

IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY

*Sean, Ah & Kp...*

*17/04/19*

CR 153 of 2018

**BETWEEN:**

**REX**

**Prosecution**

**AND:**

**VASEETH SAMSUDEEN**

**Accused**

**BEFORE LORD CHIEF JUSTICE PAULSEN**

**Counsel: Mr 'A Kefu SC for the Prosecution**  
**The Accused in person**

**Date of Hearing: 17 April 2019**

**Date of Decision: 17 April 2019**

**SENTENCING REMARKS**

- [1] Mr Samsudeen is a citizen of Sri Lanka. He appears for sentence having pleaded guilty to two counts of knowingly dealing with a forged document contrary to section 172 of the Criminal Offences Act. The maximum penalty for these offences is 5 years imprisonment.
- [2] The essence of the first charge is that on 10 May 2018 at Fu'amotu, Mr. Samsudeen was given permission to enter Tonga by presenting to an Officer

of the Ministry of Customs a French passport knowing that the passport was a forgery.

- [3] The essence of the second charge is that on 12 May 2018 at Fu'amotu, knowing that the said French passport was a forgery, Mr Samsudeen presented it to an employee of the Air Terminal Services to process his check-in to board a flight from Tonga to New Zealand.
- [4] When he was arrested Mr Samsudeen cooperated with the Police and admitted that he had no entitlement to a French passport. He told the Police that he had received threats to his life in Sri Lanka and had made arrangements to collect the French passport from an associate in Hong Kong, for which he had paid a large sum of money. He had then flown from Hong Kong to Fiji and then to Tonga intending to then fly to New Zealand where he would seek asylum.
- [5] In a letter to the Court of 6 December 2018, Mr Samsudeen stated that in 2006 he had witnessed the murder of aid workers in the Mutur area of Sri Lanka and thereafter he and his family were threatened. He said that because of this he moved to London and applied for refugee status but returned to Sri Lanka for family reasons in 2015.
- [6] When Mr. Samsudeen appeared for sentence on 11 December 2018, I was not prepared to sentence him without some enquiries being made as to his criminal history (if any) in Sri Lanka and England, how it was proposed that he might pay for the airfare to leave Tonga and confirmation that he is eligible to legally enter any destination he proposes to travel to upon leaving Tonga. Since then Mr. Samsudeen has been on bail and his case has come before me a number of times awaiting this information. I was told that Mr. Samsudeen has been supported by members of the Muslim community in Tonga and that attempts were being made to raise money to pay for his travel.

- [7] In light of Mr Samsudeen's expressed concerns as to his safety should he be forced to return to Sri Lanka, I made enquires and provided to his then counsel information concerning the United Nations High Commissioner for Refugees. Some contact was made with that office as on 9 April 2019 the Court received a letter from the Deputy Regional Representative at Canberra listing sources of information on the rights of refugees but giving no indication that Mr. Samsudeen had taken steps to seek formal assistance.
- [8] It appears that there is no record of Mr Samsudeen having any criminal convictions in the United Kingdom or Sri Lanka but that he had entered the United Kingdom illegally in 2010 and was deported from there to Sri Lanka in 2015. This contradicts his letter of 6 December 2018.
- [9] When the case was last before me on 10 April 2018, I was advised that Mr. Samsudeen still did not have funds to leave Tonga. I advised counsel that I would adjourn the case one final time to 17 April 2019 and unless there was anything new to report I would sentence Mr Samsudeen.
- [10] Today, Mr. Samsudeen advises me that given some more time he can raise the money to pay his way out of Tonga. I discussed with him the sentence I intend to impose and he takes no objection to it. I also understand from Mr. Kefu that the Crown agrees that the proposed sentence is appropriate in the circumstances.

### **Discussion**

- [11] In its written submissions the Prosecution referred me to a comparable case *R v Shinjkashvili & ors* (CR 118-124/16 Cato J). I do not need to set out the facts of that case which are very similar to this one but for present purposes note my agreement with what Cato J said at para [6] concerning the nature and gravity of this type of offending.
- [12] I consider that there are no meaningful distinctions between this case and *Shinjkashvili*. I therefore intend to deal with this case in a similar manner.

## Result

- [13] I sentence Mr. Samsudeen to a period of two years imprisonment on each charge which sentences are concurrent. I fully suspend the sentences on the conditions that;
- a. He is not to commit any offences punishable by imprisonment whilst he remains in Tonga.
  - b. He shall pay within 1 month of today the sum of \$1,000 Tongan into Court.
  - c. He is to reside at an address satisfactory to the Crown throughout his remaining stay in Tonga, which address is to be communicated to Mr. Kefu within 24 hours.
  - d. He is to leave Tonga no later than 2 month from today's date. He may apply to the Court for an extension of time to remain for a limited period if there are exceptional difficulties in facilitating travel on written notice to the Crown
  - e. His Sri Lankan passport is to be released to him only upon approval from a Supreme Court Judge and after payment of the sum referred to in b above and to obtain his ticket and travel. The Court shall however on request provide a certified copy of his passport for the purpose of arranging his travel from Tonga.
  - f. He is not to otherwise leave Tongatapu.

[14] Should Mr. Samsudeen fail to abide by any of these conditions the Crown may apply to have the suspended period of imprisonment activated and served.



A handwritten signature in black ink, appearing to read "O.G. Paulsen".

**NUKU'ALOFA: 17 April 2019**

**O.G. Paulsen  
LORD CHIEF JUSTICE**