



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

MISC. CASE NO. 994 OF 2010

**CO-OPERATIVE BANK OF KENYA
LIMITED PLAINTIFF**

VERSUS

**DAVID WANDORE
MWANIKI DEFENDANT**

R U L I N G

The Applicant in the Notice of Motion dated 11th October, 2010 is the Plaintiff in **Muranga SRMCC No. 50 of 2008** which he seeks to have transferred from the Muranga Court to the Chief Magistrate's Court at Milimani Commercial Courts for hearing and disposal.

The Applicant has moved the Court under **Section 15, 18 b (ii)** and **Section 3A** of the **Civil Procedure Act** on the basis that the Muranga Court lacks pecuniary jurisdiction to determine the dispute wherein the Applicant claims a sum of Kshs. 762,481.95 plus interest and costs, from the Defendant.

The application is supported by the affidavit of the Applicants' Advocate sworn on 11th October, 2010. In it Counsel depones that the suit was inadvertently filed at the Muranga Court on the mistaken belief that the said Court had jurisdiction to hear and determine the same, only to be told, at the time of hearing, that the Court lacked the requisite pecuniary jurisdiction.

The power of the High Court to transfer suits under **Section 18** of the **Civil Procedure Act** has been discussed severally and rulings made thereon, following the highly persuasive Ugandan authority of **GAKENYA vs. MUSIRAMO [1968] E. A. 43**, where the Honourable Sir Udo Udoma C.J., following the commentary at P. 130 of **MULLA'S CIVIL PROCEDURE CODE (10th Edition)**, on **Section 24 of the Indian Code of Civil Procedure** (which is identical to Section 18 of the Ugandan and Kenya **Civil Procedure Acts**), held as follows:

- (i) Section 18 of the Civil Procedure Act gives general power of transfer of all suits, which may be exercised at any stage of the proceedings even suo motu by the Court without application by any party;**
- (ii) An order for the transfer of a suit from one Court to another cannot be made unless the suit has been in the first instance brought to a Court which has jurisdiction to try it;**

(iii) The subject matter of the application on the admission and showing of the Applicant had been instituted in a Court without jurisdiction and it was therefore incompetent for the case to be transferred to the High Court for hearing and determination.

The above holding applies squarely to the application before this Court. The suit sought to be transferred, having been filed in a Court without jurisdiction is null and void *ab initio*. There exists no suit for this Court to transfer to the Milimani Commercial Court and the application must fail.

Whilst dismissing the same, as I hereby do, I must mention that the application ought to have been filed in the Nyeri High Court under whose supervisory jurisdiction the Muranga Court falls.

Accordingly the application is dismissed with no orders as to costs.

SIGNED and DELIVERED at NAIROBI this 10th day of December, 2010.

**M. G. MUGO
JUDGE**

In the presence of:

Mr. Ataka holding brief for Mr. Onyango For the Plaintiff

No appearance For the Defendant