

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL CASE NO.37 OF 2002

DOCTOR ROBERT ONSARE MONDA PLAINTIFF

VERSUS

THE CATHOLIC DIOCESE OF KISII DEFENDANT.

RULING

On 9/12/02 an application by the plaintiff the defendant was given 10 days to make discoveries. He did not do so and on 28/1/03 the court struck out the defence.

There after the case was set down for formal proof on several occasion but due to one reason or another hearing did not take off. On 3/6/03 the defendant bought this application seeking to set aside the dismissal order and to reinstate the defendants defence. It was submitted that on 9/12/02 Mr. Soire was holding brief for Mr. Nyangau for the defendant. After the order he wrote to him informing him they have been given 30 days to serve their documents. Mr Nyangau deponed that he received Mr. Soire's letter on 15/1/03. He then wrote to his client to furnish him with the documents.

FATHER LAWRENCE NYAANGA deponed that when the letter was received it was mistakenly filed in office.

The application was opposed and it was submitted that the delay was inordinate and the lawyer did not act diligently. I concur that there was quite some delay from January 2003 to June when the application was filed. But both the lawyer and Father Nyaanga in their affidavits have explained the delay. True the lawyer should have been more diligent but taking into account all circumstances the explanation for the delay is excusable.

I therefore allow the application and set aside the court's order dated 28/1/03 dismissing the defence. The defence is hereby reinstated. The defendant should comply with order 10 rule 11(a) within 14 days from today's date.

The applicant will pay the Respondent costs of this application assessed at shs.1500/=.

Signed, dated and delivered on 23rd March 2004.

KABURU BAUNI

JUDGE.

23/3/2004

Mr. Momanyi for the plaintiff.

N/A for Applicant.

Order:- Mr. Momanyi to extract the Order and serve it on Mr. Nyangau.

KABURU BAUNI

JUDGE.