of the two courts below and set aside the orders made thereat. Appeal allowed with costs.

SILAS SIMBA *v.* EDITOR OF MFANYAKAZI NEWSPAPER AND ANOTHER

COURT OR APPEAL OF TANZANIA AT DAR ES SALAAM

(Ramadhani, Samatta and Lugakingira, JJ.A.)

CIVIL APPEAL No. 7 OF 1997

(From the High Court of Tanzania at Dar es Salaam, Bubeshi, J., dated 23 December1996)

Powers – Inherent powers – Court looking at records or receipt book to determine correct date – Whether proper.

At the start of the hearing of the appeal against *ex parte* judgment of the High Court, the advocate of the respondents raised a point *in limine* on behalf of the second respondent asking that the appeal be struck out because the second respondent was not served either the Notice of Appeal or the Record of Appeal. The advocate further urged, in the alternative, that the appeal be stood over until determination of a chamber application filed in the High Court to set aside the *ex parte* judgment. On the question of service the appellant submitted that the second respondent had refused to accept service, and that the application for setting aside *ex parte* judgment was inserted in the file after the appeal had been filed. In order to determine the truth of the matter the court examined the Exchequer Receipt book from which the court cashier had issued receipt number 0476645 to the advocate of the respondent section

Held: (i) Exchequer Receipt Number 0476645 issued on 23 January 1997 to the advocate of the respondents was among many other receipts issued on that day, namely Numbers 06706641, 06706642 and 06706643, issued to various advocates for renewal

of their practicing certificates while Numbers 06706644, 06706646, 06706647, 06706648 and 06706649 were issued to various advocates in respect of various civil cases.

(ii) The assertion of the appellant that the application for the setting aside of the *ex parte* judgment was inserted in the file after the appeal had been filed is not borne out by the Exchequer Receipt Book.

(iii) The appeal against the assessment of damages is stood over pending determination of the application to set aside the *ex parte* judgment of the High Court.

Order accordingly

RULING

(Dated 02 December 1998)

SAMATTA, J.A.: This is an appeal against the *quantum* damages awarded for defamation in a judgment of the High Court (Bubeshi, J.) after an *ex parte* proof. The appellant was awarded the sum of TZS. 2 000 000. Three members of the court assisted the learned judge in trying the case. The first member assessed damages at that figure; the second member at TZS. 5 000 000 and the third member at TZS. 6 000 000 The learned trial judge accepted the assessment by the first member.The appellant says that assessment is inadequate and ought to be varied.

When the appeal was called on for hearing, Dr Lamwai, counsel for the respondents, raised, on behalf of the second respondent, a point *in limine*. He submitted that the appeal is incompetent in law on the ground that the second respondent was served with neither a copy of the Notice of Appeal nor a copy of the Record of Appeal.

He urged us to strike out the appeal. The learned advocate also urged us, in the event we are not inclined to hold that the appeal is incompetent, to order that the appeal be stood over until a chamber application to set aside Bubeshi, J.'s *ex parte* judgment the Second respondent has filed in the High Court is determined. According to counsel, that chamber application was filed on 23 January 1997. The appellant's answer to the preliminary point seeking to have the

appeal struck out was simple but forceful: he served the Notice of Appeal and the Record of Appeal on the second respondent but in each case the latter refused to accept the service. According to the appellant the second respondent was served with the Notice of Appeal on 6 January 1997, and with the Record of Appeal on 21 February 1997. The appellant asserts in his affidavit that the application to have the *ex parte* judgment set aside was "inserted in the High Court case file after the appeal [had been] lodged on or about 3 March 1997", and he repeated that assertion in the course of making his submission.

It seems to us that logic demands that we deal first with the application to have the appeal stood over until the disputed chamber application is determined. We proceed, therefore, to deal with that point. In order to discover on which side lies the truth as regards when the chamber application was filed we painstakingly examined the Exchequer Receipt book from which the court cashier issued receipt number 047665 on 23 January 1997, in respect of the payment made by Messrs MRA Lamwai and Co., Advocates, in connection with the filing of the chamber application. The receipt book is the one which bore receipts with numbers 04706601 to 04706800 inclusive. The following is what we have discovered from the exercise. The four receipts immediately preceding Receipt Number 04706645, namely, Receipts Numbers 04706641, 04706642, 04706643 and 04706644, were issued on the same date, that is to say, 23 January 1997. The four immediate subsequent receipts – Numbers 04706646, 04706647, 047-6648 and 04706649 – were also issued on the same date, to different firms of advocates, MRA Lamwai and Co. (in connection with High Court Civil Case Number 17 of 1997), R Marandu (in connection with High Court Civil Case Number 20 of 1994), "legal counsel (advocate)" (in respect of Civil Case Number 18 of 1997), and M.A. Ismail (in connection with Civil Case Number 11of 1996). Receipt Numbers 04706641, 04706642 and 04706643 were issued in respect of renewals of practicing certificates of advocates F.A. Ureni, D.N. Kapoor and D.C. Mbezi respectively, while Receipt Number 04706644 was issued to Messrs Maira and Co. Advocates, in connection with High Court Civil Case Number 62 of 1996.

Bearing in mind these discoveries, we entertain no doubt that the appellant's bold assertion that the chamber application to set aside the *ex parte* judgment was filed after he had filed the instant appeal has no grain of truth. We are satisfied that the filing of the chamber application preceded the lodging of the appeal. Having arrived at that opinion, we agree with Dr Lamwai that justice demands that the appeal be stood over until the chamber application before the High Court is determined by that court. That view compels us to hold, as we do, that the point *in limine* regarding the competence of the appeal has been prematurely raised. We therefore express no opinion on it.

For the reasons we have given, we order that the appeal against assessment of damages be stood over pending the determination of the chamber application filed before the High Court by the second respondent to have Bubeshi, J.'s *ex parte* judgment set aside and the case tried *inter partes*. The respondents will have their costs.

AFRICAN TROPHY HUNTING LTD. *v.* ATTORNEY GENERALAND FOUR OTHERS

COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(Ramadhani A. .C.J.J, Lubuva and Lugakingira, JJ.A.)

CIVIL APPEAL No. 25 OF 1997

(From the decision of the High Court of Tanzania at Dar es Salaam, Bube.shi, J., dated 23 September 1996 in Miscellaneous Civil Case No. 4 of 1994)

Civil Practice and Procedure – Temporary and Interim orders of injuction – Whether time prescribed for validity thereof begins to run from the time of compliance with order.