



**Kibwala v Republic**

**Court of Appeal, at Nairobi January 24, 1985**

**Madan JA, Nyarangi & Platt Ag JJA**

**Criminal Appeal No 167 of 1984**

**(Appeal from the High Court at Nairobi, Aganyanya J)**

**January 24, 1985, Madan JA, Nyarangi & Platt Ag JJA delivered the following**

**Judgment.**

The appellant pleaded guilty and was convicted on two counts of obtaining money by false pretences, and on two counts attempting to obtain money by false pretences, all counts being laid contrary to section 313 of the Penal Code, without the 2 attempts counts being connected with section 389 also of the Penal Code. He appealed to the High Court. In a supplementary petition of appeal filed by an advocate the first ground of appeal was that the facts adduced by the prosecutor and admitted by the appellant did not and could not in law constitute an offence of obtaining or attempting to obtain money by false pretences. The appeal was summarily rejected by the High Court under section 352(2) of the Criminal Procedure Code. The appellant has appealed to this court on the one succinct ground that the High Court erred in law in summarily dismissing the first appeal. It is only on a ground of law that this second appeal could be presented to this court and we treat the ground of appeal accordingly.

This court has repeatedly stated that the judge of High Court is empowered to reject an appeal summarily if it is brought on the ground that the conviction is against the weight of evidence or that the sentence is excessive and it appears to him that it was sufficient to support the conviction and that there is no material in the circumstances of the case which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the subject ought to be reduced.

In our opinion the first ground of appeal in the supplementary petition of appeal took the appeal to the High Court out of the ambit of section 352(2). It was therefore wrongly rejected summarily, this notwithstanding that the appellant pleaded guilty. We are aware of cases where even after a plea of guilty an accused person has been able to establish to his advantage a change in the events either as stated or as narrated to the court. We note that although served the Attorney General's Chambers is not represented.