



Trina Kenya Limited v Kenya Bureau of Standards (Tribunal Appeal E002 of 2023) [2023] KEST 1372 (KLR) (28 April 2023) (Judgment)

Neutral citation: [2023] KEST 1372 (KLR)

**REPUBLIC OF KENYA
IN THE STANDARDS TRIBUNAL
TRIBUNAL APPEAL E002 OF 2023
GM MBURU, CHAIR, MS MAKHANDIA & P MUNGAI, MEMBERS
APRIL 28, 2023**

BETWEEN

TRINA KENYA LIMITED APPELLANT

AND

KENYA BUREAU OF STANDARDS RESPONDENT

JUDGMENT

- 1 The Appellant Trina Kenya Limited is a company duly registered in Kenya under Registration No. PVT-6LUB9VB in accordance with the [Companies Act](#).
- 2 The Respondent is a statutory body established under Section 3 of the [Standards Act](#) Cap.496 Laws of Kenya tasked with inter alia collection of Standards Levy for manufacturers under Section 3 of the Standard Levy Order of 1990 and Section 8 of the same Standard Levy Order of 1990.
- 3 The genesis of the dispute is a demand letter dated 3/1/2023 sent by the Respondent to the Appellant demanding payment of Ksh.5,172,319.53 being the accrued amount of Standards Levy and penalty owed from 2019-2022. On receipt of this demand letter, the Appellant then proceeded to file an appeal to the Tribunal vide their statement of appeal dated 16/1/2023, filed on 17/1/2023. The Appellant contends that there is no lawful basis for the alleged levy and penalties accrued, demanded by the Respondent as they are not manufacturers under Section 2 of the [Standards Act](#).
- 4 In their statement of response, the Respondent avers that the Appellant is a manufacturer under Section 2 of the [Standards Act](#) Cap.496 Laws of Kenya that defines the term manufacturer to mean produce, process, treat, install, test, operate and use.
- 5 Further, the Respondent avers that the Appellant main business entails “Technical consulting in the field of photovoltaic technologies, environmental technologies, and new energy resources, wholesales, import and export and commission agency of photovoltaic equipment and its spare parts, as well as provision of relevant systemic services.”, comprise manufacturing. The respondent contends that the



- Appellant has not paid the Standards Levy over the years and under Section 8 of the Standards Levy Order, the Respondent has powers to recover any unpaid sums under the Order as civil debt.
- 6 The respondent also contends that the Appellant did not contest the demand or seek clarification thereby failing to exhaust available remedies before invoking the jurisdiction of the Tribunal.
- 7 The issues for determination in this Tribunal are as follows:
- i. Is the appeal properly filed before this Tribunal
 - ii. Is the Appellant a manufacturer as per Section 2 of the [Standards Act](#)
 - iii. If yes to (ii), is the amount demanded properly computed
 - iv. Should the appellant be compelled to pay Ksh.5,172,319.53
 - v. Who should bear the cost of this appeal.
- 8 On the first issue, the Respondent contends that the Appellant failed to uphold the doctrine of exhaustion by moving directly to the Tribunal without first seeking the mechanism of resolution and responding to the demand letter issued. Without belaboring this issue, the Tribunal is guided by Section 10B of the [Standards Act](#):
- 10B(5) Standards Levy Order (5) any person aggrieved by an act or decision under Standards Levy Order may appeal in writing to the Tribunal.
- 9 The provision does not give any proviso that other methods of dispute resolution have to be exhausted. It gives the aggrieved party the leeway to move the Tribunal as the first port of call in any dispute of this nature. Therefore, this dispute is properly before the Tribunal.
- (ii) Is the Appellant a manufacturer under Section 2 of [Standards Act](#) Cap.496:
- 10 Section 2 of the [Standards Act](#) provides that:
- “manufacturer” includes produce, process treat, install, test, operate and use.
- 11 The appellant assertion is that it engages in consulting services and does not engage in any manufacturing activities. It attached and marked appendix 2 a demonstration of the company’s core activity on E-Citizen. It is indicated on the E-Citizen document that the Appellant is in the business conducting technical consulting and services in the field of photovoltaic technologies, environmental technology and new energy resources, wholesale, import and export and commission agency of photovoltaic equipment and its spare parts as well as provision of systematic services.
- 12 The Respondent also contended that the Appellant’s business entailed transportation of ready mix concrete and genesets, small scale civil works, concrete pumping works and telecommunications infrastructure installations, to which the Appellant response is that it is untrue and notably the Respondent did not refer to this averment in their submissions.
- 13 On reviewing the documents filed by the Appellant, this Tribunal has not found any admission of carrying out the business indicated by the respondent. We are at a loss as to where this came from. It is quite unfounded. We can only rely on what the parties have presented before the Tribunal in deciding on whether the Appellant is a manufacturer or not as per Section 2 of the [Standards Act](#).
- 14 The Appellant avers that it deals in consulting services and has produced the annex from E-Citizen as evidence.



- 15 The respondent did not produce any evidence whatsoever, no document whatsoever was produced in support of their contention.
- 16 As in Section 109 of the *evidence Act* Cap.80 Laws of Kenya, the burden of proof is on the Respondent to prove that the Appellant is indeed a manufacturer under Section 2 of the *Standards Act*.
- 17 The said Section 109 talks about the proof of a particular fact.
- 18 The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- 19 The Respondent has not met the threshold prescribed by Section 109 *evidence Act* Cap.180.
- 20 The Respondent in his submission sought to introduce new information obtained from KRA which was not in the pleadings and therefore, could not be entertained by this Tribunal.
- 21 In view of the above, this Tribunal finds that the Appellant renders consulting services and is not a manufacturer as per Section 2 of the *Standards Act*.
- vi. The impact of finding that the appellant is not a manufacturer addresses issues number (iii) and (v). The appellant should not be compelled to pay Ksh.5,172,319.53.
- 22 This Tribunal hereby finds for the appellant, the respondent has no grounds to demand Ksh.5,172,319.53 from the appellant.
- 23 Each party to bear its own costs. The *Standards Act* that does not give this Tribunal power to award cost.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2023

GLADYS MUTHONI MBURU - (CHAIRPERSON)

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MOSES SANDE MAKHANDIA - (MEMBER)

.....

PETER MUNGAI - (MEMBER)

Delivered in the presence of:

.....for Appellant.

.....for Respondent.

