



REPUBLIC OF KENYA



**KENYA LAW**  
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**Constituency Development Fund Board v Githinji & another (Civil Appeal  
18 of 2018) [2025] KECA 1957 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1957 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 18 OF 2018  
WK KORIR, JA  
NOVEMBER 21, 2025**

**BETWEEN**

**CONSTITUENCY DEVELOPMENT FUND BOARD ..... APPELLANT**

**AND**

**SAMUEL NGARI GITHINJI ..... 1<sup>ST</sup> RESPONDENT**

**DAGORETTI SOUTH CONSTITUENCY DEVELOPMENT FUND  
COMMITTEE ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the judgment and decree of the Environment & Land Court  
at Nairobi (Mbugua, J.) dated 3rd November 2017 in ELCC No. 8 of 2015)*

**RULING**

1. This appeal was listed for hearing on 30<sup>th</sup> October 2024. It ought not to have been listed for hearing at all because as of that date, both the appeal and cross-appeal had abated.
2. Briefly, by a judgment dated 3<sup>rd</sup> November 2017, the Environment & Land Court (ELC) found that the appellant, the Constituency Development Fund Board, and the 2<sup>nd</sup> respondent, Dagoretti South Constituency Development Fund Committee, had trespassed unto the parcel of land measuring in size approximately 0.1957 ha. and known as Dagoretti/Ruthimitu/958 (the suit property), owned by the 1<sup>st</sup> respondent, Samuel Ngari Githinji.
3. As result, the ELC awarded the 1<sup>st</sup> respondent as against the appellant and the 2<sup>nd</sup> respondent jointly and severally, Kshs. 12,000,000.00 being the market value of the suit property, Kshs. 7,000,000.00 general damages for trespass, interest from the date of judgment, and costs of the suit. The ELC also ordered the appellant and the 2<sup>nd</sup> respondent to compulsorily acquire the suit property for the benefit of the 2<sup>nd</sup> respondent, in accordance with the procedures prescribed in the [Land Act](#), 2012.



4. The appellant was aggrieved and preferred this appeal on 24<sup>th</sup> January 2018. On its part, the 2<sup>nd</sup> respondent was aggrieved by the judgment and lodged a cross-appeal on 15<sup>th</sup> February 2021. When the appeal came up for hearing, none of the parties appeared but they had filed their written submissions. The Court directed that it would render its judgment based on the submissions. There was critical information which was not brought to the attention of the Court, otherwise it would not have made that order.
5. In the course of preparation of the judgment, it transpired that indeed both the appeal and cross appeal had abated long before the appeal was scheduled for hearing. The information that has come to light and which was then not available to the Court indicates as follows.
6. The 1<sup>st</sup> respondent died on 29<sup>th</sup> April 2018. No application for his substitution by his legal representative was made within twelve months from the date of his death. By dint of rule 102(2) of the Court of Appeal Rules, the appeal and cross- appeal against him abated on or about 28<sup>th</sup> April 2019.
7. On 14<sup>th</sup> April 2021 the appellant applied for substitution of the 1st respondent and for revival of the abated appeal. That application was heard and dismissed by a single judge (Gachoka, JA) on 15<sup>th</sup> March 2024. There was no reference to the full Court under rule 57(1) (b) of the Rules and therefore the appeal against the 1st respondent stands and remains abated to this date.
8. On its part, the 2<sup>nd</sup> respondent, the cross-appellant in this appeal, applied on 9<sup>th</sup> April 2021 for an order of substitution of the 1<sup>st</sup> respondent. That application was dismissed by a single judge (Okwengu, J.) on 18<sup>th</sup> February 2022. Again, there is no evidence of a reference to the full Court under rule 57(1) (b) from the decision of the single judge.
9. In light of the dismissal of the separate applications for substitution/revival of the appeal by the 1<sup>st</sup> and the 2<sup>nd</sup> respondents, it means that both the appeal by the appellant and the cross-appeal by the 2<sup>nd</sup> respondent which were against the judgment in favour of the 1<sup>st</sup> respondent remain abated. There was nothing to hear and determine and the appeal ought not to have been listed for hearing in the first place.
10. In light of the foregoing, we reiterate that this appeal and the cross-appeal have abated by operation of the law and that this file ought to be closed in so far as the appeal and cross appeal are concerned.
11. This ruling is delivered pursuant to rule 34(4) of the Court of Appeal Rules, in light of the demise of the Hon. Mr. Justice F. A. Ochieng, JA.

### **Concurring Ruling Of Korir, JA**

1. I have read in draft the ruling of the Presiding Judge, Kathurima M’Inoti, JA, and I entirely agree with him that the appellant’s appeal and the 2<sup>nd</sup> respondent’s cross-appeal had indeed abated by the time they were fixed for hearing. That being the case, there was no appeal or cross-appeal that could be listed for hearing.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF NOVEMBER 2025.**

**K. M’INOTI**

.....

**JUDGE OF APPEAL**

**W. KORIR**

.....



**.. JUDGE OF APPEAL**

