

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**MISC. APPLICATION NO. 292 OF 2002**

**(Arising from Civil Suit No. 147 of 2002)**

**PAVEMENT CIVIL WORKS LTD:..... APPLICANT/DEFENDANT**

**VERSUS**

**ANDREW KRUNGI :..... RESPONDENT/PLAINTIFF**

**BEFORE: THE HON. MR. JUSTICE OKUMU WENGI.**

**RULING:**

This is an application brought under Order 9 rule 24 of the Civil Procedure Rules. It seeks orders among others that:-

“the exparte decree and compromise cum order of satisfaction in the above suit be set aside and the applicant be allowed to file an application to defend the suit.”

When the matter came up for hearing Charity Nakabuye, learned counsel for the Respondent raised two objections. The first one was that the application was incompetent in so far as the decree proceeded from a suit brought under summary procedure. In which case the proper way was to apply to set it aside under Order 33 rule 11 of the Civil Procedure Rules. Secondly, Ms Nakabuye contended that the application was misconceived in so far as the decree being a consent decree could only be set aside by way of an application for review. She cited the Supreme Court decision in Ladak Abdallah vs Griffin Isingoma CA No. 8 of 1995 S.C (unreported).

I am aware that a consent decree cannot be set aside by appeal or by motion. For setting aside such a decree there are two available modes of procedure (a) by a suit, (b) by an application for a review of the judgment sought to be set aside. But the more appropriate mode is by an application for review. A decree on compromise is passed in between the two persons who are

present before the court. Therefore it can by no stretch of imagination be an *ex parte* decree as between the parties seeking compromise. Therefore Order 9 rule 24 would not apply. Secondly a third party such as a wife cannot apply under Order 9 rule 24 to set aside a compromise decree between her husband and another (say landlord) on the ground that the decree was *ex parte* to her. These are some of the statements of the law that appear relevant in this type of case.

In answer Mr. Guma contended that though the original suit here was a summary suit the decree was *ex parte* and Order 9 rule 24 is wide enough to cover it. The issues raised by this preliminary objection therefore seem to be whether this was a decree *ex parte* or consent decree. In Naggitta Kafuma vs Kimbowa Builders & Contractors M.B. 189/73 a consent judgment was taken to be one as defined in Halsburys Laws 3 Edition paragraph 1631:-

“if either party is willing to consent to a judgment or order against himself or if both parties are agreed as to what the judgment or order ought to be due effect may be given by court to such consent.”

In that case what had been entered was not a consent judgment as the applicant was never a party to the settlement nor was he willing to consent to the judgment against himself. Further still it is the law that a judgment obtained irregularly may be set aside ex debito justitiae. See Magon vs Ottoman Bank (1958) EA 156.

In the present case a summary suit was brought by Andrew Kalungi the Plaintiff against Pavement Civil Works Ltd. the Defendant. The summons was served and on 8/4/2002 one Kahwa A.B. Martin endorsed as Director Pavement Civil works Ltd, receipt with the following words: -

“We admit the debts and do hereby pledge to arrange payments to settle.”

On 1gth April 2002 the Registrar of this court entered a decree as prayed under Order 33 rule 3 of the Civil Procedure Rules against the Defendant for Shs. 60,173,050/=

Then on 13th May 2002 the Registrar again entered a consent Order named “Compromise Cum Order of Satisfaction). It is both the decree and this latter order that is subject of this application.

Now it is clear that the decree in this suit was entered under Order 33 of the Civil Procedure Rules. Secondly the order of compromise was a Consent Order in the execution process. It also varied the decree to one of partial satisfaction of the decretal sum and for payment in installments. The net result is that a decree was entered under Order 33 and was not exparte in so far as no application for leave to defend was sought. Such a decree is not an exparte decree as long as leave to appear and defend had not been granted and no defence filed. The issues of appearance or defending the action which must exist in order to determine if a matter was “exparte or not were irrelevant.” In fact the Order 33 procedure does not employ the term exparte. It is therefore my view and I am in agreement with Ms Nakabuye, that the decree subject of this application is not exparte and is under Order 33. Therefore an application under Order 9 rule 24 does not apply.

There may be disagreement among the directors of the Pavement Company. But until the decree under Order 33 of the Civil Procedure Rules is set aside on whatever ground I would not allow a party to it to apply to set it aside under Order 9 rule 24 of the Civil Procedure Rules. The consequence is that this application is dismissed with costs and the Interim Order earlier vacated accordingly.

**RO. OKUMU WENGI**

**JUDGE**

**10/06/2002.**

**13 /06/2002:-** Guma for Applicant

Nakabuye for Respondent

Mutegeya Court Clerk

**Court: -** Ruling delivered in open court.

**Ag. D/REGISTRAR**

**13/06/2002.**