes between 1<sup>st</sup> January 2020 and 31<sup>st</sup> December 2021 at Port Vila ESROME NAMKA LOUGHMANI by making additions and insertions forged residency visa cards for 15 Chinese nationals knowing that they were false, with intent that they be used or acted upon as genuine, or that some person be induced by the belief that they were genuine.



**C. Count 3- Statement of offence- Obtaining money by Deception contrary to section 130B  
(1) of the Penal Code Act [ Cap 135]**

Particulars of Offence

That sometimes between the 1<sup>st</sup> January 2017 and 31<sup>st</sup> December 2021 at Port Vila, ESROME NAMKA LOUGHMANI by deception, dishonesty obtained for himself money in the total sum of VT 17,436,400 that were paid to him in relation to the residency visa applications of 55 Chinese nationals, and for which cards he forged.

9. Despite being charged, section 81 of the Criminal Procedure Code Act [Cap 136] provides for the presumption of innocence to the defendant. It states-

*"In this trial you will be presumed to be innocent unless and until the prosecution has proved your guilt beyond reasonable doubt. It is not your task to prove your innocence. If at the end of the trial, any reasonable doubt exists as to your guilt, you will be deemed to be innocent of the charge and will be acquitted"*

- 10: Section 8 of the Penal Code Act provides for the general rule as to burden of proof in Criminal cases. It states:

**"8. General rule as to burden of proof**

(1) *No person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.*

(2) *In determining whether a person has committed a criminal offence, the court shall consider the particular circumstances of the case and shall not be legally bound to infer that he intended or foresaw the natural or probable consequences of his actions.*

(3) *If the prosecution has not so proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith.*

11. The legal and evidential burden of proof rests on the prosecution to prove the defendant's guilt. The standard is proof beyond reasonable doubt. It is a high threshold.

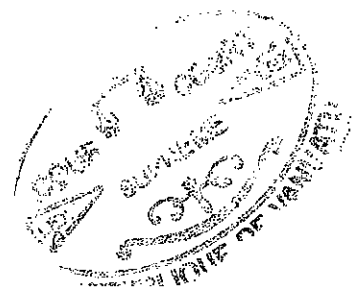


### **The Elements of Forgery- Counts 1 and 2**

12. Prosecution had a high duty to prove the following elements-
  - a) That the defendant made the 55 false or faked visa cards of the 55 Chinese nationals as charged.
  - b) That he did it, knowing they were false.
  - c) That he did it with intent to be used or acted upon as genuine within or without the jurisdiction of Vanuatu.
  - d) That he made material additions and insertions.
  
13. For the offence of obtaining money by deception Prosecution had to prove the following elements:
  - a) That the defendant obtained moneys by deception.
  - b) That he did so dishonestly.
  - c) That he gained financial advantage from the moneys he received.

### **The Evidence of the Prosecution**

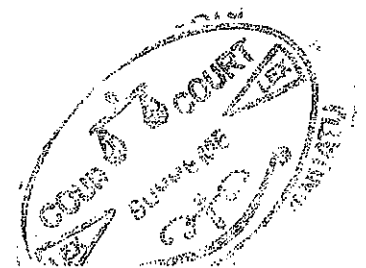
14. To discharge the burden of proof Prosecutions produced evidence from around 34 witnesses, 30 of whom gave oral evidence in the witness box and were cross examined, and 5 witnesses whose statements were tendered by consent.
  
15. From the evidence of those witnesses it was submitted by Prosecution that the detailed oral testimonies of the Director Jeffrey Markson, Danielle Stacy Kalo, Nina Lee, Lisale, Marie Ella, Graziella Tave Sawia, Mathias Garoleo and Nicolette Lockvaro provided a comprehensive and full account of the processing system within the Department and how the 55 visas could only have been declared fake or forged because they had not been processed through the legitimate departmental system.
  
16. The evidence was voluminous and included 55 documents tendered as exhibits. The exhibits included P41 to P47 produced by Yosef Atis showing official stamps found at the defendant's residence.



