IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 50 OF 1994

LAWRENCE BISHOBE .... APPELLANT

versus

DAR ES SALAAM CITY COUNCIL .... RESPONDENT

RULING

MAINA, J.

This is an application for extension of time to file
an appeal to this Court against the decision of the Resident
Magistrate's Court of Kisutu, Dar es Salaam and for an order
to restrain the Respondent from demolishing the suit premises,
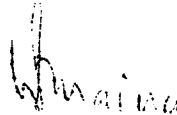pending the final determination of the intended appeal.

As regard the application for extension of time to file
an appeal, it is noted that the decision of the lower court
was delivered on 2 April 1991. Thereafter, the applicant
filed an appeal to this Court, vide Civil Appeal No. 18
of 1992. His appeal was against the order dismissing his
application to set aside the dismissal. He had applied to
the trial court to set aside the dismissal of his case which
was made for non-appearance. The proper procedure, as
Mkude, J held in Civil Appeal No. 18 of 1992 was to appeal
against the trial court's order which dismissed his
application for setting aside the dismissal order.

The applicant had acted diligently, and in time, when
he appealed to this Court, but his appeal was against an
order in which the suit was dismissed for non-appearance.
But that was dealt with when he applied to set aside the
dismissal order. In the circumstances, as Mkude, J ordered,
the applicant should have appealed to this court against
the trial court's order of 2 April 1991 dismissing his
application to set aside the dismissal order.

There are sufficient cause for the delay, and
accordingly, the application for extension of time
appeal to this court is granted, as prayed.

The applicant's second prayer for an order to restrain the Respondent from demolishing the suit premises pending the final determination of the intended appeal, is also granted.

The applicant is given thirty days within which to file the appeal to this Court.
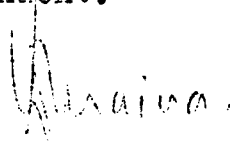
W. J. MAINA
JUDGE
9 August, 1994

Delivered in the presence of the applicant and in the absence of the Respondent.

W. J. MAINA
JUDGE
9 August 1994