

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

February 17, 2004

Charles R. Fulbruge III  
Clerk

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No. 02-41490  
Summary Calendar

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KINGS A. KOMOLAFE,

Plaintiff-Appellant,

versus

WILLIAM DEWEASE,

Defendant-Appellee.

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Appeals from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:01-CV-420  
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Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Kings A. Komolafe, Texas prisoner # 601354, appeals from the district court's denial of his post-judgment motion for a new trial and/or for relief from judgment brought under Rules 59(a)(1) and 60(b)(3) of the Federal Rules of Civil Procedure. Komolafe does not argue that the district court erred in denying his motion under Rule 59(a). Komolafe argues only that the district court erred in failing to consider his post-judgment

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

motion as a Rule 60(b) motion and his argument of fraud. Because Komolafe filed his motion before the 10-day period following entry of judgment for filing a Rule 59(a) motion had expired, his motion fell under Rule 59 and the district court did not err in treating his motion as a Rule 59 motion. See Teal v. Eagle Fleet, Inc., 933 F.2d 341, 347 n.3 (5th Cir. 1991). Komolafe's motion to remand is DENIED.

AFFIRMED; MOTION DENIED.