

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI**

**CIVIL APPEALS DIVISION**

**CIVIL APPEAL NO. E339 OF 2025**

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

**APPELLANT**

**VERSUS**

**MORAN (E.A) PUBLISHERS LIMITED .....**

**RESPONDENT**

***(Being an appeal from the decision of the Standards Tribunal in Tribunal Appeal No. STAE004/2024 delivered on 27th September 2024.)***

**JUDGMENT**

**Introduction**

1. The dispute between the parties herein concerns a demand issued by the Appellant to the Respondent on 16th January 2024, and subsequently on 7th March 2024, for payment of Kshs. 52,125,944/= being alleged unpaid Standards Levy and penalties for the period between 2017-2023.
2. The Respondent challenged the demand before the Tribunal, which found that it does not qualify as a “manufacturer” within the meaning of Section 2 of the

Standards Act, Cap 496, and was therefore not liable to pay the levy.

3. Dissatisfied with that decision, the Appellant filed the present appeal.

### **The Appeal**

4. The appeal is premised on the grounds that the Tribunal erred in law and fact:

***a) In finding that the Appellant had not presented evidence to show that the Respondent is a manufacturer;***

***b) In failing to appreciate the scope and meaning of who constitutes a manufacturer;***

***c) In failing to appreciate the Appellant's statutory mandate to demand payment of the Standards Levy from the Respondent;***

***d) In failing to find that the Respondent, being a manufacturer under Section 2 of the Standards Act, was liable to pay the Standards Levy.***

5. The Appellant seeks orders that:

***a) That the appeal be allowed and the Tribunal's judgment be set aside;***

***b) A declaration that the Respondent is a manufacturer within the meaning of the Standards Act;***

***c) Upholding of the Appellant's demand for unpaid levies and penalties;***

d) ***Costs of the appeal and the Tribunal proceedings.***

6. The appeal was canvassed by way of written submissions which I have considered.

**Appellant's Submissions**

7. On the meaning of the word “manufacturer” the Appellant submitted that the Tribunal adopted an unduly narrow and literal interpretation of the term “manufacturer,” limiting it to entities engaged in physical transformation of raw materials.

8. It contended that Section 2 of the Standards Act provides an inclusive definition, stating that manufacture includes to “produce, process, treat, install, test, operate and use.”

9. The Appellant argued that this definition is broad and functional, encompassing entities that control, direct, or oversee production processes, including outsourced production.

10. The Appellant further submitted that the Tribunal erred in placing undue emphasis on the absence of production infrastructure and in accepting the Respondent’s characterization of its role as merely coordinative.

11. It contended that the Respondent engages in manufacturing activities including manuscript development, specification of production standards, coordination of printing, and marketing of finished

products under its brand, all of which constitute manufacturing within the statutory meaning.

12. The Appellant relied on judicial authorities, including ***Mjengo Limited vs. Commissioner of Domestic Taxes [2016] KECA 66 (KLR)*** to support the proposition that “manufacture” includes value addition and transformation processes, and that the use of the term “includes” denotes an expansive interpretation.
13. The Appellant further argued that regulatory statutes such as the Standards Act should be interpreted purposively and broadly to achieve consumer protection and quality assurance objectives.
14. On evidentiary burden of proof, the Appellant submitted that the Tribunal misapplied Section 109 of the Evidence Act regarding the burden of proof and argued that once it established a prima facie case demonstrating that the Respondent engaged in manufacturing-related activities, the evidentiary burden shifted to the Respondent.
15. The Appellant contended that the Tribunal failed to consider the totality of evidence, including affidavits, demand notices, and correspondence demonstrating the Respondent’s role in production processes.
- 16.** It was further submitted that the Tribunal erroneously imposed a requirement that the Appellant proves ownership of production machinery, which is not a statutory requirement for classification as a manufacturer.

17. On the lawfulness of the levy, the Appellant submitted that its demand for Kshs. 52,125,944 in unpaid levies and penalties is grounded in the Standards Act and the Standards Levy Order, 1990.
18. It was argued that Order 3 of the Levy Order imposes a mandatory monthly levy obligation on every manufacturer, recoverable at source.
19. The Appellant contended that the obligation to pay the levy is continuous and not dependent on registration or notification to the regulator.
20. It was further submitted that failure by the Respondent to declare itself as a manufacturer does not extinguish the statutory obligation to pay the levy.
21. On the issue of the levy, the Appellant maintained that the Standards Levy Order imposes a mandatory obligation on all manufacturers and that the Respondent's failure to declare itself as such does not extinguish its statutory duty to pay. The Appellant maintained that unpaid levies constitute a civil debt recoverable by the Bureau and that penalties accrue for non-compliance.
22. It was also argued that retrospective assessment of levies is permissible within statutory and administrative limits.

