



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Appli 1753 of 2004**

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

**VERSUS**

**JAMES MUCHINA WANDUTU.....DEFENDANT**

**RULING**

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The Applicant in the Chamber Summons dated 15<sup>th</sup> December 2004 seeks an Order of this Court to transfer S.R.M.C.C. No. 148 of 2004 from the Murang'a Senior Resident Magistrate's Court to the High Court, Nairobi for trial and final disposal .

The grounds in support of the application are that:

1. The subject matter of the suit is shs 1,116,327.20/=
2. That at the time of filing suit the Murang'a Court did have a Senior Principal Magistrate with the requisite pecuniary jurisdiction but whose services have since been terminated.

Counsel for the applicant has submitted that the highest ranking officer at the Murang'a Court at the moment has a pecuniary limit of shs 1,000,000/= only and that there is no indication as to when a Magistrate with adequate pecuniary jurisdiction will be posted to the station. A Supplementary Affidavit to this effect was filed on 7<sup>th</sup> April 2005.

The application is opposed on the ground that the Murang'a Court lacked the pecuniary jurisdiction even when the suit was filed. The Respondent would therefore wish that the suit is transferred to a court which is more convenient in terms of travel time and costs. He does not however say that the High Court at Nairobi is not such a court.

In his submissions at the inter parties hearing, Counsel for the Respondent, Mr. Mwaura told the Court that Judicial Notice ought to be taken of the date of the purge in the Judiciary in which the presiding Magistrate's services were terminated. The Respondents claim that the purge took place in February 2004. Applicants claim it was in 2003/2004 and that it affected the various Courts/Magistrates individually. I regret to say that, the issue is not one for court to take Judicial Notice. A confirmation in writing regarding the official status of affairs at the Murang'a Court ought to have been obtained by either party herein to confirm the stand taken. Such documentary proof, being exhibited in the filed

Affidavits would have presented the conclusive position as regards the issue in dispute.

As it is I have nothing on which to rely on to draw the conclusion that as of now the Court is still incapacitated. I have also not been availed any evidence to persuade me that the court had jurisdiction when the suit was filed and that such jurisdiction was affected by the purge.

I am unable in the circumstances to allow the application since the court cannot issue orders in a vacuum.

The application is dismissed with no order as to costs.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of June 2006

M. G. Mugo

JUDGE

Delivered in the presence of:

Chege holding brief for Mwaura for Applicant

Mr. Muthuri For Respondent