



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oxford University Press East Africa Limited v Kenya Bureau of Standards (Tribunal Appeal E002 of 2023) [2024] KEST 1633 (KLR) (Commercial and Tax) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEST 1633 (KLR)

**REPUBLIC OF KENYA  
IN THE STANDARDS TRIBUNAL  
COMMERCIAL AND TAX  
TRIBUNAL APPEAL E002 OF 2023  
GM MBURU, CHAIR, MS MAKHANDIA, P MUNGAI & A ONG'INJO, MEMBERS**

**JULY 26, 2024**

**BETWEEN**

**OXFORD UNIVERSITY PRESS EAST AFRICA LIMITED ..... APPELLANT**

**AND**

**KENYA BUREAU OF STANDARDS ..... RESPONDENT**

**JUDGMENT**

1. The Appellant Oxford University Press East Africa Limited is a leading education publisher in Eastern and Central African Region and a subsidiary of The University of Oxford.
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 Appellants' grievance arose from a letter dated 16<sup>th</sup> January 2024 and served upon them by the Respondent on 24<sup>th</sup> January 2024.
4. They promptly filed a Statement of Appeal dated 16<sup>th</sup> February 2024.
5. By the letter dated 16<sup>th</sup> January 2024, the Respondent's informed the Appellant that it had not remitted Standards Levy as required by the Standards Levy Order 1990 (The Standards Levy Order) and demanded the Appellant to pay an amount of Kshs 52,125,944/= on account of unpaid levies and penalties by 20<sup>th</sup> February 2024 otherwise, it would initiate debt recovery measures against it.
6. 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*, Cap 496 Laws of Kenya. They contend that it does not produce, process, treat, install, test, operate or use raw materials: they do not transform raw materials into finished products.



7. 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”.
8. The Respondent on the other hand 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.
9. Both Parties agreed to dispose off this matter by way of written submissions. We have considered the detailed submissions and Authorities filed by both Parties.
10. The issues for determination in this matter are as follows:
  - i. Is the Appellant a manufacturer as per Section 2 of the *Standards Act*?
  - ii. If yes to (i) is the amount demanded properly computed?
  - iii. Should the Appellant be compelled to pay Ksh. 52,125,944/=?
  - iv. Is a manufacturer duty bound to declare that they are a manufacturer?
  - v. Who should bear the cost of this appeal?
11. On whether the Appellant is a manufacturer under Section 2 of *Standards Act* Cap.496:

The Standards Levy Order under 1990 Order 2 defines “manufacturer” as to mean “any person or persons who engages in the process of manufacture in terms of section 2 of the Act”.
12. Section 2 of the *Standards Act* provides that:

“manufacturer” includes; produce, process treat, install, test, operate and use.
13. The Appellant placed reliance on the definition of Manufacturer according to the Black Laws dictionary 6<sup>th</sup> Edition West Group Publishers at page 965 as “one who by labor, art, or skill transforms raw material into some kind of a finished product of trade...Any individual, partnership, corporation, association or other legal relationship which manufactures assembles or produces goods”.
14. The Appellants’ assertion is that it does not produce, process, treat operate or use raw materials.
15. The Appellant further states that instead, it enters into agreement with authors who create literary works that govern how the literary works would be published and distributed by the Appellant.
16. Thereafter, the Appellant or its parent organization then enters into a separate agreement with a supplier of print production services to provide printing and binding services.
17. They argue therefore that it is these suppliers of print production, both in Kenya and abroad who engage in printing of literary works to be published by the Appellant.
18. The Respondent sought to counter the arguments of the Appellant by stating in their Response to Statement of Appeal dated 21<sup>st</sup> February 2024 that the Appellant admitted that it enters into agreements with authors and suppliers but takes full ownership and credit of the production of literary materials and therefore fall squarely under Section 2 of the *Standards Act*.
19. The Respondent sought to turn around the definition relied on by the Appellant under the Black Laws dictionary by stating that all aspects of manufacturing are embodied in the Appellants scope of work.



