IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RAMADHANI, Ag. C.J., LUBUVA, J.A., And LUGAKINGIRA, J.A.)

CIVIL APPEAL NO. 25 OF 1997

B E T W E E N

AFRICAN TROPHY HUNTING LTD. . . . . APPELLANT

A N D

1. THE HON. ATTORNEY GENERAL
2. PRINCIPAL SECRETARY MALIASILI
3. DIRECTOR OF WILDLIFE . . RESPONDENTS
4. ECO HUNTING CO. LTD.
5. AFRICAN BUSH CO. LTD.

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Bubeshi, J.)

dated the 23rd day of September, 1996

in

Miscellaneous Civil Case No. 4 of 1994

JUDGEMENT OF THE COURT

LUBUVA, J.A.:

This appeal arises from High Court Misc. Civil Cause No. 4 of 1994. In that case the applicant, who, in this matter is the appellant, had applied by Chamber Summons for orders of certiorari and mandamus. The orders sought were in these terms:

1. to remove into this Honourable Court and quash the decision of the Director of Wildlife in the Ministry of Tourism Natural Resources and Environment of 4th August, 1994 withdrawing the blocks allocated to the Applicant namely, Selous K4 and R1

2. to compel the Director of Wildlife Ministry of Tourism, Natural Resources and Environment to restore the blocks withdrawn.

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In order to have a clear picture of the sequence of events, we think it is appropriate at this juncture to preface our judgment with a brief outline of the background giving rise to this case. On 24.11.1992, the appellant was allocated by the Director of Wildlife, Ministry of Tourism, Natural Resources and Environment hunting blocks Selous K4 and R1. On 18.6.1993, these hunting blocks were withdrawn from the appellant on the grounds that the appellant had failed to pay the requisite block fees and the underutilisation of the blocks. After the appellant was served with the letter of withdrawal Reference No. GD/16/44/11/138 of 18.6.1993, proceedings for certiorari and mandamus were initiated in the High Court i.e. Miscellaneous Civil Cause No. 4 of 1994. The amended Chamber Summons was filed on 6.12.1995.

While the application for certiorari was still pending, African Trophy Hunting Limited, the (original applicant) the appellant, filed another application for a temporary injunction against the Principal Secretary, Ministry of Tourism, Natural Resources and Environment and the Attorney General. On 13.2.1995, the High Court (Bubeshi, J.) heard the application. Allowing the application for temporary injunction, the learned judge ordered the status quo to be maintained pending the hearing of the main application i.e. Miscellaneous Civil Cause No. 4 of 1994. It is apparent however, that after the withdrawal of the hunting blocks from the appellant, the respondents, Eco Hunting Company Limited and African Bush Company Limited were allocated the same hunting blocks. The respondents, fearing that they would be affected by the interim order of injunction of 13.2.1995, filed an application seeking the rescission, variation or setting aside of the order. The application was filed under Order 37 Rule 4 of the Civil Procedure Code, 1966. The ground for the application was that the status quo sought in the interim order of injunction could not be maintained at that stage without affecting the interests of other third parties. After a careful consideration and

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analysis of the matter, the learned judge came to the conclusion that the interim order of injunction of 13.2.1995 was no longer valid, it had expired on 13.8.1995. The application was granted and the interim order of injunction was set aside on 23.9.1996.

Against the decision of 23.9.1996, the appellant, African Trophy Hunting Limited, has preferred this appeal. Mr. Nyange, learned counsel appeared for the appellant at the hearing of this appeal. He filed a ten-point memorandum of appeal. When the appeal was called on for hearing, Mr. Nyange opted to argue most of the grounds together. This, he said, was due to the fact that some of the grounds in effect overlapped. From these grounds of appeal, we think in totality the gravamen of the appeal is reflected in the following issues: First, that the appellant had all along complained that the court's order of 23.2.1995 had not been complied with. Second, that since there was no compliance with the court order, time had not started to run in regard to the order of temporary injunction. Third, that the respondents had no locus standi in the proceedings. We propose to address these issues in this appeal. In dealing with the appeal, if we do not consider each and every point canvassed by the learned counsel for both parties, it is not out of discourtesy. Otherwise, we are grateful to the counsel for their very helpful, lucid and well researched submissions.