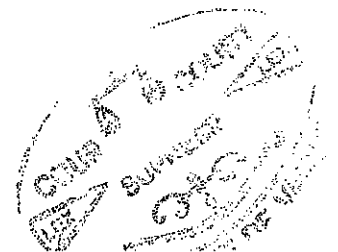
17. However despite the volume of evidence produced, none of it pointed directly to the defendant to show that the signatures on the 55 visa cards were the defendant's signatures or that he had signed the cards knowing they were false and forged, or that he made alterations in the cards and that he did them with intent to be used or acted upon as genuine.
18. It was also the evidence of some of those witnesses that stamps 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 the Director and usually in a locked drawer.
19. The defendant was not a Visa Officer but a Boarder Control Officer who worked mainly at the Airport. If the stamps were kept only in the Visa Section in 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.
20. With these questions in my 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 1 and 2. The doubt is reasonable due to the fact 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 he had no access to the printing room to print prepaid cards.
21. The law in regards to doubt is trite where there is doubt which is reasonable, the accused must be given the benefit of the doubt. Because of the high threshold of proof required from the Prosecution to prove guilt, circumstantial evidence cannot suffice to safely convict the accused and in my view Boihilan v PP [2022] VUCA 6 lends no support to the Prosecution's submission about drawing inferences based on circumstantial evidence.
22. Accordingly for the offences of forgery in Counts 1 and 2, I return verdicts of not guilty and acquit the defendant on both these counts.

### The charge in Count 3

23. I now move to consider whether or not the defendant is guilty of obtaining moneys by deception, the charge in Count 3.

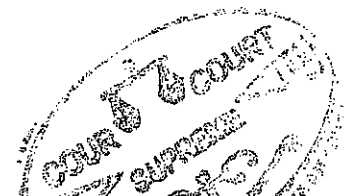


24. The evidence of Sun Zhe, Grace Malas, Charity Bona and 8 Chinese nationals namely Wu Hesual, Liu Yang, Zhang Han, Zheng Lin, Peng Gusheng, Wan Yongquan, Fu Deju and Police Officer Whitely Kenneth are relevant and admissible evidence going to prove guilt of the defendant in regard to the charge of obtaining moneys by deception.
25. The evidence of Sun Zhe and Grace Malas show that they were used as intermediaries by the Chinese nationals who gave moneys and relevant documents first to Sun Zhe, who then gave the moneys and documents to Grace Malas, who ultimately contacted the defendant by telephone to collect the moneys and documents at the Shefa Province and behind the City Motel by Equity Building to facilitate the process.
26. The evidence of Grace Malas also showed that she gave moneys in envelopes after counting them with documents to the defendant and waited for his call to collect the visa cards in return, after one or two weeks. Those evidence were not discredited by defence.
27. The records of calls made between the defendant and Grace Malas were disclosed by Mrs Charity Bona Titiliu. Those records were not challenged by the defendant in cross-examination.
28. The evidence of the eight Chinese nationals remaining in Vanuatu at the time of trial all confirmed they approached Sun Zhe with their relevant documents and moneys in different amounts. They used intermediaries due to language barriers and difficulties and for not knowing the location of the Immigration offices.
29. The evidence of Police Officer Whitely Kenneth showed amongst other things that deposits made into the defendant's National Bank Accounts were not consistent with his fortnightly and monthly salaries and that large amounts of deposits were suspicious. Those evidence were not discredited by the defence.
30. Further, it was the evidence of Grace Malas that she met Sun Zhe first in 2015 as a guest at the City Motel and assisted her and her daughter with their residency cards by delivering them to the Immigration Department. It was later in 2017 that she met the defendant at the department at Shefa Province where they exchanged greetings and he gave her his mobile phone number and



offering his assistance. From then on Grace Malas placed her trust and confidence in the defendant and used him as an intermediary to process or assist in the processing of the visa cards applied for. It was also her evidence that she sent cash by Kwik Cash to the defendant whilst he was stationed at the Santo Office. This was in relation to a couple of applicants who were in Luganville, Santo.

