

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL CASE NO.133 OF 1998

ERNEST MOTANYA NYABOGA PLAINTIFF.

VERSUS

1. JOHN MASITA)
T/A NURU CHEMIST) DEFENDANT.

RULING

The applicant/plaintiff seeks court to reinstate the suit for hearing. The suit was fixed for hearing on 25th April 2002. On that day the plaintiff and his counsel did not appear in court. The suit was therefore dismissed.

Ms. Obaga for the applicant submitted that due to an oversight the hearing date was not put in her diary by her clerk. She did not therefore inform the plaintiff of the hearing date. She also did not attend court. It is much later she realized the suit had been dismissed.

Mr. Anyona opposed the application.

I have considered the application. Indeed counsel and her client were not in court on the day the suit was dismissed. The counsel has however explained the reason why they failed to attend court. This explanation is satisfactory. It is true that this application was brought long after suit was dismissed but the reason has been explained.

I allow the application and set aside the order dismissing the suit. The suit is reinstated for hearing. The applicant will however pay the Respondent throw away costs before setting the date for hearing. The costs should be agreed upon or be taxed by the taxing master.

It is so ordered.

KABURU BAUNI

JUDGE.

28/7/04

Dated 27th July 2004

KABURU BAUNI

JUDGE.

