



**Kenya Agricultural and Processed Food Products Development
Authority (APEDA) v Krish Commodities Limited (Civil Appeal
610 of 2019) [2025] KECA 1587 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1587 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 610 OF 2019
W KARANJA, AO MUCHELULE & JM NGUGI, JJA
OCTOBER 3, 2025**

BETWEEN

**KENYA AGRICULTURAL AND PROCESSED FOOD PRODUCTS
DEVELOPMENT AUTHORITY (APEDA) APPELLANT**

AND

KRISH COMMODITIES LIMITED RESPONDENT

*(Being an Appeal from the Judgment of the High Court of Kenya at
Nairobi (Mboghli, J.) dated 26th April, 2017 in HCCA No. 338 of 2013)*

JUDGMENT

A. Introduction & Background

1. This appeal concerns the status, in Kenyan law, of the word “Basmati” as a geographical indication (GI) and whether its use within the respondent’s six trade mark applications precluded registration.
2. In October, 2009 the respondent applied to register six word-marks in Class 30 — Wali Basmati Rice (KE/T/2009/66624); Rouz Basmati Rice (.../66625); Pilau Basmati Rice (.../66626), Nawab Basmati Rice (.../66627); Rajah Basmati Rice (.../66628); and Al-Hannan Basmati Rice (.../66629). Each application expressly disclaimed exclusive rights in the component words “Basmati” and “Rice” (and, respectively, “Wali/ Rouz/ Pilau/ Nawab/ Rajah/ Al-Hannan”).
3. The appellant filed notices of opposition to the registration of the trade marks contending, inter alia, that “Basmati” is a geographical indication denoting a special long-grain aromatic rice grown in specific regions at the foothills of the Himalayas in India and Pakistan; that the respondent’s marks would mislead the public and take unfair advantage of the distinctive character and goodwill in the geographical indication; and that registration should be refused.



4. On 17th May, 2013, the Registrar of Trade Marks (Registrar) delivered a detailed ruling dismissing the oppositions. He first addressed locus standi, holding that the appellant qualified to bring the proceedings under section 21(2) of the *Trade Marks Act*, which permits “any person” to oppose. Turning to the substance, the Registrar found that the appellant had not established any proprietary rights in the word “Basmati” in Kenya that could entitle it to restrain others from registering composite marks incorporating that word. In his analysis, the Registrar underscored the territorial nature of intellectual property and examined the evidential record tendered by both sides. While accepting that the Agreement on Trade-Related Intellectual Property Rights (TRIPS) (Articles 22–24) obliges Member States to provide legal means to protect geographical indications, he emphasized that in Kenya the operative domestic pathway at the time was section 40A(5) of the *Trade Marks Act*, which provides that geographical names or other indications of geographical origin may be registered as collective trade marks or service marks. According to the Registrar, the permissive “may” did not render registration an absolute prerequisite for all recognition, but — crucially — the appellant had neither sought nor secured domestic anchoring for “Basmati” in Kenya through registration as a collective (or certification) mark, nor had it adduced persuasive Kenyan-market evidence showing that the inclusion of the disclaimed word “Basmati” within the respondent’s composite marks would mislead consumers as to origin or constitute unfair competition.
5. The Registrar also dealt with a point of classification, observing that the specification of goods in each of the respondent’s application improperly mirrored the applied-for mark. To avoid over-breadth and consumer confusion while respecting the respondent’s disclaimers of exclusivity in “Basmati” and “Rice,” he directed that the specification in all six applications be regularized to read simply “Basmati.” In the result, the Registrar held that the appellant had not demonstrated that, under Kenyan law, “Basmati” is a mark whose registration as a trade mark is prohibited by reason of being a protected geographical indication, and he, therefore, dismissed the oppositions with costs to the applicant (the respondent herein).

B. The Appeal to the High Court

6. On 26th April 2017, the High Court (Mbogholi-Msagha, J., as he then was) delivered its judgment on the appellant’s first appeal. The learned Judge substantially affirmed the Registrar’s findings and dismissed the appeal. After carefully reviewing the record, the learned Judge held that the appellant had not demonstrated that it possessed any proprietary or protectable rights in Kenya over the word “Basmati”. While acknowledging the appellant’s statutory role in India in relation to agricultural exports, the High Court found that such status, standing alone, did not translate into ownership rights enforceable in Kenya. The learned Judge further noted that the appellant’s own statutory declaration admitted that as at the time of opposition, “Basmati” had not yet been formally registered as a geographical indication in India itself, which further weakened its claim to exclusive rights abroad.
7. The Judge emphasized that, under Kenyan law, and in particular the *Trade Marks Act*, “Basmati” had not been shown to be a name prohibited from registration by reason of its being a geographical indication. The learned Judge reasoned that the evidence before the Registrar, including the widespread use of the term “Basmati” in the Kenyan market by various players such as the Mwea Rice Cooperative Society, supported the conclusion that “Basmati” did not enjoy recognition or protection as a geographical indication in Kenya. In the absence of such recognition, the learned Judge concluded, there was no legal bar to the respondent’s applications, especially given that the Respondent had entered disclaimers disclaiming exclusivity in the word “Basmati”.
8. The High Court also addressed the appellant’s argument that the respondent’s applications were intended to deceive or mislead consumers into believing that the respondent enjoyed proprietary rights



over “Basmati”. On this, the learned Judge found no evidence of deception, misrepresentation, or economic prejudice, noting that the appellant had failed to show any actual harm or confusion likely to result in the Kenyan context. The learned Judge was, therefore, satisfied that the Registrar had correctly applied the law and exercised his discretion judiciously. In the result, the High Court dismissed the appeal with costs to the respondent.

C. The 2nd Appeal before the Court of Appeal and Standard of Review

9. Still dissatisfied, the appellant is now before this Court on a second appeal. In its Memorandum of Appeal, the appellant sets out five (5) grounds appeal as follows:
 1. That the Learned High Court Judge erred in law and in fact in failing to appreciate the nature of Geographical Indications both under local and international laws thereby arriving at an erroneous decision.
 2. That the Learned High Court Judge erred in law and in fact in failing to find that BASMATI is a Geographical Indication.
 3. That the Learned High Court Judge erred in law and in fact in failing to find that BASMATI ought to enjoy protection as a Geographical Indication under Kenyan laws.
 4. That the Learned High Court Judge erred in law and in fact in failing to prohibit the Respondent from registering the word BASMATI as a trade mark and thus wrongly permitting the Respondent to claim proprietary rights over the name.
 5. That the Learned High Court Judge erred in law and in fact in dismissing the appeal and awarding costs to the Respondent.
10. This is a second appeal. As such, we are limited to considering matters of law only unless it can be demonstrated that the courts below considered matters they should not have considered or failed to consider matters they should have considered or the decision of the superior court is, on the whole, perverse. See *Charles Kipkoech Leting vs. Express (K) Ltd & another* [2018] eKLR. As this Court stated in *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR:

“In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters, they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

D. The Record, Appearances and Submissions of the Parties

11. The hearing was canvassed by way of written submission and oral highlights. At the hearing before us on 30th June, 2025, Ms. Matasi appeared for the appellant and Ms. Karanja for the respondent. The appellant relied on its written submissions and Ms. Matasi provided oral highlights. The respondent made oral submissions only as it had failed to file written submissions despite clear directions of the Court.
12. The appellant submitted that the starting point is the TRIPS Agreement, and in particular Article 22 thereof, which defines geographical indications and obliges member states to provide the necessary legal means to prevent their misleading use. In the appellant’s view, TRIPS also requires national authorities to refuse or invalidate the registration of trade marks which contain or consist of a geographical



- indication with respect to goods not originating in the indicated territory, where such use would mislead the public as to origin.
13. Turning to Kenyan law, the appellant pointed to section 40A(5) of the *Trade Marks Act* (Cap. 506) which provides that geographical names or other indications of geographical origin “may” be registered as collective trade marks or service marks. The appellant placed emphasis on the wording of the provision, and in particular the use of the word “may”. It urged that this makes it clear that registration is not a mandatory precondition to recognition or protection of a geographical indication in Kenya. In its view, geographical indications can attract protection by virtue of their status under international law and through recognition of their established distinctiveness in trade, even without formal domestic registration.
 14. Against this legal background, the appellant contended that “Basmati” rice has long been recognized internationally as a geographical indication. It stressed that Basmati is not an ordinary trade name but a renowned GI associated with very specific agro- climatic conditions in the Indian subcontinent, particularly in India and Pakistan, where the grain acquires unique characteristics of aroma, texture and quality that cannot be replicated elsewhere. According to the appellant, to allow the respondent to register marks incorporating the word Basmati would amount to misleading the public in Kenya and elsewhere into believing that the respondent has some proprietary entitlement to the name, when in reality it denotes a protected geographical product.
 15. The appellant further argued that Kenya, as a member of the World Trade Organisation, is bound by TRIPS obligations, and that these obligations form part of Kenyan law by virtue of Article 2(5) and (6) of *the Constitution*, which incorporate general rules of international law and ratified treaties into the domestic legal order. In this light, Kenya is obliged to give full effect to the protection of geographical indications, including “Basmati.”
 16. In the end, the appellant urged the Court to find that “Basmati” should be formally recognized in Kenya as a geographical indication and that the six marks applied for by the respondent should accordingly be expunged from the register.
 17. The respondent’s position was that the appeal lacked merit because, under Kenyan law as it stood at the material time, no enforceable rights in a geographical indication could arise without domestic anchoring. It stressed that Kenya did not have a stand-alone or sui generis regime for geographical indications at the time; instead, protection was provided through the *Trade Marks Act*, particularly by way of registration as a collective or certification mark under section 40A. The respondent argued that the appellant had never taken steps to register “Basmati” under this framework and, therefore, could not assert any enforceable rights in Kenya.
 18. The respondent maintained that the TRIPS Agreement is not self- executing and does not, by itself, create proprietary rights in Kenya. In its view, TRIPS sets a baseline that each member state must implement through its own legal system, and Kenya had done so through section 40A of the *Trade Marks Act*. Without registration in Kenya, the appellant could not import foreign geographical indication rights and enforce them locally.
 19. The respondent also emphasized that in each of the six impugned applications, it had expressly disclaimed exclusivity in the word “Basmati”. The marks were composite marks, such as “Wali Basmati Rice” and “Nawab Basmati Rice”, and were never intended to claim a monopoly over the word “Basmati” itself. On this basis, the respondent rejected the appellant’s claim that registration of its marks would be deceptive or misleading.



20. Beyond this, the respondent submitted that the appellant had failed to demonstrate that “Basmati” enjoyed goodwill or distinctiveness among Kenyan consumers as a geographical indication pointing to India or Pakistan. In the respondent’s view, the evidence showed the opposite: that in Kenya the term “Basmati” had become a common descriptor for a variety of aromatic long-grain rice available from different sources, including locally grown rice in Mwea and Ahero. This widespread use meant that Kenyan consumers did not associate “Basmati” exclusively with rice from the Indian subcontinent.
21. The respondent further invoked provisions of Article 24 of TRIPS, which recognize that member states are not obliged to protect a geographical indication that has become generic or customary in common language within their territory. It argued that this was precisely the case in Kenya, where “Basmati” was widely and generically used as a product description rather than a badge of geographical origin.
22. On these bases, the respondent urged the Court to uphold the concurrent findings of the Registrar of Trade Marks and the High Court, and to dismiss the appeal. It maintained that the appellant had failed to show any deception, misrepresentation, or unfair advantage arising from its applications, and that the six marks were lawfully filed, examined, and accepted. The respondent therefore prayed that the appeal be dismissed with costs.

E. Issues for Determination, Analysis and Determination

23. Having carefully reviewed the record of appeal, the rulings of the Registrar and the High Court, the written submissions of the appellant, and the oral arguments of both parties, we are of the view that this appeal turns on three substantive issues:
 - a. Whether, under Kenyan law and in light of international obligations, the term “Basmati” constitutes a geographical indication.
 - b. Whether, for a party to successfully object to the registration of a trade mark on the ground that it incorporates a geographical indication, prior registration or formal recognition of the geographical indication in Kenya is required; and whether, on that basis, the Registrar and the High Court properly dismissed the appellant’s opposition.
 - c. Whether the respondent’s registration of composite marks incorporating the word “Basmati” was misleading or otherwise prohibited under Kenyan law.

Issue 1: Whether, under Kenyan law and international obligations, the term “Basmati” constitutes a geographical indication

24. The point of departure is the legal framework. Article 22(1) of the TRIPS Agreement defines a geographical indication as an indication which identifies goods as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to that geographical origin. Articles 22(2) – (3) then oblige member states to provide legal means to prevent misleading uses and to refuse or invalidate trade marks which would mislead as to origin.
25. Domestically, section 40A(5) of the *Trade Marks Act* contemplates protection for geographical indications by providing that geographical names or other indications of geographical origin may be registered as collective trade marks or service marks. As was noted in argument, Kenya has since (in 2019) adopted a sui generis framework for geographical indications; but at the time material to this controversy, the *Trade Marks Act* provided the operative pathway.



26. On that legal canvas, the appellant urged us to hold that “Basmati” is a geographical indication, pointing to its reputed linkage to agro- climatic conditions in parts of India and Pakistan. The respondent countered that there has been no domestic recognition or registration of “Basmati” as a geographical indication in Kenya, and that — given the territorial nature of intellectual property — any such status must be grounded in Kenyan law and evidence.
27. We agree that the word “Basmati” may, in the abstract, fit the TRIPS definition of a geographical indication. But whether “Basmati” is a geographical indication for purposes of Kenyan law is not a question to be answered in the abstract or for the first time on a second appeal. Kenyan law provides institutional pathways for geographical indication recognition that are designed to generate the factual record and expert evaluation on which such recognition rests — historical use in Kenya; consumer perception; trade practice; the scope of any claimed exclusivity; and conditions of controlled use. Under the *Trade Marks Act*, that role lies with the Registrar (e.g., through collective or certification mark procedures); and under the newer sui generis regime (enacted post-2019), it lies with the designated geographical indications authority. No party invoked those primary mechanisms to seek domestic recognition or registration of “Basmati” as a geographical indication at the material time.
28. Two consequences follow. First, in the absence of a properly invoked administrative process and a developed factual record, this Court would be venturing into first-instance fact-finding were it to declare “Basmati” a geographical indication in Kenya at this stage. That is neither our institutional role nor our remit on a second appeal, where our mandate is confined to matters of law and where we are guided by the principle that specialized statutory mechanisms should be used in the first instance (see, by analogy, *Speaker of the National Assembly v Njenga Karume* [2008] on adherence to prescribed statutory procedures).
29. Second, the case before us does not turn on an abstract declaration of geographical indication status; it turns on whether, absent prior domestic recognition or registration and on the record as it stands, Kenyan law required refusal or expungement of the respondent’s composite, disclaimed marks because they would mislead as to origin or otherwise offend the *Trade Marks Act*.
30. Accordingly, we make no definitive holding that “Basmati” is or is not a geographical indication under Kenyan law. That determination — if sought — should be presented to the competent authorities in the first instance, where the evidentiary record can be properly developed and tested. Recognition of “Basmati” as a geographical indication, if it is to be pursued, must, therefore, follow its own independent statutory pathway under section 40A of the *Trade Marks Act* rather than being determined collaterally within opposition proceedings to a trade mark application. At the material time, section 40A was the operative route for protection of geographical indications in Kenya, the dedicated Geographical Indications Act only being enacted in 2019. Only through such a dedicated process can clarity, fairness, and legal certainty be achieved.
31. The outcome of this appeal, therefore, turns on Issues 2 and 3: whether domestic registration or recognition of geographical indication is a prerequisite to successfully mounting an opposition to an application for a trade mark in Kenya, and whether, on this record, the respondent’s marks are misleading or otherwise prohibited. We address those issues next.

Issues 2: Whether protection of a geographical indication in Kenya requires prior domestic recognition or registration, and whether the Registrar and the High Court properly dismissed the opposition

32. The appellant urged us to hold that registration of a geographical indication in Kenya is not a prerequisite for protection. It relied on Article 22 of the TRIPS Agreement, which obliges member



states to provide legal means to prevent misleading uses of geographical indications and to refuse or invalidate trade marks incorporating them. It argued that section 40A(5) of the *Trade Marks Act*, by providing that geographical names or other indications of geographical origin “may” be registered as collective trade marks or service marks, renders such registration permissive rather than mandatory. In its view, once “Basmati” is shown to fit the TRIPS definition, Kenya is under a constitutional duty — through Article 2(5) and (6) of *the Constitution* — to recognize and protect it, even absent local registration.

33. The respondent took the opposite view. It maintained that intellectual property rights are inherently territorial and that without registration or formal recognition of “Basmati” in Kenya, there is no legal basis for objecting to the use of the word within composite marks. It emphasized that the statutory machinery exists precisely to provide clarity and predictability, and that to allow claims of geographical indication protection without domestic registration would introduce uncertainty and ad hoc decision-making.
34. We agree with the respondent. It is true that TRIPS imposes obligations on Kenya to protect geographical indications, and that Article 22(3) directs Member States to refuse or invalidate misleading trade marks. But TRIPS is not a self-executing treaty in Kenya: it requires implementation through national law. Section 40A(5) of the *Trade Marks Act* was enacted to give effect to those obligations, by providing a pathway for geographical indications to be registered as collective or certification marks. That procedure creates the institutional framework in which questions of scope, control, and conditions of use can be evaluated, and a factual record developed.
35. To construe the legal process as allowing parties to invoke TRIPS directly, without recourse to the statutory procedure, would be to bypass the legislative design. It would leave the Registrar, the High Court, and ultimately this Court to make ad hoc determinations of whether a claimed geographical indication exists and is entitled to protection, without the benefit of a prior recognition process. Such an approach would undermine stability and predictability in the intellectual property regime, and would expose traders to uncertainty over whether words long used descriptively in Kenya might suddenly be declared protected indications.
36. A proper reading of section 40A(5), harmonized with Kenya’s obligations under TRIPS, therefore yields the conclusion that while registration of a geographical indication may not be mandatory in the abstract, registration or formal recognition in Kenya is necessary for a person to successfully object to a trade mark application on the ground that it incorporates a geographical indication. This interpretation aligns with the logic of intellectual property law: just as trade mark rights flow from registration, protection of geographical indications in Kenya must flow from the statutory recognition pathway. It also ensures a bright-line rule for the Registrar (or the geographical indications authority in the later statute), who must be able to determine readily from the Register whether a claimed geographical indication is entitled to protection, rather than engage in case-by-case assessments of international claims.
37. To properly understand this, one has to consider how Article 22(3) of TRIPS is phrased: It obliges Member States to provide the legal means to refuse or invalidate the registration of a trade mark which contains or consists of a geographical indication in respect of goods not originating in the place indicated, where such use is of such a nature as to mislead the public. Notably, TRIPS does not prescribe a single pathway for compliance. Different jurisdictions have adopted different models: some, like the European Union and India, have enacted sui generis legislation establishing dedicated registers for geographical indications; others, such as the United States, rely on trade mark law by permitting



geographical indications to be registered and enforced as certification or collective marks; yet others have turned to general unfair competition or consumer protection statutes to police misleading uses.

38. Kenya, at the time material to this controversy and until the enactment of the Geographical Indications Act in 2019, chose to comply with its TRIPS obligations through its trade mark regime. Section 40A(5) of the *Trade Marks Act* (Cap. 506) which the appellant principally relies on provided that:

“Geographical names or other indications of geographical origin may be registered as collective trade marks or service marks.”

39. This provision was the legislative vehicle for securing protection of geographical indications in Kenya prior to 2019. The use of the term “may” did not create an optional parallel route of informal recognition as the appellant claims; rather, it signaled that geographical names were eligible for registration as collective or certification marks, and that once registered they attracted the legal incidents of protection under Kenyan law.
40. In this context, it made sense to interpret section 40A(5) as not only permitting the registration of GIs but also as requiring that any party seeking to enforce geographical indications rights against allegedly offending trade marks must first utilize the statutory pathway of registration. This approach provided clarity and predictability to the Registrar of Trade Marks and to traders, creating a bright-line rule: unless and until a geographical indication was registered or formally recognized in Kenya, it could not serve as a bar to the registration of another’s mark.
41. Applying this reasoning to the present case, we are satisfied that both the Registrar and the High Court were correct. The appellant did not invoke the statutory mechanism in section 40A(5) to seek registration or recognition of “Basmati” in Kenya. In the absence of such recognition, it could not rely on “Basmati” as a geographical indication to prevent the respondent’s composite marks from being registered. The Registrar, therefore, rightly dismissed the oppositions, and the High Court properly upheld that dismissal.

Issue 3: Whether the registration of trade marks incorporating the word “Basmati” by the respondent is misleading or otherwise prohibited in law

42. The appellant’s core contention was that permitting the respondent to register marks containing the word “Basmati” would mislead consumers into believing that the respondent had proprietary rights over the term or that the rice in question necessarily originated from the Himalayan foothills of India and Pakistan. It argued that such registrations would impair the distinctiveness of “Basmati” as a geographical indication and would constitute misrepresentation, contrary to both TRIPS Article 22(3) and the objectives of section 40A(5) of the *Trade Marks Act*.
43. The respondent countered that it had not sought to monopolize the term “Basmati.” In each of its six applications, the word “Basmati” was expressly disclaimed, and the marks were for composite expressions such as “Wali Basmati Rice” or “Rajah Basmati Rice.” The respondent maintained that these were bona fide trade marks identifying its commercial identity, not an attempt to claim ownership of “Basmati” per se. It emphasized that the *Trade Marks Act* permits registration of marks containing descriptive or geographical words, provided disclaimers are entered, and that there was no evidence of actual or likely confusion in the Kenyan market.
44. We begin by noting the settled principle that trade marks are intended as “badges of origin,” distinguishing one trader’s goods from another’s (see *SmithKline Beecham Plc v Registrar of Trade Marks* [2005] eKLR). A purely descriptive or geographical term ordinarily cannot be monopolized, as it must remain available for all traders. The *Trade Marks Act* addresses this by allowing registration of



composite marks incorporating such terms, provided disclaimers prevent appropriation of the generic or descriptive component.

45. In this case, the Registrar carefully required that the specifications of goods be regularized to read “Basmati Rice” and accepted the respondent’s disclaimers of exclusivity over the word “Basmati.” These measures reflect the Registrar’s recognition that “Basmati” is a descriptive element that cannot be monopolized in Kenya absent its recognition as a protected geographical indication. We see no error in that approach.
46. As for the risk of deception, the burden lay on the appellant to show that the use of “Basmati” within the composite marks would mislead Kenyan consumers as to the origin of the rice or as to the respondent’s entitlement to the word. The record contains no cogent or concrete evidence that was placed before the Registrar to substantiate the claim of any likelihood of misleading the public, the allegation remaining at the level of mere assertion. On the contrary, the evidence suggested that “Basmati” is used descriptively in Kenya to refer to a variety of aromatic long-grain rice, regardless of importer. Without a domestic legal determination that “Basmati” is a protected geographical indication, the Court cannot assume that its use in trade marks would mislead or confuse.
47. Finally, we are not persuaded that TRIPS obligations alone require us to invalidate the respondent’s registrations. Article 22(3) mandates refusal of marks containing GIs where their use would mislead as to origin. But, as we have already explained, until “Basmati” is formally recognized in Kenya as a geographical indication, the Registrar and the courts have no clear legal basis to treat it as such.
48. Accordingly, we conclude that the respondent’s registrations of composite marks incorporating “Basmati” were not prohibited under Kenyan law, and that the Registrar and the High Court correctly so found.

F. Conclusion and Disposition

49. In the result, and for the reasons set out above, we reach the following conclusions. First, while “Basmati” may, in fact, qualify to be a geographical indication within the meaning of Article 22 of TRIPS and section 40A of the *Trade Marks Act*, it has not been formally recognized or registered as such in Kenya. Secondly, without such registration or formal recognition, the appellant lacked the legal footing to object to the respondent’s trade mark applications solely on the ground that they incorporated the word “Basmati.” Thirdly, the record does not demonstrate that the respondent’s composite marks were misleading or otherwise prohibited under Kenyan law.
50. Accordingly, we find no merit in this appeal. It is hereby dismissed in its entirety. The orders of the High Court dated 26th April, 2017, affirming the ruling of the Registrar of Trade Marks of 17th May, 2013, are upheld.
51. The respondent shall have the costs of this appeal.
52. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2025.

W. KARANJA

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

JOEL NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

