

3.0 WEIGHTS AND MEASURES LAWS

3.1 INTRODUCTION

The Weights and Measures Department enforces two Acts of parliament, namely the Weights and Measures Act CAP **513 laws of Kenya** and the Trade Descriptions Act **CAP 503**.

The main purpose of Weights and Measures laws is to establishing a uniform system of units of measurement, control weighing and measuring equipments in use for trade, control transactions in some goods, and to protect the public against false trade descriptions.

3.2 THE WEIGHTS AND MEASURES ACT (CAP. 513, LAWS OF KENYA)

The Weights and Measures Act provides for the following:

- a) The legal units of measurement;
- (b) The standards of measurement;
- (c) The control of weighing and measuring instruments;
- (d) The technical specification of weighing and measuring instruments;
- (e) The control of manufacturer, repair and sale of weighing and ensuring instruments;
- (f) The control of transactions in goods by quantity; and
- (g) The administrative and enforcement of the various controls.

3.2.1 THE LEGAL UNITS OF MEASUREMENT

The legal units of measurements are provided for under

Part II of the Act. The provisions under this part of the Act are intended to establish a uniform system of units of measurement for all transactions in Kenya, be they commercial transactions or otherwise. The international system, otherwise referred to as the SI, is declared as the only uniform system of measurement in Kenya. The Act goes further to define the seven base units of legal measurement. These are: the **metre**, the **kilogram**, the **second**, the **ampere**, the kelvin, the **candela** and the mole.

3.2.2 THE STANDARDS OF MEASUREMENT

A unit of measurement cannot per se be utilised to make any measurement. It is a scientific definition of a magnitude of a physical quantity. Consequently, to translate units of measurement into practice for application, in various fields, the units must be physically realised. Standards are, therefore, the physical representations made to certain specifications under controlled conditions, of the units of measurement. For instance, the base unit of length in the SI is the metre and is defined as the length of the path travelled by light in vacuum during a time interval of $1/299,792,458$ of a second.

This unit of length is physically represented by the international prototype metre which is a bar made of an alloy of ninety per cent platinum and ten per cent iridium. It is 102 centimetres long and two polished areas near each end carry fine graduation marks which define the length of the metre at zero degrees centigrade. The unit of mass is the international prototype of the kilogram. The prototype of the kilogram is a plain cylinder of diameter equal to height with slightly rounded edges made of the same material as the prototype metre.

3.2.3 THE CONTROL OF WEIGHING AND MEASURING INSTRUMENTS

Part IV of the Act sets out provisions to control weighing and measuring instruments for use for trade. The Act has, therefore, devised several methods of control which includes:-

- (a) Approval of patterns of weighing and measuring equipment with an emphasis on those intended for use for trade;
- (b) Initial verification of new weighing and measuring equipment;
- (c) Annual or periodical verification of weighing and measuring equipment in use for trade;
- (d) Verification of repaired weighing and measuring equipment in use for trade; and
- (e) Inspection of use of weighing and measuring equipment at business premises.

It is essential to note here that the only equipment falling under the control of the Act are those **"IN USE FOR TRADE"**

The phrase "**in use for trade**" here includes use of equipment for buying and selling

and also cover use for determining wages or other payments based on weight, measure or number. Thus, a Kitchen scale at home is outside the control of the Act

but the machine used to weigh coffee or tea in a farm factory in order to determine

how much the picker of such coffee or tea are to be paid are "in use for trade" and are covered under the Act. All other kinds of machines, large and small, are used to determine quantity of whatever form for the purpose of selling are caught

by the legislation. It should also be noted that it is not necessary for the equipment to be ACTUALLY IN USE for it to be classified as being in use for trade rather the very

fact that it is PRESENT ON BUSINESS PREMISES is legally taken to mean that it is in use for trade.

3.2.3.1 APPROVAL OF PATTERNS

For the purpose of controlling the types of weighing or measuring equipment, the Department examines and tests all new pattern of weighting and measuring equipment intended to be used for trade before such equipment is brought into use. This control is normally referred to as "Pattern Approval".

Pattern approval is the first important step in the control of weighing and measuring equipment. Weighing and measuring equipment are constructed in accordance with some laid down technical specifications. These specifications cover physical characteristics, constructional details, materials, tolerances, procedures and methods of testing for accuracy in relation to weighing and measuring equipment. In this scheme one or more weighing or measuring instrument of the same pattern is subjected to vigorous tests prescribed under the weights and Measure Rules. The objective of such tests is to ensure that the instrument will be able to maintain its accuracy and other metrological characteristics such as sensitivity, repeatability, durability, etc. for a prolonged period under varied conditions of use. If the equipment is found suitable for trade use it is approved and a certificate is issued to that effect. Such equipment, or equipments conforming to that pattern, can then be allowed to be used for trade purposes. These tests also ensure that the instrument cannot easily be used to perpetrate fraud in normal use or where fraud is not intended the instrument will give consistent results at all the time.