20. In support of its case, the Appellant exhibited the Letter dated 16<sup>th</sup> January 2024, an excerpt sample Publishing Agreement and a sample Framework Purchasing Agreement for Paper, Print and Binding Services which we will refer for purposes of this judgment as Exhibits 1, 2 and 3 respectively.
21. It also placed reliance on the Affidavit of its Director Mr. John Mwazemba dated 28<sup>th</sup> May 2024 in response to the Respondent's Affidavit dated 2<sup>nd</sup> May 2024.
22. A perusal of the Publishing Agreement (exhibit 2) reveals that an author of a literary work engages the Appellant to publish literary works completed and deliverer to the Appellant by the author.
23. On the other hand the Supplier Agreement (exhibit 3) exhibited show the parameters under which the Appellant prints the literary works supplied by authors. These works are produced through supply of print production services.
24. The Respondent's evidence was contained in a further affidavit dated 2<sup>nd</sup> May 2024 sworn by Mr. Adan Mohammed, the Director, Finance and Strategy in which he outlined three distinct Standards set by the Respondent for use by the Appellant.
25. No other evidence was produced by the Respondent to rebut the fact that the Appellant does not own its own production function and neither procures paper nor uses it to print any of the literary works on its own.
26. It is no in doubt and it has not been pleaded by the Respondent otherwise, that the Appellant does not own any of the literary works it publishes.
27. The Respondent did not produce any evidence whatsoever to rebut the fact that the Appellant did not run a production function of its own in support of their contention that it was a manufacturer.
28. Parties are bound by their pleadings and evidence.
29. 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*.
30. The said Section 109 talks about the proof of a particular fact. 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
31. By failing to rebut the evidence of the Appellant, the Respondent has not met the threshold prescribed by Section 109 *Evidence Act* Cap.180.
32. It is therefore clear that the Appellant does not have its own production function or infrastructure which would bring it under the definition of manufacturer under Section 2 of the *Standards Act*.
33. On the basis of the pleadings and evidence, it is their case that they are therefore not required to pay the Standards Levy under Section 3 of the Standards Levy Order 1990.
34. In view of the above, this Tribunal finds that the Appellant is not a manufacturer as per Section 2 of the *Standards Act*.
35. The impact of finding that the Appellant is not a manufacturer addresses issues number (ii) and (iii).
36. On issue (iv), on whether a manufacturer is duty bound to declare that they are a manufacturer, the Standards Levy Order places this burden on the Manufacturer. Section 4 of the Standards Levy Order provides as follows:



- (1) For the purpose of complying with paragraph 3, every person, or persons who manufacture or intend to manufacture, shall notify the Director, Kenya Bureau of Standards, in the format set out in Form SL. 1 set out in the First Schedule.
  - (2) Failure to notify the Director as aforesaid shall not affect the obligation of a manufacturer to pay the levy in terms of this Order.
37. Had this Tribunal found that the Appellant was a manufacturer, the burden of notifying the Respondent as such, would fall on the Appellant.
38. This Tribunal hereby finds for the Appellant, the Respondent has no grounds to demand Ksh. 52,125,944/= from the Appellant.
39. On issue number (v), the Standards Act that does not give this Tribunal powers to award cost.

### **Disposition**

40. Consequently, the Statement of Appeal dated 16<sup>th</sup> February 2024 is hereby allowed in the following terms: -
- a. That the Respondent's decision contained in the letter dated 16<sup>th</sup> January 2024 demanding payment of Ksh. 52,125,944/= in levies is annulled and set aside: and
  - b. Each party to bear its own costs

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY, 2024**

**GLADYS MUTHONI MBURU - (CHAIRPERSON)**

**MOSES SANDE MAKHANDIA - (MEMBER)**

**PETER MUNGAI - (MEMBER)**

**ADRIAN OPIYO ONG'INJO - (MEMBER)**

Delivered in the presence of:

Mr. Lawson Ondieki instructed by Messrs. Hamilton Harrison & Mathews Advocates for Appellant.

Ms. Victoria Musyoka holding brief for Ms. Beatrice Maina for Respondent.