Arguing grounds 1, 2 and 3 together, Mr. Nyange submitted that from the time the interim order of injunction was issued on 13.2.1995, the appellant had all along been complaining that the order of court of 13.2.1995 had not been complied with. That is, the Director of Wildlife, Ministry of Tourism, Natural Resources and Environment who was, by the order of 13.2.1995 restrained from withdrawing hunting blocks from K4 and R1 from the appellant did not maintain the status quo, Mr. Nyange stated. He further submitted that by the time the interim order of injunction was issued on 13.2.1995, the Director of Wildlife had already (27.1.1995)

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allocated hunting blocks K4 and R1 to Eco Hunting Company Ltd. In that situation, Mr. Nyange went on, it was not possible to maintain the status quo envisaged because the matter had been overtaken by events.

Mr. Nyange, learned counsel went further in his submission. He stated that as the status quo was not maintained in terms of the interim order of injunction of 13.2.1995, the time had not started running. Elaborating on this, Mr. Nyange adamantly maintained that notwithstanding the provisions of rule 3 under Government Notice No. 508 of 22.11.1991, which provides for the validity of an order of injunction for a period not exceeding six months, the time starts running from the time of compliance with the court order. In this case, he stressed, so long as the court order of 13.2.1995, was not complied with, the order of temporary injunction also still remained valid.

Then Mr. Nyange dealt with the question of the respondents' locus standi. He submitted that as the respondents were not parties to the proceedings in the High Court for certiorari and mandamus, they (respondents) had no locus standi in the proceedings for the variation or setting aside of the order of 13.2.1995 for interim injunction. This is so, he went on, because an application for discharging or varying an injunction order can only be made by one who is a party to the proceedings and not anybody who is dissatisfied with the order.

On the other hand, Mr. Mbuya, learned counsel who appeared for the respondents in this appeal responded to the submissions regarding the locus standi of the respondents. In his submission, he eloquently made the distinction between an application made under Order 37 Rule 2 and another under Rule 4 of the same Order. That under Rule 2 an application for an injunction is only available to a party to a suit but an application for variation or discharge of an order under Rule 4 is available to any interested party. In this case, Mr. Mbuya submitted, in the course of implementing the order for temporary injunction of

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13.2.1995 to maintain the status quo, the interests of the respondents were affected by the withdrawal of the hunting blocks. For that reason, he further stated, the respondents had an interest in the matter. Therefore, he concluded, they had locus standi in the matter.

With regard to the fact that the appellant had all along been complaining that the court order of 23.2.1995 had not been complied with, Mr. Mbuya, while conceding that, that may well have been so, he strongly maintained that it was not due to the fault of the respondents. Rather, he insisted, it was due to the appellant's failure to disclose to the court at the time the order of 13.2.1995 was issued that the appellant was not in possession of the hunting blocks. As a result of such non-disclosure on the part of the appellant, Mr. Mbuya pressed, the order was issued by the court on the assumption that the applicant, the appellant in this matter, was in possession of the hunting blocks. In these circumstances, and, in the absence of any fraud on the part of the respondents, Mr. Mbuya concluded, there is no basis upon which to fault the learned judge's decision to allow the application for review and discharge of the order of 23.2.1995.

We shall first address the issue whether in matters pertaining to interim orders of injunction, time starts to run from the time of compliance with the court order. As just observed, Mr. Nyange streneously urges the court to take the view that as long as the court order granting an interim injunction is not complied with, time does not start running. According to him, the order for temporary injunction remains valid for an indefinite period if there is no compliance. With great respect, we find this a novel and attractive submission which, we are however, unable to accept. Not only is it unconvincing but it is also absurd as well. It is trite knowledge that the power to grant an injunction is discretionary on the part of the court and that such

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discretion is to be exercised judicially. In the case of Kirklees BC V Wickens Building Supplies Ltd. (1993) AC 227, the House of Lords underscored this principle in these terms:

> "The power to grant injunctions, which now arises under section 37 of the Supreme Court Act 1981, is a discretionary power, which should not as a matter principle be fettered by rules."

