



**IN THE COURT OF APPEAL**

**AT NYERI**

**SITTING IN NAKURU**

**(CORAM G.B.M. KARIUKI, J.A (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. 327 OF 2013**

**BETWEEN**

**SOLOMON K. RUGUT..... APPLICANT**

**AND**

**JOSEPH W. MUNDIA.....1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, NAKURU.....2<sup>ND</sup> RESPONDENT**

*(Being an application for stay of execution in an intended appeal*

*from the Judgment and/or Order of the High Court of Kenya*

*at Nakuru (Wendoh, J) dated 15<sup>th</sup> March, 2013*

**in**

**H.C.C.C. NO. 158 B OF 2005)**

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**RULING**

This application was fixed for hearing today and counsel on record for both parties were duly served. Learned counsel Mr. Harrison Kinyanjui has appeared on behalf of Mr. Kariu whose brief he holds and has sought adjournment on the ground that Mr. Kariu is not available to prosecute the application. His instructions are limited to seeking adjournment as he has not prepared for or gotten up on the application.

On his part, learned counsel Lawrence Karanja opposes the application for adjournment as he has been in Court since morning waiting for this hearing and yet no one indicated to him as a matter of courtesy that an application for adjournment would be made.

I observe that the application was filed on 9<sup>th</sup> March 2017. It relates to restoration of an appeal. This is the first application for adjournment by counsel for the applicant. It is not however clear why Mr. Kariu did not detail another counsel in good time to take up the matter on his behalf nor is it clear why he is

unable to appear in Court today. It is necessary in an application for adjournment for an applicant to show that there are unavoidable circumstances beyond his control militating against his appearance in Court.

The learned counsel for the respondent has dutifully waited for this hearing since morning and has dissipated valuable time. Be that as it may, as this is the first application for adjournment, and as it is desirable that the application be determined on merit, and as counsel for the respondent can be compensated by an award of costs, I reluctantly allow the application for adjournment. The application is adjourned to a date to be fixed again in the registry.

Further, I order that the applicant shall pay to the respondent's counsel today's costs which I assess at Kshs 5,000/= to be paid before the next hearing.

**Dated at Nakuru on this 30<sup>th</sup> day of May, 2017.**

***G.B.M. KARIUKI SC***

.....

***JUDGE OF APPEAL***

*I certify that this is a true copy of the original*

**DEPUTY REGISTRAR**