

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0496-2006

(Arising from HCT-00-CC-CS-1182-1997)

Francis Jaya Salongo

Applicant

Versus

Mukono District Council

Respondents

Kimenyede Local Council 111

Legislation referred to:

1. *Civil Procedure Act*

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The applicant was the successful party in the head suit filed in 1997. The applicant had sued the respondents for arrears of rent and renovation of the applicant's premises. By virtue of a consent decree dated 10/08/2001 the applicant was to be paid by the respondents rent for 39 months from 1/01/1995 at the rate of shs.160,000.00 per month in

respect of the said premises. Provision was made as to the mode and timing of payment of the said sums of money. It was further decreed that the respondents would renovate the premises in question and hand the same over to the applicants on 31/07/2001.

2. It would appear the decree was not performed as agreed. The applicant has returned to this court, with an application made under Sections 92 and 98 of the Civil Procedure Act seeking certain reliefs. Two of the reliefs sought have been agreed upon by the parties. This ruling is in respect of one of the reliefs not agreed upon. This is that the respondent no.2/judgment debtor pays the rent of the decreed premises as from 1/08/2001 to the date of the handing over at shs.160,000.00 per month.
3. Section 92 of the Civil Procedure Act states,

‘(1) Where and insofar as a decree is varied or reversed, the court of first instance shall, on application of the party entitled to any benefit by way of restitution, or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position they would have occupied but for such decree or such part of it as has been varied or reversed; and for this purpose the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on the variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection (1).’
4. It is clear that these provisions relate only to instances where a decree has been varied or reserved, and not in any other circumstances. The decree in the head suit has never been reversed or varied at all. That provision is obviously not applicable to the present circumstances in which not only has the original decree not been varied or reversed but that applicant seeks relief that is not consequential upon variation or reversal of the original decree.
5. When this was drawn to the attention of learned counsel for the applicant, Mr. Osili, he responded that by the respondents not performing the decree, the decree was varied thereby. I do not accept this argument. Non-performance of a decree does not vary a

decree in anyway. The decree remains intact, and it is up to the party who desires it performed to enforce its performance in the manner provided for at law.

6. What the applicant is seeking now is for this court to grant an award that was not made in the original consent decree and thus vary the original decree. The new award would be for rent for the premises between the 1/08/2001 up to the date the applicant would obtain possession of the premises. This is a substantive claim that can not be dealt with in the manner proposed by the applicant. The law referred to, to support this approach is inapplicable to the circumstances of this case.
7. Secondly whether or not the applicant would be entitled to such relief as claimed can only be established after a trial. In fact the respondent no.2 contests the claim in light of the affidavits filed in reply. The trial of the claim in the head suit is over and a final decree entered into the matter. This matter cannot be reopened in the manner the applicant seeks to do so now.
8. Accordingly I dismiss this part of the application with costs to the respondent no.2.

Signed, dated and delivered at Kampala this 28th day of September 2006

FMS Egonda-Ntende

Judge