In Tanzania, the court's power to grant temporary injunctions is provided for under Order XXXVII Rule 1 of the Civil Procedure Code, 1966. It is significant to note that the word used in the Tanzanian statute is "temporary" injunction. In practice however, it is apparent that the terms "temporary" and "interim" are sometimes used interchangeably. In relation to the duration of an interim injunction, the learned author David Bean, in his book INJUNCTIONS 6th Edition at page 3 describes interim injunction as follows:

> "An interim injunction is still more temporary, and remains in force only until a named day ---"

As the term temporary injunction implies as well the wording of Order XXXVII Rule 1 of the Civil Procedure Code in Tanzania and other persuasive pronouncements of the law in other jurisdictions, we are increasingly convinced that an order for temporary injunction is valid only for the specified period. Mr. Nyange's contention that in this case, the validity and duration of the order was dependant upon compliance with the terms given in the court order is, with respect, not in accord with the spirit behind the issuance of orders for temporary injunction. It is absurd, to say the least. We reject it.

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Having taken the view that a temporary injunction is valid for the period specified in the order, what was the position in the instant case. Here, we think there are two facets to the problem. First, concerns the period when the order was made, and second, the period six months after the issuance of the order on 13.2.1995. Addressing on how the status quo could be maintained at the time when by 27/1/1995 the hunting blocks had been re-allocated, the learned judge lamented that it was unfortunate that the matter was not brought to the notice of the court. For our part, we wish to say no more than that the court order was nonetheless, at that time, unless discharged or set aside, valid.

Next, we propose to deal with the period six months after 13.2.1995. Dealing with the validity of the order of 13.2.1995 the learned judge said:

> "I hold therefore that the order this court granted on 13.2.1995 expired on 13.8.1995 and no attempts have been made to revive it. And on that ground alone I further hold that since it is no longer valid it cannot be used to withdraw the two hunting blocks from third parties and restore them to the 1st Respondents. (sic)" (emphasis supplied)

From this, we think it cannot be gainsaid that the learned judge was correct in her view of the matter. This is so, in our considered opinion, for two reasons: Firstly, the order of 13.2.1995 was for an interim injunction, not a perpetual one. Secondly, the law in Tanzania under which the relief was granted, specifically provides for an order of this kind to be in force for a period not exceeding six months. By virtue of Government Notice No. 508 of 22.11.1991, Order XXXVII Rule 4 was amended in order to introduce a maximum period of six months when an interim

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order of injunction would be in force. As amended, it reads:

> "In addition to such terms as the keeping of an account and giving security, the court may by order grant injunction under Rule 1 or Rule 2 and such order shall be in force for a period specified by the court, but not exceeding six months." (emphasis supplied).

There is however, a proviso to this order which, in appropriate circumstances, upon an application by the party concerned, the court may grant an extension for a further period not exceeding an aggregate of one year. In this case, there being no application made for the extension of the order before the expiry of six months, the order of 13.2.1995, as correctly held by the learned judge, expired on 13.8.1995, when the six months' period ended. That is, by operation of the law, at the expiry of six months, the order of 13.2.1995 ceased to have any legal force, it lapsed. Consequently, it follows therefore, that on 23.9.1996, when the learned judge dealt with the application for varying or rescission of the order for temporary injunction, the order the subject matter of the application, was no longer of any legal force. This, it is apparent that the learned judge was consciously aware when granting the application by stating inter alia:

> "In the premise I allow the application as prayed, the order of 13.2.1995 which is no longer valid is hereby set aside."

With respect, we think that while the learned judge correctly addressed the legal status of the order of 13.2.1995 at the time after the expiry of six months, she got mixed up as it were, in the concluding part of the ruling. If, as already indicated, the learned judge had cound and correctly so in our opinion, that the order was no longer of any legal force, it had lapsed, then the application before her was

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incompetent. It was based on an order which had no legal force at the time. In that situation, to grant the application on the learned judge did, by implication, in our view, it amounted to construing the order of 13.2.1995 as one still having legal force i.e. valid. This, with respect, was not correct. The application before the learned judge being incompetent, the proper course was for the application to be struck out.

This ground alone, we are satisfied is sufficient reason for disposing of this appeal. Having taken this view, we think it unnecessary to deal with the other grounds which were ably argued at the hearing of the appeal.

In the event, for the foregoing reasons, the appeal is dismissed with costs.

DATED AT DAR ES SALAAM this 3rd day of December, 1998.

A.S.L. RAMADHANI
Ag. CHIEF JUSTICE

D.Z. LUBUVA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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

(A.G. MWARIJA)
DEPUTY REGISTRAR