3.2.3.2 INITIAL VERIFICATION

Initial verification in this context means the verification of a new weight, measure, weighing or measuring instrument of an approved pattern which has previously not been verified since its manufacture. Under the Act such instruments are required to be duly verified and stamped before the release for sale to the public.

Generally the accuracy requirements for acceptance on initial verification are more stringent than in periodical verification.

3.2.3.3 ANNUAL OR PERIODICAL VERIFICATION.

Annual or periodical verification as a method of control of weighing and measuring equipment is a requirement under the Act and is done at most once every year. The requirement provides that persons having weights, measures

weighing or measuring instruments for use for trade must produce them for examination, verification and stamping or restamping at certain regular time and at particular places called stamping stations to be notified by the inspector. It is the duty of the inspector to call upon persons in any area having weights, measures, weighing or measuring instruments in use for trade to produce the same for the purpose of their being examined, verified, stamped or restamped at such time and place within that area as he may appoint. For this purpose a notice is normally given in the Kenya Gazette and in a newspaper circulating within such area stating the time and place so appointed (section 27 of the Act). To know such time and place see advertised stamping stations .

Members of the public are advised that it is an offence under the weights and Measures Act to fail to comply with such notice.

3.2.3.5 VERIFICATION AFTER REPAIRS

Verification after installation, overhaul and repairs is the other method of control of weighing and measuring instrument in use for trade. Every weighing or measuring instrument is subject to rigorous verification, of the same nature as in initial verification, every time it undergoes overhaul or repair before being put back to use for trade.

To enforce further controls in this regard, the repairs are carried out by persons licensed by the Department for that purpose.

3.2.3.6 INSPECTIONS OF WEIGHING AND MEASURING INSTRUMENTS

After verification of weighing and measuring equipment subsequent checks, normally referred to as "inspections", are made by the Inspectors to determine whether any previously stamped equipment can be maintained in use or whether it needs repair, adjustment or replacement. For example, if during such a

subsequent check the Inspector finds that the equipment has been altered in some way or has become inaccurate, he may obliterate the stamp on the equipment by impressing a six pointed star on the stamp thereby cancelling it. Once the stamp has been thus cancelled, the equipment becomes illegal for trade use and must be taken immediately out of use and submitted to a repairer. When the repairer has corrected the fault in the equipment he must resubmit it to an Inspector for verification and stamping before it is put back on the premises.

If the inspector discovers a fault in the equipment which does not justify the immediate cancellation of the stamp, he may leave the stamp intact but will issue a written notice calling upon the user of the equipment to have the fault corrected within any period of up to a maximum of 28 days. If it is not corrected within the time given, the Inspector may immediately obliterate the stamp.

Inspections are done without notice otherwise they would not have any salutary effect.

It should be noted that it is illegal to use for trade, or have in possession for use for trade, any item or equipment which is either false or unjust. "False" in this context means that the equipment has been altered or adjusted in some way so as to make it incorrect outside the prescribed tolerances while "Unjust" simply means that the 'the equipment is incorrect outside the prescribed tolerances. In this case the prosecution would not have to prove that the trader knew that the equipment was incorrect. Its mere presence in the shop premises would be enough.

3.2.5 CONTROL OF MANUFACTURE, REPAIRS AND SALE

Manufacture, repairs and overhauls of weighing and measuring instruments is done by legally authorised and licensed persons who have sufficient knowledge of weighing and measuring instruments.

The repairers are required to submit repaired apparatus to an inspector of weights and measures before the same is put back to trade use. They are also required to

maintain a register of repaired apparatus and submit the same to an inspector. All test weights and standards used by repairers are required to be submitted to an inspector for purposes of examination and verification at least once a year. After the repair work is complete, a repairer's servicing certificate (part VII of thirteenth schedule) is required to be left with the owner of the equipment.

3.2.6 THE CONTROL ON PRE-PACKED GOODS AND LOOSE FORM GOODS

The control of goods both in the loose form and in the pre-packed form fall under the purview of the weights and measures Act. The control is rather indirect as it arises from other controls in the use of weighing and measuring instruments. This control ensures that during sale of any goods in loose form, the consumer gets the actual quantity contracted for and paid for. In the case of goods made up in advance ready for the purpose of sale, the goods are marked with the correct statement of the net quantity in such a manner that the statement is readily visible to the purchaser.

The control in connection with pre-packed goods is very important from the point of view of consumers' protection. The control is designed to curb such trade malpractices as:-

- (a) Insufficient information on the label about the contents of the package;
- (b) Deceptive packaging;
- (c) Misleading slogans to describe packaging size; and

(d) Proliferation of irrationality in pack size making price comparisons difficult and creating unfair trade competition; and

(e) Tendency to conceal price increases or maintain a customary price by making a small reduction in the package contents.