### **Respondent's Submissions**

23. The Respondent supported the Tribunal's decision and submitted that it does not engage in manufacturing as it does not transform raw materials into finished goods.

It contended that all physical production processes, including printing and binding, are undertaken by independent third-party printers.

24. The Respondent took issue with the Appellant's reliance on Indian authorities and submitted that the same was misplaced as the court, in the said cases, gave the expression 'manufacturing process' a deliberately broad and liberal construction so as to include activities such as laundering and dry-cleaning.
25. It was further submitted that the Appellant failed to produce any evidence to demonstrate that the Respondent engages in manufacturing activities either at its premises or elsewhere.
26. The Respondent relied on judicial authorities emphasizing that manufacturing entails transformation of raw materials into a new product, and that activities such as coordination, packaging, or intellectual content development do not amount to manufacture. Reliance was placed on the case of **McNicol vs. Pinch [1906] 2 KB 352**.
27. Regarding evidentiary burden, the Respondent submitted that the burden lay squarely on the Appellant to prove that it was a manufacturer, which burden was not discharged.
28. The Respondent also challenged the legality of the demand, arguing that it exceeded statutory limits, lacked proper computation, and was issued without prior notice, thereby offending principles of fairness.

## Issues for Determination

29. The issues that arise for determination are:
- a) Whether the Respondent is a “manufacturer” within the meaning of Section 2 of the Standards Act;**
  - b) Whether the Tribunal correctly applied Section 109 of the Evidence Act on burden of proof;**
  - c) Whether the Appellant’s demand for Kshs. 52,125,944/= was lawful and enforceable.**

## Analysis and Determination

30. On whether the Respondent is a manufacturer, Section 2 of the Standards Act provides that:
- “manufacture includes produce, process, treat, install, test, operate and use.”**
31. While the above definition is inclusive, it does not eliminate the need to establish, as a matter of fact, that the entity in question undertakes activities that fall within the scope of manufacturing.
32. The jurisprudence on the subject underscores the centrality of transformation. In **McNicol vs. Pinch** case (supra) the Court observed that the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made.
33. A similar position was taken in **Mjengo Limited vs. Commissioner of Domestic Taxes** (supra) where the

Court of Appeal held that: under Standards Act, the definition of the word ‘manufacture’ does not equate ‘packaging’, in itself, to ‘making’, in the sense of an act or process of producing something.

34. In the present case, it is not disputed that the Respondent develops intellectual content and outsources printing and binding to third parties. There is no evidence that it undertakes the physical transformation of raw materials into finished books.

35. I find that the Tribunal properly evaluated the evidence and correctly concluded that the Respondent does not fall within the statutory definition of a manufacturer.

36. On whether the Tribunal correctly applied Section 109 of the Evidence Act, Section 109 of the Evidence Act provides that:

**“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence...”**

37. In ***Raila Odinga & others vs. IEBC & others (Petition No. 5 of 2013) [2013] eKLR*** the Supreme Court stated that:

***“...a petitioner should be under obligation to discharge the initial burden of proof before the respondents are invited to bear the evidential burden...”***

38. I find that the Appellant, having alleged that the Respondent is a manufacturer and sought to impose substantial liability, bore the burden of proving that assertion.
39. The record however shows that no sufficient evidence was tendered to demonstrate that the Respondent engages in manufacturing. On the contrary, the Respondent's evidence that production is outsourced remained uncontroverted.
40. I therefore find that the Tribunal correctly applied the law on evidentiary burden.
41. On whether the demand was lawful and enforceable, I note that the Appellant's claim is anchored on the Standards Levy Order, 1990, which provide that:
- “Subject to the Act there shall be paid by each manufacturer a levy recoverable at source...”**
42. My understanding of the above provision is that the obligation to pay the levy is contingent upon the entity being a manufacturer.
43. Having found that the Respondent is not a manufacturer within the meaning of the Act, it follows that the demand for the levy cannot be sustained.
44. In the circumstances of this case, it is not necessary to delve into the additional arguments regarding computation, statutory caps, or procedural fairness.
45. Having carefully considered the record of appeal, the submissions by both parties, and the applicable law, I find

no basis upon which to interfere with the decision of the Tribunal.

46. Consequently, I make the following orders:

- a) The Appeal is hereby dismissed;***
- b) The Judgment of the Standards Tribunal delivered on 27th September 2024 is upheld;***
- c) The Appellant shall bear the costs of this Appeal.***

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. W. A. OKWANY  
JUDGE  
16/04/2026**

**FOR APPELLANT** No appearance

**FOR THE RESPONDENT** No appearance

**COURT ASSISTANT** Abdirizak

File closed

Parties to be notified