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AN ANALYSIS OF THE BASMATI JUDGEMENT AND ITS IMPLICATIONS

In October 2025, the Kenyan Court of Appeal issued a definitive judgment that resolved a long-standing conflict over the protection of Geographical Indications. The court dismissed an opposition by India's Agricultural and Processed Food Products Export Development Authority (APEDA) against six trademark applications for "Basmati" filed by Krish Commodities Limited.

The case, Kenya Agricultural and Processed Food Products Development Authority (APEDA) v Krish Commodities Limited [2025] KECA 1587 (KLR), establishes that the protection of a GI is not automatic based on its international reputation but is dependent on Kenya's domestic statutory framework.

This article provides an overview of the case, the legal principles it reaffirmed and its significant implications for future Geographical Indication protection in Kenya.

WHAT IS A GEOGRAPHICAL INDICATION (GI)?

Article 22(1) of the TRIPS Agreement defines geographical indications as indications which identify a good as originating in the territory, region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

In Kenya, the protection of Geographical Indications is recognized under Section 40A (5) of the Trademarks Act, Cap 506 ("the Trademarks Act"), which allows geographical names or other indications of geographical origin to be registered as collective or service marks.

Internationally, famous examples include "Champagne" from France and "Roquefort" cheese. In Kenya, there are emerging Geographical Indications like the "Taita Basket", "Kisii Soapstone" and "Kericho Tea".

In this case, APEDA argued that "Basmati" is a Geographical Indication for a special long-grain aromatic rice grown exclusively in the Himalayan foothills of India and Pakistan.

THE BASMATI CASE

Background

The dispute revolved around the protection of the word "Basmati" as a Geographical Indication in Kenya. Krish Commodities had applied to register six composite trademarks, each including the word "Basmati". Further, Krish Commodities had disclaimed the exclusive rights to the words "Basmati" and "Rice," indicating that it was not claiming monopoly over these terms.

APEDA opposed these applications, asserting that "Basmati" is a recognized Geographical Indication that should only be used by producers from India and Pakistan. APEDA argued that allowing other parties to use the term would mislead consumers and diminish the value of the Geographical Indication.

The Court of Appeal's Determination

The Court of Appeal upheld the decisions of the Registrar of Trade Marks and the High Court, reaching the following conclusions:

a. The TRIPS Agreement requires domestic implementation: While "Basmati" could theoretically qualify as a Geographical Indication under TRIPS, the treaty does not automatically create enforceable rights in Kenya. Each member state must implement TRIPS obligations through its own legal system.

b. Domestic anchoring is essential: The Trademarks Act requires local registration of a Geographical Indication before rights can be enforced. Since the word "Basmati" had not been registered as a Geographical Indication in Kenya, it did not enjoy legal protection.

c. The right forum for Geographical Indication recognition: The court declined to rule on whether "Basmati" is inherently a Geographical Indication, stating that such a factual determination must be sought through the appropriate statutory process (like a Geographical Indication registration application), not through a trademark opposition case.

d. No evidence of misleading use: The court found that Krish Commodities' composite marks with their clear disclaimers, were not misleading. There was no evidence that Kenyan consumers were being deceived or that APEDA had suffered economic harm.

The court thus reaffirmed that Geographical Indication protection in Kenya is territorial and dependent on domestic registration.

CONCLUSION

The Basmati judgment underscores that Geographical Indications derive enforceable protection only through domestic registration, not merely international recognition.

For innovators and brand owners, this judgement reinforces the importance of a proactive IP strategy, ensuring that Geographical Indications are properly registered, monitored and enforced to safeguard market position and consumer trust.

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- Portfolio management: Monitoring renewal deadlines and managing restorations to ensure your trademarks remain valid.
- Enforcement and protection: Advising on strategies to enforce your rights and prevent unauthorized use of your trademarks or Geographical Indications.

Need legal guidance?

For support with trademark registration or related intellectual property matters, please contact:

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