

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

Revision Case 209 of 2006

RAEL MBULA WAMBUA APPLICANT

VERSUS

MARIANA KATUA NGUNDO RESPONDENT

R U L I N G

The facts confirm that the civil suit No. 93 of 2004 arose from a Makueni Resident magistrate Criminal Case No. 719 of 2003 in which the same court presided over the case. The court accordingly rightly disqualified itself.

I have considered the matter and agree that this court should transfer the case. I wish however to point out that the practice of subordinate courts transferring such and other cases to the Chief Magistrate's Court at Machakos is not proper. All the court needs to do is to disqualify itself and leave the parties to file proper and relevant proceedings for transfer in civil cases or merely draw the attention of their disqualification to Deputy Registrar of this court to seek remedial action.

Order:

The Makueni Resident Magistrate Civil Case No. 93 of 2004 is hereby transferred to Machakos Chief Magistrate's Court for hearing and final determination.

Dated at Machakos this 20th day of October, 2006.

D.A. ONYANCHA

JUDGE