



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bodle v Egge & 4 others (Civil Appeal 130 of 2018)**  
**[2022] KEHC 13540 (KLR) (Family) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13540 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**CIVIL APPEAL 130 OF 2018**  
**MA ODERO, J**  
**SEPTEMBER 30, 2022**

**BETWEEN**

**HASSAN HAJI EGGE BODLE ..... APPELLANT**

**AND**

**ADAM MOHAMMED EGGE ..... 1<sup>ST</sup> RESPONDENT**

**FARHAN AHMED EGGE ..... 2<sup>ND</sup> RESPONDENT**

**ALI AHMED EGGE ..... 3<sup>RD</sup> RESPONDENT**

**ABDI AHMED EGGE ..... 4<sup>TH</sup> RESPONDENT**

**MOHAMED YASIN MUSTAFA ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. Before this court is a memorandum of appeal dated December 14, 2018 challenging the ruling delivered on November 30, 2018 by honourable Kadhi Abduljabal in Nairobi Misc No 38 of 2018: Estate Of Hussein Egge Bodle (deceased).
2. The appeal was canvassed by way of written submissions. The appellant filed written submissions dated March 25, 2021 whilst the respondents relied upon their written submissions dated May 11, 2021.

**Background**

3. The matter before the Kadhi Court was Succession Cause No 38 of 2019, which involved the estate of Hussein Egge Bodle (herein after the 'deceased'), who died intestate on April 2, 1989. A death certificate serial no 249411 is annexed to the record. The deceased who had no wife or children was survived by five (5) siblings as follows:-



- i. Muhamud Egge Bodle – Brother
  - ii. Ahmed Egge Bodle – Brother
  - iii. Abdi Egge Bodle – Brother
  - iv. Hassan Egge Bodle – Brother
  - v. Fatuma Egge Bodle – Sister
4. The deceased had under an oral will left all his property to his brother Abdi Egge Bodle. The said Abdi Egge Bodle applied in the Kadhi court for letters of administration to the estate of the deceased. A grant of letters of administration was issued to the appellant on January 23, 2003.
  5. Thereafter two of the deceased brothers Mohamed Egge Boddle and Ahmed Egge Bodle also passed away. Their children laid claim to the estate of the deceased on grounds that since the deceased had no wife or children therefore under Islamic Law his estate ought to have devolved to all the four (4) brothers of the deceased equally.
  6. Abdi Egge Bodle who held a grant to the estate of the deceased filed a case in the Kadhi Court being Succession No 4 of 2015. On August 12, 2015 the parties in that succession cause entered into a consent (see page 59 of the record of appeal) as follows:-
    - “ - That the family of Mohamed Egge Boddle will get Kshs 800,000 and ½ property known as 144B.
    - That the family of Ahmed Egge Bodle to get Kshs 800,000 and ½ property known as 144B of Migori.
    - That the family of Fatuma Egge Bodle to get Kshs 500,000 and ½ property known as 144A.
    - That the family of Hassan Egge Bodle will get ½ of the estate 144A.
    - That Abdi Egge Bodle to harvest the trees in the shamba Wasweta 2 land parcel No 329 in Migori county.”
  7. The above consent agreement was adopted as a judgment in the Kadhi Court.
  8. Thereafter Abdi Egge Bodle passed away on July 7, 2017. Upon his death, the children of Mohamed Egge Boddle and Ahmed Egge Bodle (the respondents herein) filed in the Kadhi court succession cause no 38 of 2018 seeking to revoke the grant which had by consent been issued to Abdi Egge Bodle. They filed a chamber summons dated April 26, 2018 seeking revocation of the grant which had been issued to Abdi Egge Bodle on the following grounds:-
    - a) The deceased died a muslim hence his estate should be devolved in accordance with Islamic law;
    - b) That the estate was partially distributed over the late Abdi Egge Bodle who died on July 7, 2017
    - c) That the applicants have unearthed fraud which tainted the distribution conducted by then administrator Abdi Egge Bodle while procuring the grant dated January 23, 2003.
    - d) That the applicants/beneficiaries want the estate distributed in accordance with Islamic law.



