

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 16 of 2008

JAMES KABOKO KAMOTHO APPELLANT

Versus

REPUBLIC..... RESPONDENT

RULING

The Chamber Summons dated 11th January 2008 seeks that the court will admit the Appellant to bail pending appeal. The Appellant was convicted on his own plea of guilty to a charge of being in possession of narcotic drug bhang contrary to **Section 3(1)** as read with **Subsection 2(a)** of the Narcotic and Psychotropic Substance Control Act No. 4 of 1994. In submission counsel for the Appellant argued that the plea was not unequivocal and further that the language of the court was not shown. In that respect counsel relied on two cases namely;

1. *Adan Vs Republic (1973) EA 445*
2. *Kariuki Vs Republic (1984) KLR 809*

In those two cases the court set out the proper procedure of taking a plea. Counsel also relied on case of **SOMO vs REPUBLIC (HIGH COURT OF KENYA AT NAIROBI (TREVELYAN, J.) 3 NOVEMBER 1972) Criminal Application 105 of 1972** where it was held in part as follows:-

“The most important ground is that the appeal has an overwhelming chance of being successful: in that case there is no justification for depriving the applicant of his freedom;”

The state opposed the application. On behalf of the state it was submitted that the plea of the appellant was unequivocal. That in responding to the charge the appellant stated ‘true’ and unless contrary evidence is provided that plea was unequivocal.

Having considered the submissions made before court and the application and having considered the proceedings in the lower court I find that the Appellant has failed to meet the principles of granting bail. I therefore decline to grant the prayers sought. The Chamber Summons dated 11th January 2008 is dismissed.

DATED AND DELIVERED ON 19TH DAY OF MARCH 2008.

MARY KASANGO

JUDGE