

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Criminal Appeal 195 of 2006

(From original conviction and sentence in Criminal Case No.2041 of 2005 of the Principal

Magistrate's Court at Naivasha – J.G. KINGORI, P.M.)

IMRAN MALLU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The appellant was charged for being in possession of cannabis sativa contrary to **Section 3(1)** as read with **Section 3(2)** of the **Narcotic Drugs and Psychotropic Substances Control Act No.4 of 1994**. The particulars of the offence were that on the 14th August 2006 at Tamu Tamu area in Gilgil within Nakuru District the appellant and his accomplice were found in possession of one roll of 20/- without a medical subscription or authority under the regulation of the said **Act**.

The appellant and his accomplice pleaded guilty to the said charge and were duly convicted and sentenced to 18 months imprisonment. Being aggrieved by the said conviction and sentence the appellant preferred an appeal to this court against both the conviction and the sentence. The appellant also filed an application by way of notice of motion under the provisions of **Section 356(1)** and **375** of the **Criminal Procedure Code**. He urged the court to admit him to bail pending the determination of this appeal. The application was supported by an affidavit sworn by his advocate, Achieng Owour.

In his submissions, Mr. Ndubi who held brief for the appellant's advocate urged the court to take cognisance of the fact that the charge as framed before the trial court was defective and did not disclose any offence. He further submitted that the plea was not taken in the proper manner as was laid down by the Court of Appeal in **ADAN VS R [1973] EA Pg 445**. He further submitted that the facts of the case as read out to the trial court could not sustain a conviction. He urged the court to find that the appellant had a meritorious appeal with overwhelming chances of success.

Mr. Gumo, Assistant Deputy Public Prosecutor, did not oppose the appellant's application. He conceded, and in my view rightly so, that for the reasons stated by Mr. Ndubi, the appeal had overwhelming chances of success.

In the circumstances, I allow the appellant's application and order that he be released on a cash bail of Kshs.10,000/- pending the hearing and determination of his appeal.

DATED, SIGNED and DELIVERED at Nakuru this 5th day of October, 2006.

D. MUSINGA

JUDGE

Ruling delivered in open court in the presence of Mr. Gumo, Assistant Deputy Public Prosecutor for the state and N/A for the applicant.

D. MUSINGA

JUDGE