

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL 197 OF 2008

JOSEPH KUNGU KIMANI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This appeal has brought to the fore a very sad state of affairs Joseph Kungu Kimani, the Appellant, was charged before the Ag. Senior Resident Magistrate at Nyahururu with creating a disturbance in a manner likely to cause the breach of the peace contrary to **Section 95(1)(b)** of the **Penal Code** and cultivating bhang contrary to **Section 6(a)** of the **Narcotic Drugs and Psychotropic Substance Control Act**. Despite ample time given to the prosecution they failed to take witnesses to court and the accused was acquitted under **Section 2002** of the **Criminal Procedure Code**. Strangely a committal warrant was prepared and signed and the Appellant was on 30th October 2008 committed to prison for five years.

Clearly the Appellant had no business going to prison having been acquitted. It is hoped that such a silly mistake will not be repeated. And for this purpose I direct that a copy of this judgment be sent to the Principal Magistrate at Nyahururu to warn the clerk concerned.

I direct the Appellant be released forthwith.

DATED and delivered this 22nd day of May, 2009.

D. K. MARAGA

JUDGE.