31. These evidence show that moneys were paid by the applicants first to Sun Zhe who transferred to Grace Malas, who used the defendant to bring the moneys in cash with the documents to the Immigration Office for processing. Upon completion the defendant would contact Grace Malas by telephone to meet him and collect the processed visa cards. It was the evidence of Sun Zhe that that she saw the defendant with Grace Malas once from a distance behind the City Motel. The amounts given to the defendant were not recorded by either Sun Zhe or Grace Malas.
32. Against those evidence, I have to determine whether the defendant received moneys from the Chinese nationals through Sun Zhe and Grace Malas as the first element of this offence. I am satisfied from the evidence that he received moneys from Grace Malas as agent of the Chinese nationals.
33. The second element is whether the defendant received those moneys by deception and dishonesty? When the defendant offered his assistance to Grace Malas and providing her with his telephone number, he won her trust and confidence that as an officer working in the Department of Immigration he would comply with all the legal processes involved and return the cards as valid cards. Moneys were paid over to the defendant however those moneys were never received by the cashier in the Department by either Ricky David, Finance Officer or Lisa Moses, the Cashier. When that occurred, deception had been shown. And when the cards were returned with no moneys going into the Government treasury resulting in the cards being invalid as faked or forged, there was dishonesty on the defendant's part. Those elements had been established.
34. Finally the element of the defendant gaining financial advantage from those transactions or activities. The evidence of Police Officer Whitely Kenneth shows the defendant's bank statements and entries or deposits which were not consistent with his salaries and which were suspicious. Because the moneys paid were in cash, not all those moneys were deposited. Some of it were



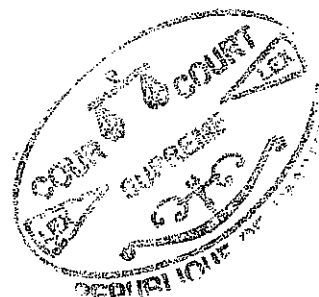


used presumably to conceal the money so that it would not be apparent that he had received moneys.

35. The evidence of Crime Scene Officer CPL Atis Yosef shows the photograph of a large 9 rooms residential house of the defendant at Bladinere Estate with about 2 vehicles and a tool shed and some personal properties. These are circumstantial evidence by which the Court can draw necessary reference that portions of the cash collected for visa cards by the defendant from Grace Malas were used by him in building and developing his properties.
36. I am satisfied from the evidence that Prosecutions had proved all elements of the offence of obtaining money by deception beyond reasonable doubt, and have discharged the burden of proof resting on them by law.

#### Defence Evidence

37. The defendant gave evidence himself. He denied knowing Sun Zhe. He denied receiving moneys except from Celia Tsang. He confirmed receiving moneys from Grace Malas by Kwik cash in Santo but those were his personal moneys. He denied receiving any moneys at the back of City Motel. As regards his NBV Bank Accounts he said he had a taxi and was an agent for seasonal workers. He said he has some outstanding loans. He confirmed having a house on Santo but not a 4 bedroomed one. He said the forms found at his home were left over forms which he sent to other countries. He confirmed he was a Boarder Control Manager with an office. He said he had a personal relationship with Grace Malas.
38. Much of his evidence was objected to by the Public Prosecutor for breach of the principle in Browne v Dunn (1893) 67. Those parts of the defendant's evidence are rejected as inadmissible.
39. Timothy Malon gave evidence in defence of the defendant however his evidence was irrelevant and did not assist the defendant.
40. On the whole, there was nothing in the evidence of the defendant consistent with his innocence in relation to the charge in Count 3 which is obtaining money by deception.




**Conclusion and Result**

- 41. I therefore find that Prosecutions had proved the defendant's guilt in relation to the charge of obtaining money by deception beyond reasonable doubt.
- 42. The amount involved was VT 16,362,800 and not VT 17, 436,400 as charged.
- 43. I return a verdict of guilty against the defendant on the charge in Count 3 and convict him accordingly.

**DATED at Port Vila this 18<sup>th</sup> day of April 2024**

**BY THE COURT**

  
**Hon. Oliver A. Saksak**  
**Judge**

