



**Harley's Limited v Kenya Bureau of Standards (Tribunal Appeal
5 of 2018) [2019] KEST 114 (KLR) (22 March 2019) (Ruling)**

Neutral citation: [2019] KEST 114 (KLR)

**REPUBLIC OF KENYA
IN THE STANDARDS TRIBUNAL
TRIBUNAL APPEAL 5 OF 2018
GM MBURU, CHAIR, H SIGEI, MS MAKHANDIA, P MUNGAI & L ABDIWAHID, MEMBERS
MARCH 22, 2019**

BETWEEN

HARLEY'S LIMITED APPELLANT

AND

KENYA BUREAU OF STANDARDS RESPONDENT

RULING

Introduction

1. The Appellant/Applicant is a limited liability company with registered offices in Nairobi. They are in the business of whole sale distribution and importation of pharmaceutical products in Kenya, which include among others adult disposable diapers by name Dry Maxx which are the subject of this appeal.
2. The Respondent is a body corporate established under section 3 of the *Standards Act* Cap 496 laws of Kenya whose functions among others include promoting standardization in industry.
3. The appeal was filed by the Applicant on 19th October, 2018 having been dissatisfied by the Respondents test results which indicated that the Appellants goods comparing of 2469 pieces of medium, 2100 pieces of large and 1960 extra large Drimaxx Adult diapers all valued at Kshs.170,000 had failed to meet the respective standards. The decision was communicated by the respondent vide their letter to the appellant dated 6th June, 2018. Both parties were represented and the matter was disposed by way of submissions on 25th January, 2019.

Summary Of Facts

4. In the normal course of business the Appellant imported disposable adult diapers on or about May 2018. These were Drimaxx adult diapers valued at kshs.170,000. Prior to importation the goods had been duly inspected by a duly appointed agent of the Respondent SGS India. On inspection the



Appellant issued with Pre-verification of Conformity PVoC vide a Certificate of Conformity CoC No. S-2018/05/479416 on 4th May, 2018.

5. The copy of the Certificate was attached to the schedule of document produced.
6. Upon arrival to the country the goods were inspected by the Respondents and the documents accompanying the goods approved and the Respondent subsequently issued the Appellant with KEBS inspection and approval documents Ref. No. CD2018KEBSKEBSIA0001033285 which copy was produced. The goods were then released to the Appellant unconditionally.
7. That subsequently on 31st May, 2018 the Respondent agent or Daniel Kimonge collected samples of the Appellant goods from the consignment for testing vide the letter dated 6th June, 2018.
8. The respondent informed the Appellant that the goods were tested against the requirements of KS 2662: Kenya standards specification for Disposable Adult Diapers and failed to comply with the set standards. This was communicated to the Appellant vide a letter dated 6th June, 2018. Copy attached to the schedule of documents and the letter.
9. It's indicated that the sample drawn had failed to comply with marking as per the requirement of KS2662. The letter also indicated that the Appellant should ensure that all their consignments comply fully with the requirements of the relevant standards.
10. The letter dated 6th June, 2018 was received by the appellant on 27th September, 2018 and they wrote a letter dated 3rd September, 2018 to the respondent disputing the results of the tests and asking for a re-analysis of the products.
11. Pursuant to the letter dated 6th June, 2018 the office of director of Public prosecutions preferred charges against the Directors of the Appellants as per the charge sheet stamped on 24th September, 2018 with connivance to commit an offence under section 9(3) (b) of the East African community customs management Act No.1 of 2005 and wilful disobedience of statutory duty contrary to section 130 of the Penal code Cap 63 Laws of Kenya.

Appellants Case

12. The appellant contends that the Respondent through its Pre-Export verification of Conformity (PVoC) agent SGS India issued a Certificate of Conformity (CoC) which was a requirement before importing the diapers. On strength of this the Appellant proceeded to import the diapers having no doubt whatsoever that the Kenya's standards had been met.
13. The Appellant argues that the Respondent cannot be heard to say that the goods were substandard.
14. It's also the contention of the Appellant that after receiving the letter dated 6th June, 2018 from the respondent, they wrote back requesting for a reanalysis of the goods and received no response.
15. The Appellant argues that the Respondent should not be allowed to ignore their verification and approval.
16. The Appellant also urges that the alleged failure of the goods do not affect the quality as the Respondent alleges that the number of diapers in a package was not indicated.
17. Further contention and the issue of warranty is that the goods in question do not fall under the ambit of manufacture and expiry dates.
18. It was for the contended that there was no evidence whatsoever that these goods were harmful to the public.



Respondents Case

19. The respondent case is anchored on the failure of the goods to meet KS2662:2016. That the goods failed to meet the standards as related to marking.

DATED AT NAIROBI THIS 22ND DAY OF MARCH, 2019

GLADYS MUTHONI MBURU - (CHAIRPERSON)

HILLARY SIGEI - (MEMBER)

MOSES SANDE MAKHANDIA - (MEMBER)

PETER MUNGAI - (MEMBER)

LUL ABDIWAHID - (MEMBER)

Delivered in the presence of:

