THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 416 OF 2002

(Arising from Civil Suit No. 147 of 2002)

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

VERSUS

1. ANDREW KIRUNGI } :::::::::::::::::::::::::::::::::::: 1ST RESPONDENT/PLAINTIFF

2. KAHWA A.B. MARTIN } :: 2ND RESPONDENT

BEFORE : THE HON. MR. JUSTICE OKUMU WENGI.

RULING:

This is an application for review brought under Order 42 rule 1(1)-(b) and Rule 8 of the Civil Procedure Rules. However in his written submissions counsel has amended the order under which he made the application to read that he was moving court under Order 48 of the Civil Procedure Rules. The latter is a procedural order under which review originally sought cannot be granted. On this alone I would strike out the application. However, the substance of the application is that a consent order entered in Civil Suit No. 147 of 2002 should be set aside on the ground that the loan it was subject of had long been repaid. The Respondent has denied this and filed an affidavit in reply.

According to the affidavit in support of the application filed by Fred Mwesigwa on 12/07/2002 vide paragraph 13, the Respondent on 29/11/2000 received a cheque of Shs. 15 million by draft that he delivered according to annextures F, G, and H to his company Mirera Tours & Travel Ltd. That further the applicant paid a sum of Shs. 13 million to the Respondent. No evidence of this was annexed to the affidavit in support of this application though it is submitted that it was admitted. It could also not be reflected in the Applicant's Bank statement annexed as H to his affidavit in support.

In reply the Respondent admits receiving payment of Shs. 15 million from the Applicant but states that shortly after that Applicant received from him Shs. 15 million issuing Security therefore a cheque for Shs. 15 million dated 25/01/2001. He also states that further sums were subsequently advanced by Respondent to the Applicant who gave post-dated cheques in 2001.

The affidavit in reply was not controverted in any way by a further affidavit by the applicant. In short I have not seen new evidence or matter to warrant the setting aside of the consent order which compromised a decree obtained in summary suit. I am of the view that this application has no merit whatsoever and is misconceived in that the decree in the summary suit still subsists and has not been sought to be set aside. There is also no ground upon which that summary decree had been satisfied and discharged.

The result is that I dismiss this application with costs to the Respondent/Plaintiff.

R.O. OKUMU WENGI

JUDGE

15/10/2002.