- e) That the beneficiaries of the estate of the late Hussein Egge Bodle desire to complete the distribution process.”
9. The appellant herein Hassan Haji Egge Bodle who is the younger brother of the deceased opposed the application in the Kadhi court. In opposing the application, the appellant laid claim to the estate of the deceased who did not have any children. The respondents on their part insisted that the grant issued to Abdi Egge Bodle ought to be revoked and the property of the deceased should devolve equally to all the brothers.
10. The learned hon Kadhi heard both parties and delivered a ruling dated November 30, 2018 revoking the grant of letters of administration which had been issued to Abdi Egge Bodle on January 23, 2003. The Kadhi directed that a fresh petition be filed regarding the estate of the deceased.
11. The appellant being dissatisfied by the ruling delivered by the hon Kadhi on January 23, 2003 filed this undated Memorandum of appeal which appeal was premised upon the following grounds:-
- “ 1. The learned honourable Kadhi of the Kadhi’s court of Kenya, Nairobi, honourable KadhiAI Hussein erred in fact and in law allowing the respondents chamber summons dated April 26, 2018.
2. The learned honourable Kadhi of the Kadhi’s court of Kenya, Nairobi, honourable KadhiAI Hussein completely misapprehended the law on res-judicata erred and plainly erred in law in holding that chamber summons dated April 26, 2018 in Miscellaneous Case No 38 of 2018, (In the matter of the Estate of Hussein Egge Bodle (deceased) and in the matter of Islamic Inheritance Adam Mohamed Egge, Farhan Ahmed Egge, Ali Ahamed Egge, Abdi Ahmed Egge, Mohammed Yasin Mustafa versus Ismail Yusuf Rabbi, Zainab Abdi Egge Hassan Haji Egge Bodle) is not Res-Judicata.
3. The learned honourable Kadhi of the Kadhi’s Court of Kenya, Nairobi, honourable Kadhi AI Hussein completely misapprehended the law on Locus standi erred and plainly erred in law in holding that applicants in Miscellaneous Case No 38 of 2018, (In the matter of the Estate of Hussein Egge Bodle (deceased) and in the matter of Islamic Inheritance Adam Mohamed Egge, Farhan Ahmed Egge, Ali Ahamed Egge, Abdi Ahmed Egge, Mohammed Yasin Mustafa versus Ismail Yusuf Rabbi, Zainab Abdi Egge Hassan Haji Egge Bodle) had locus standi.
4. The learned honourable Kadhi of the Kadhi’s Court of Kenya, Nairobi, honourable KadhiAI Hussein completely misapprehended the law and plainly erred in allowing the revocation and annulment of the grant and confirmation of letters of Administration of the Estate of Hussein Egge Bodle in a cause whereby the estate of Hussein Egge Bodle is not a party to the application.
5. The learned honourable Kadhi of the Kadhi’s Court of Kenya, Nairobi, honourable KadhiAI Hussein erred in law in allowing the revocation and annulling the grant and confirmation of letters of Administration in Estate of Hussein Egge Bodle a cause whereby the administrator of the said Estate, Abdi Egge Bodle who was accused of fraud is not a party to the application.”



12. The appeal was opposed by the respondent who urged that the decision of the hon Kadhi revoking the grant issued to Abdi Egge Bodle be upheld.

### **Analysis and Determination**

12. I have carefully considered the appeal filed before the court, the record of appeal dated July 30, 2020 as well as the written submissions filed by both parties. The issues which arise for determination are as follows:-
- (1) Whether the respondent have locus standi in this matter.
  - (2) Whether the application filed before the Kadhi court was *res judicata*
  - (3) Whether the appeal has merit.
    - (1) *Locus standi*
13. The appellant submits that the deceased Hussein Egge Bodle was survived by four brothers and one sister. The grant was issued to Abdi Egge Bodle one of the brothers of the deceased. Following the demise of the administrator the respondent being one of the children of the other siblings of the deceased filed the case in the Kadhi court seeking to revoke the grant issued to Abdi Egge Bodle. The appellant submits that the respondents have no locus standi and/or interest in the estate of the deceased.
14. The respondent on their part submit that the issue of 'locus standi' was dealt with conclusively by the hon Kadhi who recognized the respondents as beneficiaries to the estate of the deceased. That following the demise of all the siblings of the deceased under Islamic law the respondents are presumed to take over the share of the estate that would have gone to their late parents. The respondents argue that since the estate had not been fully distributed the children of the deceased beneficiaries are entitled to inherit the share of the estate that would have gone to their respective parents.
15. '*Locus Standi*' is a Latin term which literally means 'Place of Standing'. It refers to the right of a party to participate and be heard in a particular suit or action. *Black's law Dictionary 10<sup>th</sup> Edition* at paragraph 1084 define '*Locus Standi*' as –
- “The right to bring an action or to be heard in a given forum.”
16. Similarly *Osborn Concise Law Dictionary 11<sup>th</sup> Edition* defines the term '*Locus Standi*' as follows:-
- “(A place of standing), the right to be heard in court or other proceedings. Locus standi is the legal capacity to institute an action in a court of law. A person who intends to litigate must ensure that he/it as locus standi ie, the right or competence to institute proceedings in a court for redress or assertion of a right enforceable at law. The person in whom this right resides as his personal right is the one having locus standi to sue.”
17. The appellant readily concedes that the respondents are the children of Muhamud Egge Bodle (deceased) and Ahmed Egge Bodle (deceased) both of who were brothers of the deceased Hussein Egge Bodle whose estate is under consideration.



18. In determining the question of locus standi the hon Kadhi in his ruling dated November 30, 2018 stated as follows:-

“It is common ground that Hussein Egge Bodle died intestate on April 2, 1989 and survived by his siblings, Mohamud Egge Boddle, Ahmed Egge Bodle, Abdi Egge Bodle, Fatuma Egge Bodle and Hassan Egge Bodle. It is common ground that all the siblings of the deceased died except Hassan Egge Bodle (3<sup>rd</sup> respondent) as such the applicants who were the children of the deceased siblings of the late Hassan Egge Bodle could be treated as beneficiaries to the estate of Hussein Egge Bodle since they are entitled to a presumed share of their respective parents thus an interested parties for the purpose of section 76 of the law of succession Act. Therefore they are within their right to apply for revocation of grant.”

