



REPUBLIC OF KENYA



**Njuguna v Bulle (Civil Appeal E002 of 2025)  
[2026] KEHC 3677 (KLR) (Family) (16 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3677 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E002 OF 2025  
CJ KENDAGOR, J  
MARCH 16, 2026**

**BETWEEN**

**PHILIP WAINAINA NJUGUNA ..... APPELLANT**

**AND**

**RAHMA ABDIRAHIM BULLE ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon Hassan Omar Daffa (SRK)  
delivered on 26<sup>th</sup> November, 2024 in Nairobi Kadhi Court Succession  
Cause No. E067 of 2024, In the matter of the Estate of Ibrahim Suleiman)*

**JUDGMENT**

1. The Deceased, Ibrahim Suleiman, and the Appellant were business partners and both were director/ shareholders at Renaissance Limited and Supertouch Auto Company Limited. The Deceased died on 23<sup>rd</sup> October, 2023 and the Appellant was left in charge of the day-to-day operations of both Companies. The Appellant subsequently made monthly payments to the Respondent, who claims to be a wife of the Deceased. The Respondent also claimed that the payments were made for maintenance of the beneficiaries of the Deceased's estate.
2. However, after some time, the Appellant stopped making the payments to the Respondent, as a result of which the Respondent filed an application at the lower Court seeking to compel the Appellant to continue paying Kshs.50,000/= for monthly maintenance and Kshs.55,000/= for monthly rent.
3. The Lower Court delivered a ruling on 26<sup>th</sup> November, 2024, in which it ordered the Appellant to pay Kshs.50,000.00 to the Respondent before 30<sup>th</sup> of November, 2024. In making the order, the Court held that the Appellant was the custodian of the estate of the Deceased and ought not to stop payment of monies due to the Respondent.



4. The Appellant was dissatisfied with the ruling and appealed to this Court vide an Amended Memorandum of Appeal dated 22<sup>nd</sup> January, 2025 in which he listed the following Grounds of Appeal; THAT-
  1. The Learned Kadhi misdirected himself by ordering the Appellant to pay maintenance of Kshs.50,000.00 to the Respondent without determining whether the Appellant was an administrator of the Deceased's estate, or whether she is a beneficiary or spouse to the [Deceased].
  2. The Learned Kadhi misdirected himself in making the said Order before formally and properly enjoining the Appellant in the Succession Cause before him and/or determining whether the Appellant is to be enjoined as an administrator, or as a beneficiary or as an interested party in the Deceased Estate.
  3. The Learned Kadhi erred in law and in fact in making the Order of the 26<sup>th</sup> November, 2024 without first determining whether the Respondent was to receive the sums as the sole administrator of the Deceased's estate to the exclusion of the co-petitioner or as a beneficiary thereof.
  4. The Learned Kadhi erred in law and in fact by making a finding that the Appellant is the "custodian of the Deceased estate" as an unknown position in law.
  5. The Learned Kadhi erred in law and in fact by making the finding that the Appellant is the "custodian of the Deceased estate" without first determining that the Appellant is an adherent of Islam therefore subject to Islamic Law and tradition.
  6. The Learned Kadhi therefore erred in law and in fact by failing to determine that he has the requisite jurisdiction to entertain the Applications that resulted in the Order of 26<sup>th</sup> November, 2024.
5. He asked the Court to set aside the ruling given on the 26<sup>th</sup> November, 2024 in the Nairobi Kadhi Court Succession Cause Number E067 of 2024 and all consequential orders.
6. The Appeal was canvassed by way of written submissions.

#### **Appellant's written Submissions**

7. The Appellant submitted that the Kadhi's Court was wrong in issuing the orders, arguing that it did not have jurisdiction to hear and determine the application. He argued that he is a Christian and not a Muslim, and thus he cannot properly submit to the jurisdiction of the Kadhi's Court. He argued that despite the instances envisaged by the Respondent's in her response, he cannot properly participate before that Kadhi's Court.
8. In addition, the Appellant submitted that the Respondent lacked the requisite locus standi to file the Application dated 22<sup>nd</sup> November, 2024 in which she sought orders that the Appellant pay her Kshs.50,000.00 per month. He argued that, at that time, the Respondent had not been appointed Administrator of the Estate of the Deceased. He argued that the Respondent had filed an application for temporary Grant but the application has neither been heard nor granted, and thus the Respondent did not have any standing to file a claim against the Appellant or the companies in which he is a shareholder.



