

**THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL No. 256 OF 2018**

(Arising from District Court of Mahenge in Matrimonial Appeal No. 07/2016 dated 20th December 2016, Originating from the Judgment and Decree of the Primary Court of Mtimbira in Civil Case No. 15 of 2016)

KAMILIUS KAMISYUS LIKWAWA.....APPELLANT

Versus

WANTUDIS LIKOKO.....RESPONDENT

JUDGMENT

27/05/- 29/9/2019

J. A. DE-MELLO, J;

Aggrieved with the decision of District **Court of Mahenge in Matrimonial Appeal No. 7 of 2016**, the Appellant preferred an Appeal on the following grounds;

- 1. That, the learned appellate Magistrate Court erred in law and facts in failing to acknowledge as a fact that most of the properties listed and subjected to division as matrimonial properties such as a godown do not belong to the Appellant instead they are owned by third parties.**
- 2. That, the Appellate Magistrate erred in law and facts in confirming the distribution of Tshs. 37,246,377 which the Appellant has never obtained in his activities instead passed through his hands as only a crops purchasing agent.**
- 3. That the learned Appellate Magistrate erred in law and facts in confirming the Primary's Court's order of building a house to the Respondent whereas the Appellant has no financial muscle to do so.**

4. That, the learned Appellate Magistrate Court erred in law and fact in failing to make a finding that the learned Trial Magistrate was biased.

With the leave of the Court, this Appeal was ordered to proceed Exparte against the Respondent, duly notified but, in defiance. It is **Counsel Cleophas James** representing the Appellant while the Respondent is unrepresented.

In the course of writing this judgment, I came to realize that, the memorandum of Appeal filed in this Court is not accompanied with the copy of the decree appealed against what **Order XXXIX Rule 1 Cap. 33** provides as follows, I quote;

"1 (i) -Every appeal shall be preferred in the form of memorandum signed by the appellant or his advocate. The memorandum shall be accompanied by a copy of the decree appealed from (.....) of the Judgment on which it is founded."

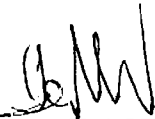
Several cases have enumerated this position, but for the sake of my findings is the case of **Stanley Kahama Mariki vs. Chilinyo Kwisila w/o Nderingo Ngomuo [1981] T.L.R 143** where it was inter-alia held that;-

"(i) A Memorandum of appeal must be accompanied by a copy of the Order appealed from (vide Order 39 Rule (1) and Order 40 Rule 2 of the Civil Procedure Code)."

See also the case of **H. J. Stanley & Sons Limited vs. Ally Ramadhani Kanyamale [1988] T.L.R 250.**

Thus, and, in the absence of the Copy of Decree in which the Judgment is appealed against, this Appeal has no legs to stand upon. This has been raised '**Suo Motu**' as I **Struck Out** the Appeal as opposed to **Dismissal** and, no order for the costs is made.

It is so ordered.



J. A. DE-MELLO

JUDGE

29/10/2019.