

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**PC CRIMINAL APPEAL NO. 02 OF 2018**

(C/f Criminal Appeal No. 14 of 2014 the District Court of Hai at Hai, Original  
Criminal Case No. 189 of 2018 Bomang'ombe Primary Court)

**ADAM ABDILLAH NDOSSI ..... APPELLANT**

**VERSUS**

**MARIETHA ISACK ..... RESPONDENT**

*2<sup>nd</sup> June, 2020 & 13<sup>th</sup> July, 2020*

**JUDGMENT**

**MKAPA, J:**

The appellant, Adam Abdillah Ndossi was charged with and convicted of the offence of Cheating contrary to **section 304 of the Penal Code** Cap 16 R.E 2002 (the Penal Code) in Bomang'ombe Primary Court (the trial court). The District Court of Hai at Hai (first appellate court) uphold the decision of the trial court. Still aggrieved the appellant preferred this appeal. On the outset I must admit the difficulties I encountered in my efforts to comprehend what exactly he prayed for this court to grant as the way the grounds were crafted are disturbing. For ease of reference I shall demonstrate as follows:-

1. The District learned Magistrate erred in failing to discover that the issue in the Bomang'ombe Primary Court was scandal to the appellant for that no any document which was tender before the court as an Exhibit regarding handling over the said money.
2. The District learned Magistrate not check well the scandal to the appellant which the court failed to check **Section 23 (1) of the law of contract ACT CAP 345 (R.E. 2002)** Which in Swahili said "Malipo yoyote au jambo lolote la kimkataba laweza kuwa halali isipokuwa limekatazwa kisheria ni la kughushi ,litadhuru mtu au mali ya mtu Fulani au endapo Mahakama italionna kama liko kinyume na maadili au sera za Serikali" The issue was preparation scandal to the appellant for that no any Exhibit tendered to the court handing over the said money.
3. This appeal is on time when appellant received judgment on 23.05.2019.
4. The appellant prays to the Honourable Judge to study carefully the whole appeared on the Criminal Case No. 189 of 2018 Bomang'ombe Primary Court which was Scandal to the appellant for that no any Exhibit tendered to the court.

It is evident that the above submissions are not properly drafted thus unclear as to what the appellant is challenging.



The appeal was heard by way of filing written submissions. Therefore I took the liberty of going through his written submissions to see whether I could grasp his grievances. Unfortunately he reproduced his grounds of appeal verbatim without further elaboration.

Under the circumstances, it is plain clear that this Court will not be in position to determine this appeal as justice demands.

In the case of **Cropper V Smith** (1884) 26 CH D 700 (CA) the Court had this to say:-

*"It is well established principle that the object of the court is to decide the rights of the parties and not to punish them for mistakes they made in the conduct of their rights. I know of one kind of error or mistake which if not fraudulent or intended to overreach, the court ought to correct if it can be done without injustice to the other part. Court does not exist for the sake of disciplines but for the sake of deciding matter in controversy."*


Guided by the above principle of which I fully subscribe, I struck out the petition of appeal and order the appellant to file a fresh appeal with proper grounds within fourteen days from today so that the same could be determined on merit.



It is so ordered.

Dated and delivered at Moshi this 13<sup>th</sup> day of July, 2020



  
**S. B. MKAPA**  
**JUDGE**  
**13/07/2020**