## **Respondent's written Submissions**

9. The Respondent submitted that the Kadhi's Court was right in issuing the orders against the Appellant, arguing that it had jurisdiction. She submitted that the Court did not exercise personal jurisdiction over the Appellant and that the Appellant was not treated as a party to a Muslim law dispute. She argued that the interim maintenance/support was a preservatory measure directed at estate income rather than a personal obligation. She submitted the joinder was functional; to facilitate disclosure, accounting, and preservation of estate assets and was not made to subject the Appellant to personal Islamic obligations.
10. She also submitted that she had the locus standi to seek preservation orders before obtaining a Grant, and that the law allows a petitioner to seek protective and preservatory orders prior to grant issuance to prevent wastage and ensure proper estate administration. She submitted that the joinder of the Appellant was proper and necessary, arguing that he was joined solely as the person controlling access to corporate records and income critical for the estate. She argued that he was not joined as a beneficiary or administrator, but rather for the purposes of disclosure and accounting.

## **Issues for Determination**

11. Having carefully considered the Grounds of Appeal and the submissions of the parties, I find that there are two issues for determination;
  - a. Whether the Respondent had locus standi to bring the Application dated 22<sup>nd</sup> November, 2024.
  - b. Whether the Kadhi Court had jurisdiction to issue the orders against the Appellant.
12. This being a first Appeal, this Court has a duty to revisit the evidence tendered before the trial Court afresh, evaluate, analyze it, and come to its own independent conclusion, but always bearing in mind that the trial Court had the advantage of observing the demeanor of the witnesses and hearing them give evidence, and give allowance for that. (See *Okeno vs. Republic* (1972) EA 32 and *Mark Oiruri Mose vs. R* (2013) eKLR.

## **Whether the Respondent had locus standi to bring the Application dated 22<sup>nd</sup> November, 2024**

13. The Appellant submitted that the Respondent did not have locus standi to bring the application dated 22<sup>nd</sup> November, 2024. He argued that, at that time, the Respondent had not been appointed Administrator of the Estate of the Deceased.
14. I have relooked at the record to determine whether the Respondent had obtained letters of representation at the time when she brought the said application. The record shows that the Respondent filed a petition for Special Limited Grant dated 5<sup>th</sup> August, 2024. Simultaneously, she brought a Notice of Motion application dated the same date asking the Court to grant her a Special Limited Grant for the purpose of maintenance for the needs and welfare of the children of the Deceased and payment of school fees.
15. However, according to the typed proceedings, this application was never heard and the Honourable Kadhi did not pronounce himself on the application. The application was brought before the Court on 19<sup>th</sup> August, 2024 in which the Court certified the matter as urgent and ordered that the application be heard on a priority basis. The Court ordered the Respondent to appear before him on 27<sup>th</sup> August 2024. However, when the matter came up on that day, the application was not heard, and she was given a further mention on 2<sup>nd</sup> September, 2024, where again the application was not heard.



16. Based on this factual analysis, I find that the Respondent did not have a Special Limited Grant or any Grant of Letters of Administration with respect to the estate of the Deceased.
17. The next question for interrogation is whether, without the Grant, she could have the Locus Standi to bring the subject application dated 22<sup>nd</sup> November, 2024.
18. Courts have previously interrogated similar questions in the past and have rendered themselves on the legality of applications filed by persons without Letters of Administration. In the case of John Marete Kirema & another v Gladys Karimi M'Muthamia & 3 others [2013] eKLR, it the Court held that:

“...an intended administrator or a person who has made a petition to be appointed as administrator is not a personal representative of the deceased person and therefore has no locus standi to bring any action independent or within the petition until a grant of letters of representation has been made to him or her as case may be”.
19. Similarly, the Court in In re Estate of James George Maruti (Deceased) [2021] eKLR held as follows;

