REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: TUNOI, SHAH & BOSIRE, JJ.A.
CIVIL APPEAL NO. 2 OF 1999
BETWEEN
KENYA BUREAU OF STANDARDS .....APPELLANT
AND
M.P. JETHWA T/A SIMONIZ TEXTILES
M.M. DODHIA T/A TRIOS PARADISE
PRAVIN LALJI MAKAN
LALJI MAKAN TAILORS
LIMITED .....RESPONDENTS
(Appeal from a ruling of the High Court of Kenya at Nairobi (Githinji J) dated 3rd December, 1998

in

H.C.MISC.A. NO. 327 OF 1998)

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JUDGMENT OF TUNOI, J.A.

I have had the opportunity of reading in draft the judgment of Shah, JA and I agree with him that the appeal must be dismissed.

The respondents are tailors within the City of Nairobi. Criminal charges were preferred against them that whilst engaging in tailoring business which includes cutting, stitching and other processes necessary to convert textile materials into garments failed to notify the Managing Director of Kenya Bureau of Standards of their intention to undertake manufacturing activities despite having been requested to do so by the Kenya Bureau of Standards.

It is not in dispute that the respondents conduct their business in the following manner. A customer walks into their premises and selects some textiles material of his choice. A negotiation on the price of the material ensues and once the agreement is reached, the customer stands upright and measurements are taken. The parties then agree on the required style whereupon the selected textile is removed from the shelf and physically cut to the required sizes or pieces which are thereafter stitched together to produce garments which we popularly call suits, shirts, jackets, trousers, shorts, etc. The ancillary activities like sewing of buttons and ironing follow thereafter and the end result is that the textile materials are transformed from being mere textiles into various garments.

The question which fell for determination before Githinji J was whether from the above process each of the respondents' activities constitute manufacturing within the meaning of Section 2 of the Standards Act (the Act) and thereby bringing their operations under the Act.

By definition in ***Section 2 of the Act*** "manufacture" includes produce, process, treat, instal, test, operate and use. I think it is impossible to attempt to place an accurate definition on the word "manufacture" . We may look up examples of its many uses in the dictionaries, but that does not help on definition in respect of the matter before us. In construing statutes it is common to look at the mischief the Act is directed at and then, in that light, to consider whether as a matter of common sense and every day usage the facts of the particular case bring the case within the ordinary meaning of the words assigned by Parliament.

Again, it should be borne in mind that in a taxing act like this, the famous words of Viscount Simon L.C. in ***CANADIAN EAGLE OIL CO LTD V REGEM*** [1945] AC 119 ring true:

"... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment.

There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

In my view, Mr Ougo counsel for the appellant, cannot be correct in his construction of the word "manufacture" for to accept his submissions on it would be giving much too wide construction to the word "manufacture" and, consequently, it would be illogical to describe the respondents as manufacturers.

It is impractical to have a specification for clothes made to measure and a Kenya standard specification cannot exist for each item of cloth made exclusively for a particular customer. The findings of the learned Judge are quite specific, and; in my view, unassailable. I accept them.

As Shah, JA agrees, this appeal is dismissed with costs.

Dated and delivered at Nairobi this 12th day of April, 2000.

P. K. TUNOI

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR