



**Kioko v Kenya Films Classification Board (Civil Appeal
E018 of 2022) [2026] KECA 49 (KLR) (30 January 2026) (Judgment)**

Neutral citation: [2026] KECA 49 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL E018 OF 2022
AK MURGOR, KI LAIBUTA & GW NGENYE-MACHARIA, JJA
JANUARY 30, 2026**

BETWEEN

MICHAEL KIOKO APPELLANT

AND

THE KENYA FILMS CLASSIFICATION BOARD RESPONDENT

*(An appeal arising from the Judgment and Order of the High Court of Kenya at Mombasa
(E. Ogolla, J.) delivered on 19th April 2021 in Constitutional Petition No. 18 of 2019)*

JUDGMENT

1. The Appellant, Michael Kioko, filed a petition dated 18th February 2019 in the High Court of Kenya at Mombasa HC Constitutional Petition No. 18 of 2019 against the Respondent, The Kenya Films Classification Board, seeking a declaration that the decision made by the Respondent on 27th April, 2018 banning and/or restricting the film ‘Rafiki’ was in violation of Articles 10, 11, 12, 19, 20, 24, 27, 32, 33 and 34 of *the Constitution*, and was therefore null and void.
2. It was the Appellant’s case that, through a statement of 27th April 2018 published on its website and signed by its Chief Executive Officer, Dr Ezekiel Mutua, the Respondent banned the distribution, exhibition, broadcast and possession of the film ‘Rafiki’ in Kenya.
3. The Respondent opposed the Petition and, by way of a Notice of Motion dated 1st September 2020, they sought to strike out or dismiss the petition on the ground that it was res judicata in view of the proceedings and decision of the Court in Nairobi High Court Constitutional Petition No. 313 of 2018: Wanuri Kahiu & Another vs. Kenya Film Classification Board And 4 Others. The application was brought on the grounds that:
 - a. The subject in issue in the present Petition has been directly and substantially in issue in a former Suit lodged before the High Court of Kenya at Nairobi, particularly Nairobi High



Court Petition No.313 Of 2018: Wanuri Kahiu & Another Vs. Kenya Film Classification Board & 4 Others.

- b. The subject in issue in the present Petition and the former Suit principally revolve on the constitutionality of the decision of the Kenya Film Classification Board (hereinafter “the Board”) to restrict the broadcasting, possession, distribution and exhibition of the Film “Rafiki” pursuant to the mandate of the Films Act and Stage Plays Act, Chapter 222, Laws of Kenya.
 - c. The former Suit, being Nairobi High Court Constitutional Petition No. 313 Of 2018: Wanuri Kahiu and Another Vs. Kenya Film Classification Board And 4 Others has since been determined in the decision of the Honourable Court (Hon. Mr. Justice Makau, J.) delivered on April 29, 2020.
 - d. The former Suit being Nairobi High Court Constitutional Petition No. 313 of 2018: Wanuri Kahiu and Another Vs. Kenya Film Classification Board And 4 Others has been determined by a Court bearing competent and concurrent jurisdiction. The existent of this Suit in Nairobi has been widely publicized in the media and the Petitioner herein should have been aware of the existence of such Suit.
 - e. Despite the parties in the present Petition and the former Suit lodged in Nairobi being different, the Petitioners in both Suits rely on the same cause action and facts in prosecuting both proceedings. Therefore, where the former Suit has been determined, the Petitioner in the present Suit is seeking to re-litigate the issue before this Honourable Court.
 - f. It is in the interest of justice that the application be allowed.
4. The Appellant opposed the application and argued that the earlier case, Nairobi Petition No. 313 of 2018, was not filed in the public interest unlike the present petition. He maintained that the issues raised in that case were not directly or substantially the same as those before the court in the current matter. According to him, the doctrine of *res judicata* should be sparingly applied in constitutional litigation and only in the clearest of cases. He further submitted that *the Constitution* does not criminalize love between persons of the same sex, nor does it prohibit same-sex marriage. He questioned why a film depicting lesbianism would be restricted when films portraying corruption, theft, assault, vigilantism, or even murder are not subjected to similar restrictions. He contended that the Respondent could have adopted less restrictive measures under the *Films and Stage Plays Act*, such as rating the film as is common practice in open and democratic societies. He therefore argued that the decision to restrict the film failed to meet the constitutional standards under Articles 10, 24, and 33, and also infringed upon the rights guaranteed under Articles 8, 27, 32, and 33 of *the Constitution*.
 5. In response, the Respondent submitted that the cause of action in both Nairobi Petition No. 313 of 2018 and the present petition was the same. He asserted that both petitions challenge the decision of the Kenya Film Classification Board to classify the film “Rafiki” as restricted. He further argued that the Petitioner could not separate the public statement issued by the Board from its decision as the statement merely communicated the classification outcome. In his view, the Appellant’s challenge to the public statement was effectively a challenge to the same decision that had already been litigated upon thereby rendering the matter *res judicata*.
 6. Mr. Makuto appearing for the Attorney General associated himself with the Respondent’s position and added that Section 29 of the *Films and Stage Plays Act* provides a clear statutory mechanism for appealing decisions relating to film classification and licensing. He argued that the Appellant had not utilized this statutory avenue before approaching the court. Consequently, counsel submitted that the



- Petitioner had prematurely invoked the jurisdiction of the Court, similar to the earlier petition, and that the Court ought to decline jurisdiction on that ground.
7. Upon reviewing the Record, the trial court found that, in Nairobi Petition No. 313 of 2018, the Appellant had challenged the Respondent’s decision to classify the film “Rafiki” as restricted, and to prohibit its exhibition and distribution in Kenya; and that the Appellant had contended that certain provisions of the *Films and Stage Plays Act* and the Board’s actions violated the constitutional right to freedom of expression and artistic creativity.
 8. The Judge observed that, in the current petition, the same decision — banning the distribution, exhibition, broadcast, and possession of the film “Rafiki” — was being challenged on similar constitutional grounds, including alleged violations of Articles 10, 19, 20, 24, 27, 32, 33, and 34 of *the Constitution*. The Court observed that the issues raised were identical in substance, particularly regarding the limitation of the right to freedom of expression. Having compared the pleadings and reliefs sought in both petitions, the Judge concluded that the cause of action and the main constitutional questions in both cases were the same.
 9. On the question as to whether the parties were the same, the Court acknowledged that, while the petitioner in the present case was different, the Respondents were largely the same, save for the addition of an interested party. The Judge found that the doctrine of res judicata applies even where parties attempt to avoid the bar by adding or removing some parties, or slightly altering the reliefs sought.
 10. The court rejected the argument that the present petition was filed in the public interest and that, as a consequence, was distinguishable from the earlier petition.
 11. In conclusion, the trial Judge found that the Appellant was deliberately seeking to re-litigate a matter already decided by a competent court, and to declare unconstitutional what had already been held to be constitutional. The Court therefore upheld the plea of res judicata, finding that all the legal conditions for its application had been satisfied.
 12. Aggrieved, the Appellant has filed an appeal to this Court on the grounds that: the learned Judge failed to reach a finding that the decision of the Respondent restricting and or banning the film “Rafiki” was in violation of Articles 10, 11, 12, 19, 20, 24, 27, 32, 33 and 34 of *the Constitution*; that, in the alternative, the learned Judge misinterpreted the provisions of section 7 of the *Civil Procedure Act* Cap 21, and failed to appreciate that the issues in Petition No. 313 of 2018 - Wanuri Kahiu & Another vs Kenya Film Classification Board & 4 Others were different from the issues in the petition before him; and that the learned Judge was in error in striking out the entire petition with costs to the Respondent.
 13. The parties filed written submissions which learned counsel Mr. Maundu for the Appellant and learned counsel Mr. Ochieng appearing with Mr. Mwango for the Respondent indicated they would rely upon entirely, while Mr. Penda learned counsel for the Attorney General for the Interested party briefly highlighted their submissions orally when the appeal came up for hearing on the Court’s virtual platform.
 14. In their written submissions, the Appellant submitted that the learned Judge wrongly dismissed Mombasa High Court Petition No. 18 of 2019 on the ground that it was res judicata, as the court failed to properly interrogate and compare the pleadings, parties, causes of action, issues, and determinations in the previous proceedings before invoking the doctrine of res judicata. It was submitted that, in constitutional litigation, the doctrine must be applied sparingly and only in the clearest of cases; that a court must examine the entire record of the earlier and subsequent proceedings to determine whether the issues were directly and substantially the same, whether the parties were the same or litigating under the same title, and whether the issues had been finally determined by a court of competent jurisdiction;



- that, although both the Nairobi petition and the present petition arose from the Respondent's decisions relating to the film "Rafiki," the two petitions were fundamentally different in nature, scope and purpose in that, the Nairobi petition was instituted by the filmmakers and a creative guild to protect proprietary, artistic and commercial interests arising from the ban while, the present petition was filed by the Appellant in the public interest pursuant to Article 258 of *the Constitution*, with the specific objective of vindicating the public's right to receive information and ideas under Article 33(1) (b) of *the Constitution*; and that the public-interest dimension was neither pleaded nor determined in the Nairobi petition and, therefore, could not be said to have been conclusively settled.
15. It was further submitted that the learned Judge failed to apply the five-part test for res judicata namely: whether the matter in issue was identical in both suits; whether the parties were the same; whether the parties were litigating under the same title; whether the previous court was of competent jurisdiction; and whether the issue had been heard and finally determined. Instead, the court juxtaposed the constitutional provisions cited in both petitions and erroneously concluded that the issues and causes of action were the same.
 16. It was argued that the present petition challenged the Respondent's decision communicated to the public on 27th April 2018 and signed by the Respondent's Executive Officer, whereas the Nairobi petition was premised on an earlier internal decision dated 26th April 2018 arising from engagements between the Respondent and the filmmakers; that, consequently, the causes of action, factual foundations and affected interests were materially different. The cases of Okiya Omtatah Okoiti & another vs Attorney General and Another [Petition No. 593 of 2013]; William Kabogo Gitau vs Ferdinand Ndung'u Waititu [2016] eKLR; and Edward Okongo Oyugi & 2 others vs Attorney General [2016] eKLR were relied upon for the proposition that constitutional petitions should not be summarily dismissed on procedural grounds as doing so would impede access to justice or suppress the determination of evolving constitutional rights.
 17. Regarding the substantive constitutional issues, it was submitted that the Respondent's decision to restrict and ban the film "Rafiki" violated Articles 10, 11, 19, 20, 24, 27, 32, 33 and 34 of *the Constitution*; that the Respondent, as a State organ established under Section 11 of the Film and Stage Plays Act, was bound by the national values and principles of governance under Article 10 to adhere to the principles of human dignity, equality, inclusiveness, non-discrimination, social justice and the protection of marginalized groups; and that the Respondent's decision failed to uphold these constitutional values.
 18. Further it was submitted that, Article 11 of *the Constitution* recognizes culture as the cumulative civilization of the Kenyan people, and obligates the State to promote all forms of cultural expression, including through the arts and media; that culture includes LGBTIQ+ persons cultural expression; and that suppressing this was discriminatory and undermined the inclusive vision of *the Constitution*.
 19. It was further submitted that the ban violated Article 19 by undermining the Bill of Rights as the foundation of Kenya's democratic state, and Article 20 by failing to adopt an interpretation that most favours the enforcement of rights and fundamental freedoms; that, further, the ban amounted to discrimination contrary to Article 27, as it denied LGBTIQ+ persons equal protection and equal benefit of the law; and that Article 32 on freedom of conscience, belief, and opinion, and Article 33 on freedom of expression, including the freedom to seek, receive, and impart information and ideas, as well as freedom of artistic creativity, were also violated.
 20. It was argued that the Respondent's reliance on Section 165 of the Penal Code was legally untenable as the provision criminalizes specific sexual acts, but does not criminalize sexual orientation, emotional relationships, or the artistic depiction of such relationships; that the film did not depict sexual activity,



and does not incite or promote criminal conduct. Counsel further argued that reliance on Article 45 was misplaced, as that provision merely defines legally recognized marriage and does not prohibit or censor the portrayal of other forms of relationships. Reliance was placed on the case of *EG & 7 Others vs Attorney General* [2023] eKLR where the Supreme Court affirmed that the constitutional rights of LGBTQ+ persons were protected and were not subject to popular opinion or moral disapproval.

21. The Appellant submitted that the ban amounted to an unconstitutional censorship rather than lawful regulation, and that that Kenya’s international obligations under the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights, which form part of Kenyan law by virtue of Article 2(6) of *the Constitution*, protect freedom of expression and prohibit discrimination.
22. On costs, the Appellant submitted that the learned Judge erroneously awarded costs against the Appellant despite the petition having been filed in good faith, in the public interest, and without any personal gain pursuant to Article 258 of *the Constitution*. The case of *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others* [2014] eKLR was relied upon to support the proposition that the award of costs against a public-interest litigant was punitive, harsh and contrary to established principles governing constitutional litigation.
23. In its submissions, the Respondent contended that the High Court properly found that the issues raised in the Mombasa petition were already directly and substantially determined in Nairobi Constitutional Petition No. 313 of 2018 – *Wanuri Kahiu & Another vs Kenya Film Classification Board & Others* where the constitutionality of the *Films and Stage Plays Act* and the Board’s decision to restrict the film “Rafiki” had been comprehensively litigated and determined by a court of competent jurisdiction.
24. Relying on Section 7 of the *Civil Procedure Act* and the Supreme Court’s decision in *John Florence Maritime Services Ltd & Another v Cabinet Secretary for Transport & Infrastructure & 3 Others* [2021] KESC 39 (KLR), it was submitted that the doctrine of res judicata prevents parties from re-litigating matters that have already been decided, whether under the same cause of action (cause of action res judicata) or the same legal issue (issue res judicata). It was argued that the current petition was an attempt by the Appellant to reopen and reargue issues already conclusively settled by the High Court in Nairobi; that both the former petition and the current one challenged the same decision — the Board’s classification and restriction of the film “Rafiki” — and both invoked similar constitutional provisions, particularly Articles 33 and 34 on the freedom of expression. The only difference, counsel submitted, was the identity of the petitioner, which did not defeat the application of the doctrine of res judicata.
16. The Respondent also relied in the case of *Henry Wanyama Khaemba vs Standard Chartered Bank of Kenya Ltd* (Civil Case No. 560 of 2006); and *Mary Wanene Kangethe vs Estate of Paul Kangethe Waruhiu & Others* [2021] eKLR for the proposition that litigants cannot evade the doctrine of res judicata by changing parties or repackaging their claims.
25. On the argument of public interest, counsel submitted that this issue had already been addressed in the earlier petition, which had several interested parties, including the Kenya Christian Professionals Forum and the Kenya National Commission on Human Rights — all representing diverse public interests; that, therefore, the claim that the present petition was filed in the public interest and the Nairobi petition did not create a new or distinct cause of action.
26. The Respondent further submitted that both the Nairobi and Mombasa High Courts were courts of equal and competent jurisdiction as conferred by Article 165 (3) of *the Constitution* and that, therefore, the Nairobi High Court’s decision was binding in principle and conclusive on the issues



raised; that the court in the former case had declared that the Film and Stage Plays Act and the 2012 Classification Guidelines were constitutional; and that the Board's limitation of freedom of expression was reasonable and justifiable in a democratic society.

27. On behalf of the Interested Party, Mr. Penda reiterated that the petition before the trial Judge was res judicata as the issues raised were the same as those raised in Nairobi Constitutional Petition No. 313 of 2018 – Wanuri Kahiu & Another vs Kenya Film Classification Board & Others where the constitutionality of the *Films and Stage Plays Act* and the Board's decision to restrict the film "Rafiki" had been comprehensively litigated and determined by the High Court; and that the Appellant had not shown any exceptional circumstances to warrant the hearing of the issues that were being raised.
28. Counsel emphasized that the doctrine of res judicata serves an important role in preventing endless litigation, preserving the integrity of judicial decisions, and protecting parties from being vexed by repetitive suits. The cases of James Njuguna Chui vs John Njugu Kimani [2017] eKLR; and Kenya Commercial Bank vs Coffee Estate Ltd & Another [2016] eKLR were cited for the proposition that litigation must come to an end, and that parties are only entitled to "one bite at the cherry."
29. In conclusion, counsel submitted that all the elements for a finding of res judicata had been satisfied, and that this Court should uphold the High Court's judgment and dismiss the appeal.
30. This is a first appeal from the decision of the High Court in its original jurisdiction. This Court's mandate as a first appellate court is as stipulated explicitly in Rule 31(1) of the Court of Appeal Rules, 2022 namely, to re-appraise, re-evaluate and re-analyze the record, consider it in light of the rival submissions and draw its own conclusions thereon and give reasons either way. See *Selle & another vs Associated Motor Boat Co. Ltd & others* [1968] EA 123 and this Court will only depart from the finding by the trial Court if they were not based on no evidence on record; where the Court is shown to have acted on the wrong principles of law as was held in *Jabane vs Olenja* [1986] KLR 661; or where its discretion was exercised injudiciously as was held in *Mbogo & Another vs Shah* [1968] EA 93.
31. With the foregoing in mind, the issues falling for this Court's consideration are whether the High Court in Mombasa Constitutional. Petition No. 18 of 2019: Michael Kioko vs Kenya Film Classification Board rightly found the petition to be res judicata, in relation to Nairobi High Court Constitutional Petition 313 of 2018: Wanuri Kahiu & Another vs. Kenya Film Classification Board & Others; and whether the Appellant is liable for costs in the High Court and in this Court.
32. The doctrine of res judicata is established under Section 7 of the *Civil Procedure Act* which provides 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..."
33. The doctrine of res judicata is therefore anchored on the principle that there must be an end to litigation. The learned authors of Mulla, Code of Civil Procedure, 18th Edition (2012) at page 293 observed that the principle of finality or res judicata is a matter of public policy and forms one of the pillars of substantive law. Once a judgment is concluded, the matters in issue cannot be reopened save for reasons of fraud, mistake, or want of jurisdiction. The principle is founded on the rationale that issues once decided may not be reopened and has little to do with the merits of the decision.



34. Similarly, Black’s Law Dictionary, 10th Edition defines ‘res judicata’ as:
- “An issue that has been definitely settled by judicial decision ... the three essentials being (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties.”
35. The Supreme Court of Kenya in *Kenya Commercial Bank Limited vs Muiri Coffee Estate Limited & Another* [2016] eKLR elaborated the purpose of the doctrine in the following terms:
- “The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”
36. Similarly, this Court in the case of *Independent Electoral and Boundaries Commission vs Maina Kiai & 5 Others* [2017] eKLR set out the essential elements for the application of the doctrine, which are:
- a) That the matter in issue was directly and substantially in issue in the former suit;
 - b) That the former suit was between the same parties or parties under whom they or any of them claim;
 - c) That the parties were litigating under the same title;
 - d) That the issue was heard and finally determined in the former suit; and
 - e) That the court which determined the former suit was competent to try the subsequent suit.
37. The Court further explained the role of the doctrine in the following terms:
- “The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
38. The Supreme Court in *Florence Maritime Services Ltd vs Cabinet Secretary for Transport, Infrastructure & 3 Others* (supra) also extensively examined the doctrine and observed that the principle of finality is a matter of public policy. The court held that the doctrine prevents a multiplicity of suits that would otherwise clog the courts and ensures that litigation comes to an end.
39. In the present appeal, the record clearly shows that the earlier petition in Nairobi concerned the same administrative action — the banning of the film “Rafiki” by the Respondent. An examination of the instant petition discloses that, like the Nairobi Petition, the instant petition sought to challenge the same decision of 27th April 2018 and not any other decision as the Appellant seems to suggest, as well



as the identical constitutional provisions namely; Articles 10, 11, 19, 20, 24, 27, 32, 33 and 34 of *the Constitution*. The instant petition also substantially seeks the same reliefs, specifically, “A declaration that the decision of the Kenya film censorship board banning and or restricting the film “Rafiki” is in violation of Articles 10, 11, 19, 20, 24, 27, 32, 33, and 34 of *the Constitution* and is therefore null and void”.

40. The Appellant also raises a further argument that the subject matter of the instant petition is distinctly different since the present petition was filed in the public interest pursuant to Article 258 of *the Constitution* with the specific objective of vindicating the public’s right to receive information and ideas under Article 33(1)(b) of *the Constitution*, a public-interest dimension that was neither pleaded nor determined in the Nairobi petition and, therefore, could not be said to have been conclusively settled.
41. But an examination of the instant petition would point to this assertion as being fallacious and disingenuous. We say so because, in his petition, no issue was raised concerning a public interest dimension, specifically Articles 258 and 33(1)(b) of *the Constitution*. What the Appellant had alleged was, inter alia, that the 1st Respondent’s decision contravened Article 33 of *the Constitution*, which guarantees the freedom of expression, freedom to seek, receive and impart information or ideas and the freedom of artistic creativity. But, after analysing the Nairobi petition, it becomes evident that, central to the issues raised, there was the alleged contravention of Article 33 by the 1st Respondent’s decision as well as the alleged limitation on the freedom of expression, which issue was elaborately and exhaustively addressed by the High Court in Nairobi. It therefore becomes clear that, at all times, the instant petition was concerned with Article 33 and not a new public interest dimension under Articles 258, and 33(1) (b) of *the Constitution* as alleged and, further, the issue regarding the alleged contravention of Article 33 was no different from that raised in the Nairobi petition, so that, the Appellant’s petition remained a replication of the Nairobi petition.
42. As such, we find, as did the trial Judge, that the subject matter and issues in both petitions were directly and substantially the same.
43. It is also undisputed that the earlier petition was heard and finally determined by a court of competent jurisdiction. The Judgment of Makau, J. upheld the legality of the impugned decision, finding that the limitation on freedom of expression was reasonable and justifiable under Article 24 of *the Constitution*. It is instructive that that decision was never set aside or appealed against, and therefore remains valid and binding.
44. As concerns the parties to the petitions, there is no dispute that they are indeed different, the petitioners in the earlier Nairobi petition were Wanuri Kahiu & Another, who are different from the petitioner Michael Kioko, the Appellant in the instant petition.
45. However, whilst graphically discussing the difference in parties to similar suits in the case of Kahoro & 2 others (Suing on their Behalf and on Behalf of Members of Twendane Company Limited) vs Kanyamwi Trading Company Limited (Civil Appeal 62 of 2018) [2025] KECA 941 (KLR), this Court held:

“In the contemporary world, one animal known for changing its colour to camouflage with its surrounding environment is the chameleon. It will be green in the morning, brown in the afternoon and yellow in the evening, depending on where its majestic walk has taken it. In the legal world, it is known that parties may attempt to approach the court in different shades, while remaining the same parties. To prevent this mischievous way of litigation, the doctrine of res judicata was developed to bar parties from bringing a litigious action once a final determination has been made on the merits of a similar previous suit...”



- 46. So that even if the petitioner in the instant petition is different, given that the Respondent and the subject matter are the same, a finding of res judicata will not be negated.
- 47. All in all, as did the High Court, we likewise find that all the elements for a finding of res judicata have been satisfied, with the result that we hereby uphold the Mombasa High Court’s Judgment Mombasa in Constitutional Petition No. 18 of 2019.
- 48. On the issue of costs, it was submitted that the Appellant should not have been condemned to pay costs given that the petition had been instituted in the public interest. However, upon considering the instant petition, we can find nothing that discloses that it was brought in the public interest, particularly since both the trial court and this Court have found it to be res judicata Nairobi High Court Constitutional Petition No. 313 of 2018: Wanuri Kahiu & Another vs. Kenya Film Classification Board & Other. Therefore, the public interest element not having been demonstrated, we find that the learned Judge rightly awarded costs against the Appellant.
- 49. For the foregoing reasons, the Appeal lacks merit and is hereby dismissed with costs to the Respondent.
It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JANUARY, 2026.

A. K. MURGOR

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA CARb, FCIArb.

.....

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