19. The hon Kadhi therefore found that the respondents had sufficient locus standi in this matter. I am in agreement with the above finding of the hon Kadhi. The respondents being the children of the late siblings of the deceased are considered beneficiaries to the estate of the deceased, both under Islamic Sharia Law and by virtue of section 39(1)(c) of the Law of Succession Act cap 160 which provides that –

“39(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.” (own emphasis)

20. I therefore find and hold that the respondents do have a legal interest in the estate of the deceased uncle and such have requisite locus standi to appear in this matter.

## **(2) Res Judicata**

21. The appellant submits that the application dated April 26, 2018 filed by the respondents before the hon Kadhi seeking revocation of the grant issued to Abdi Egge Bodle was sub judice and *res judicata* given that orders regarding the administration and distribution of the estate of the deceased had already been made by the hon Kadhi in Succession Cause No 4 of 2015 which involved the same estate. The doctrine of ‘*Res Judiata*’ is defined by section 7 of the Civil Procedure Act cap 21, laws of Kenya as follows:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”



22. In the case of *Kenya Commercial Bank Ltd vs Benjob Amalgamated Ltd* [2017] eKLR, the court expounded on the conditions for Res Judicata as follows:-

“The elements of res judicata have been held to be conjunctive rather than disjunctive. As such, the elements reproduced below must all be present before a suit or an issue is deemed res judicata on account of a former suit;

- (a) The suit or issue was directly and substantially in issue in the former suit.
- (b) That former suit was between the same parties or parties under whom they or any of them claim.
- (c) Those parties were litigating under the same title.
- (d) The issue was heard and finally determined in the former suit.
- (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

23. I have perused the record of appeal. It is not in dispute that there existed a suit being Succession Cause No 4 of 2015 which involved the estate of the same deceased Hussein Egge Bodle. On the question of Res Judicata the hon Kadhi in his ruling of November 30, 2018 observed as follows:-

“The rationale behind section 7 of the *Civil Procedure* is that a cardinal principle in the administration of justice that it is in the interest of all persons that there should be an end to litigation. For this court to establish res judicata, it must take into consideration if the parties were the same, the issues were the same in both proceedings and whether the issues were ever determined.

The former suit had five (5) applications; the first application was filed on February 5, 2010 seeking for administration of the estate of the deceased Hussein Egge. The second application filed on June 12, 2017 sought an injunction, against the 1<sup>st</sup> and 2<sup>nd</sup> respondent, and the preservation of the estate. The third application filed on April 24, 2017 sought restraining orders against the applicants. The fourth application filed on August 16, 2017 sought for the leave to enjoin the interested party. The fifth application filed on October 11, 2017 sought for distribution of the estate of Hussein Egge Bodle, revocation of grant of administration and the appointment of the applicants as the co-administrators to the estate of Hussein Egge Bodle. Resultantly, the interlocutory orders were issued on the second and third application, but it never proceeded for interparte hearing, further consent order was entered between the parties and the said consent was adopted by the hon Rashid Ali Omar in relation to a portion of the estate of the deceased.

The order sought in the current application is a replica of the fifth application in the former suit. In the present matter, there is addition of other parties to the suit thus they are not the same but that the issue is the same as in the first application. There is no evidence of either determination place before this court. It’s a trite law that the onus is on the party that rely on the doctrine to prove. In the circumstances, the respondents plea of *res judicata* fails.” (own emphasis)

24. There is no evidence that Succession Cause No 4 of 2015 was fully determined. As such, I find that this matter is not Res Judicata.



25. In their application before the hon Kadhi the respondent sought for the revocation of the grant issued to Abdi Egge Bodle on grounds that the same was obtained fraudulently. In their pleadings before the Kadhi court the respondents averred that a report regarding the irregularity of said letters of administration was made to the directorate of criminal investigation, land fraud unit. The investigating officer one Thomas Kareithi gave evidence and made recommendations. The respondents alleged that the court file for Succession Cause No 4 of 2015 suspiciously went missing. That there exists no record of the gazettelement and confirmation of the grant. That the officer who allegedly issued the letters of administration dated January 23, 2003 was dismissed.
26. The respondents therefore alleged that the administrator purported to distribute the estate without a confirmed grant contrary to the provision of section 55(1) of the *Law of Succession Act*.
27. In his ruling the hon Kadhi found that no record existed of gazettelement and confirmation of the grant. The hon Kadhi was satisfied that the evidence of the alleged fraud was corroborated by the investigating officer from the directorate of criminal investigation. Finally, the hon Kadhi found that the appellant had failed to prove the authenticity of the grant. As such, he ordered that the grant be revoked.
28. I find no reasons to fault the decision of the hon Kadhi. The appellants have not demonstrated that the grant was erroneously revoked. Accordingly, I find no merit in this appeal. The same is hereby dismissed in its entirety. This being a family matter each side will bear its own costs.

**DATED IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

