

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO, BOSIRE & O'KUBASU J.J.A)
CIVIL APPEAL NO. 89 OF 2000
BETWEEN**

FORTUNE FINANCE LTDAPPELLANT

AND

**PHILIP K. MATU)
JOSPHAT MAINA IKINU)
HANNAH NJERI MATU).....RESPONDENTS**

**(Appeal from the ruling and order of (Justice Onyango
Otieno) at Nairobi Milimani Commercial Courts on
12th October 1999**

in

H.C.C.C. No.815 of 1999)

RULING OF THE COURT

The present appeal is from the order of the superior court made on 12th October, 1999 in its Civil Case No.815 of 1999. While the certified order of that decision is included in the record of appeal, the ruling giving rise to that order is not part of the record of appeal. That is clearly in breach of the mandatory provisions of rule 85(1)(g) of the Court of Appeal Rules. The copy of the ruling may not be brought on record by a supplementary record of appeal in view of the clear provisions of rule 85(2A) of the aforesaid rules.

The appeal is therefore incurably incompetent.

Likewise the motion before us by the respondent seeking an order to strike out the appeal as incompetent is also incompetent as the applicant Fortune Finance Co. Ltd (in liquidation), did not obtain leave to proceed with this appeal.

In the result we strike out both the appeal and the motion but with no order as to costs.

Dated and delivered at Nairobi this 21st day of March, 2001.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

S.E.O. BOSIRE

.....

JUDGE OF APPEAL

E. O'KUBASU

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR