



**National Government Constituencies Development Fund Board (Formerly
the Constituency Development Fund Board) v Githinji & another (Civil
Application E114 of 2021) [2024] KECA 347 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KECA 347 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E114 OF 2021
PM GACHOKA, JA
MARCH 15, 2024**

BETWEEN

**NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND
BOARD (FORMERLY THE CONSTITUENCY DEVELOPMENT FUND
BOARD) APPLICANT**

AND

**SAMUEL NGARI GITHINJI 1ST RESPONDENT
DAGORETTI SOUTH CONSTITUENCY DEVELOPMENT FUND
COMMITTEE BOARD (FORMERLY DAGORETTI CONSTITUENCY
DEVELOPMENT FUND COMMITTEE BOARD) 2ND RESPONDENT**

RULING

1. I have read the application dated 14th April 2021, the affidavit in support of the application sworn by Simon M. Ndweka the corporation secretary of the National Government Constituencies Development Fund Board, the replying affidavit sworn by Mary Wanjiku Ngari on 17th May 2021, the applicant's submissions dated 7th May 2021, the 1st respondent's submissions dated 4th March 2024, the 2nd respondent's submissions dated 15th September 2021 and the authorities filed by parties in support of their respective submissions.
2. The applicant seeks two main prayers which are to substitute the 1st respondent with his legal representative in the Nairobi Civil Appeal No 28 of 2018 and to revive the appeal which has since abated. As at the time of filing the application, Rule 99 of the *Rules of the Court, 2010* was applicable. I note that the said rules were revoked by the *Court of Appeal Rules 2022*.
3. The applicant has relied on Sections 3A and 3B of the *Appellate Jurisdiction Act* as the basis upon which they are inviting the Court to exercise its discretion to revive the appeal and allow for the substitution



of the 1st respondent. In this case, it is apparent that the 1st respondent died on 29th April 2018 and the application before me was made about three years after the death of the deceased.

4. The reason for the delay is not plausible. The applicant has not sufficiently explained its reasons for not moving this Court from 16th April 2019 when it was served with an application seeking to substitute the 1st respondent in the Superior Court.
5. The applicant further submitted that the 1st respondent is deemed to have been automatically substituted as the 1st respondent in the appeal upon substitution as Plaintiff in the superior court from which Nairobi Civil Appeal No 18 of 2018 arose. I disagree with this submission for reason that substitution of a deceased party in one legal process does not automatically operate as substitution in all other pending and related proceedings involving a deceased party a position that was taken by this Honourable Court in Civil Application No E052 of 2021.
6. Before I pen down and give my final orders, I note that the 2nd respondent had filed an application dated 9th April 2021 in Nairobi Civil Appeal No 28 of 2018 seeking an order for the substitution of the 1st respondent herein. The application was dismissed by Lady Justice Hannah Okwengu on 18th February 2022. None of the parties notified the court of this fact and it appears that the totality of this application is a second bite at the cherry.
7. In the circumstances, the applicant has not satisfied this Court that it is deserving of the exercise this Court's discretion, nor has he provided a plausible reason for the delay in making its application. Accordingly, the application is dismissed.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH 2024.

M. GACHOKA CIARB., FCIARB.

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