“The applicant may be having a cause of action or interest as a beneficiary to protect and preserve the estate or intermeddling and waste. She however has lacked locus standi to secure the relief sought. Without first obtaining either limited or full grant of letters of administration.”
20. I also associate with the sentiments of the Court In re Estate of Nelson Zadok Otieno (Deceased) [2023] eKLR, where the Court pronounced itself on this issue as follows;

“In Conclusion I find that it is well established by law and judicial precedent that for a party to move to preserve the estate they need to be clothed with the requisite mandate, in this instance letters of administration. The orders sought are also not issuable against the Respondents as they have not taken out letters of administration with respect to the estate.”
21. Based on the above cited authorities, I hold that, even though the Respondent might have had a legitimate objective to preserve the estate of the Deceased, she did not have the requisite mandate to move the Court to preserve the estate because she did not have Letters of Administration. Accordingly, I find that she did not have the Locus Standi to bring the application dated 22<sup>nd</sup> November, 2024.
22. Having found that the Respondent had no locus standi to file the application, I am unable to proceed and consider the merits of the orders emanating from the Application.

### **Whether the Kadhi's Court had jurisdiction to issue the orders against the Appellant**

23. The Appellant also submitted that the Kadhi's Court does not have jurisdiction in the dispute at hand, arguing that he that he is a Christian and not a Muslim. He argued that despite the instances envisaged by the Respondent's in her response, he cannot properly participate before the Kadhi's Court.
24. I have looked at the record and particularly the Appellant's Replying affidavit dated 31<sup>st</sup> October, 2024. From the affidavit, it appears that from the onset, the Appellant admitted to the jurisdiction of the Kadhi's court on a condition that his appearance in the matter was limited to providing the Court with information that may guide it. He stated that he was not interested in the succession and that he did not wish to be drawn into other aspects of the Deceased's succession, save that he was ready to transfer any shares that were held by the Deceased, to any legal representative of the Deceased as confirmed or directed by the Court.



25. However, as the proceedings went on at the Kadhi's Court, the Appellant changed his mind and he no longer wanted to submit to the jurisdiction of the Kadhi's Court. The question before this court is whether the Appellant can rightly withdraw his submission to the Kadhi's Court.
26. The Court in *IAM v AGH* [2020] eKLR faced a similar question where, a party who had initially submitted to the jurisdiction of Kadhi's Court decided to opt out. The Court considered whether a party's submission to the Kadhi's Court binds the party throughout the petition or whether the party can subsequently opt out of the Kadhi's jurisdiction at any time. In holding that a party can subsequently opt out of the Kadhi's jurisdiction at any time, the Court made the following observations;
- “ 8. There is no dispute that the applicant had admitted the jurisdiction of the Kadhi's Court, but he now says he has opted out. The Kadhi's Court has jurisdiction to hear and determine a divorce matter between two parties who profess the muslim religion. However, they have to submit to the jurisdiction of the Kadhi's Court. The submission, in my view, has to be voluntary. The applicant may have, at the filing of the response to the petition, submitted to the jurisdiction of the Kadhi's Court, but did this submission bind him throughout the petition? I find not. A religion or faith entails voluntary submission to it. It means that, at any time, one can opt out. One can change the religion or faith, or decide not to be bound by the tenets of the religion or faith, or decide not to have any religion or faith altogether. I do not think he owes anyone, including the court, an explanation. Article 32 of *the Constitution* allows for the freedom of conscience, religion, belief and opinion.
9. I find that the applicant has the freedom to opt out of the jurisdiction of the Kadhi's court under Article 170(5) of *the Constitution* and section 5 of the Kadhi's Court Act”.
27. Based on the above authority, I hold that the Appellant had the right to withdraw his submission to the Jurisdiction of the Kadhi's Court at any time in the Succession Cause No E067 of 2024.

### **Disposition**

28. The Appeal is hereby allowed.
29. The ruling of the Senior Resident Kadhi Hon. Hassan O. Daffa at the Nairobi Kadhi's Court dated 26<sup>th</sup> November, 2024, and all its consequential orders, is hereby set aside.
30. Costs of this Appeal are awarded to the Appellant and are assessed at Kshs.40,000.00.
31. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 16<sup>TH</sup> DAY OF MARCH, 2026.**

.....

**HON C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl



Mr. Gichuki Advocate for the Appellant

Mr. Dadu Advocate for the Respondent