The Weights and Measures (Sale and Labelling of goods Rules) regulate the manner of pre-packaging of goods particularly common consumer goods for retail sale.

The rules require every package to bear therein or on a label certain information. The information pertaining to the net quantity together with the name of the manufacturer or the packer must be readily shown on the pre-package without any reference to an approximation. The information should readily be conspicuous, legible, prominent and unambiguous so as to be understood by any prospective purchaser. This information is necessary because it makes known to the purchaser the quantity he pays for in addition to the identification of the person responsible for the packing in case of any complaint pertaining to the goods.

The rules further require certain common consumer goods to be pre-packed in terms of standard quantities. The efficiency of the standardization is to assist the consumers to make price comparisons between competing products without difficulty. For example, most people would reach different conclusions if asked which is cheaper purchase, 245g of commodity for Ksh.6.90 or 525g of the same commodity for Ksh.14.50. On the other hand, comparing 250g for sh.7.05 with 500g for sh.13.80 obviously easier. Quantity standardization, other than assisting the consumers to make informed choices according to individual wishes and needs, also is in the interest of industry. It is one of the factors preventing any unfair competition in trade. In the absence of quantity rationalization there would be a possibility to pre-pack in odd quantities as a means of price cutting thereby encouraging unfair commercial advantage. For more information about standard quantities see Legal Notice no. 24 of 1999 Weights and measures (sale and Labelling of Goods Rules)

The rules outlaw exaggerated or misleading impressions as to the quantity of the goods contained therein. Examples of deceptive packages would be unfilled space in cardboard packages containing soap, detergents or processed foods and the use of jars and other containers with increasingly thick walls in packing cosmetics and creams.

Rules also prohibits the usage of such terms as "jumbo", "Giant", "Family size", "Economy", "Large", "Extra" "Colossal", "King" or Queen, "Minimum", "Not less than", "Average", "About" and "Approximately".

3.2.7 ADMINISTRATION AND ENFORCEMENT

The implementation of the various controls provided for in the Act entails the prescription of penalties for infringement and the establishment of a nation-wide infrastructure of enforcement. The machinery of enforcement is provided for under the Act by the establishment of a Directorate of Weights and Measures charged with the responsibility of over-seeing efficient and effective enforcement of the Act. The enforcement of this technical Act requires scientific and technical knowledge by the enforcement officer, the maintenance of elaborate equipment, the absorption of technical and trade information, constant supervision of traders of every description and over-sight of the apparatus used for trade and the goods sold.

To enable effective enforcement wide powers of entry, search, seizure and arrest have been bestowed upon the enforcement officers. The enforcement officers strive to serve all without fear or favour.

3.3 THE TRADE DESCRIPTIONS ACT(CAP. 505, LAWS OF KENYA)

3.3.1 INTRODUCTION

This Act became operative on 1st April,1979 and it is designed to stop the use of falsehood in trade and not, as some of us may think, to trap the unwary seller. It applies only to people in trade or business. If a private individual sells his own property he cannot be convicted of a criminal offence under this Act no matter how outrageous the statement. Indeed he may be guilty under civil law and may

be sued, but he cannot be held to have committed an offence under this Act. However, there are many private individuals who sell things from their homes and are actually running small businesses. Such people cannot evade their responsibility by claiming exemption from the Act.

Similarly, a shopkeeper selling his own private car from his home would be exempted in regard to that transaction. But if he was selling a van used in connection with his business he could be caught by it. The trade, relative to a particular transaction, does not have to be normal or usual trade of the accused person.

The inspectors of weights and measures were made public prosecutors for offences arising under the Trade descriptions Act Gazette Notice No. 1645 of 4th june, 1979.

Trade Descriptions Act is a unique piece of Legislation Primarily geared to promote honesty in trade transactions. This consumer protection legislation is most notable for:

1. Prohibiting false or misleading statements as to any of the following matters with respect to goods :
 - identity, quantity, size and gauge;
 - method of manufacture (or production, processing, or reconditioning);
 - composition;
 - fitness for purpose (or strength, performance, behavior or accuracy);
 - testing by any person or results thereof;
 - approval by any person or conformity with a type approved by any person;
 - place or date of manufacture (or production, processing or reconditioning);
 - person by whom manufactured (or produced, processed or reconditioned);
2. Prohibiting false or misleading indications as to price
3. Prohibiting false representation as to the supply of goods or services.
4. prohibiting the importation of goods bearing false indication of origin
5. prohibiting false or misleading statements as to services or accommodation

Let us now consider some of the salient points of the Act.

3.3.2 What is a false trade description according the Act?

A false trade description is an “untruth” about goods. It can be made in any way by word of mouth, by a notice, by a label, invoice, advertisement, and so on. It need not be deliberate.

The mere making of an untrue statement is an offence irrespective of intention. The untrue statement can refer to a wide range of matters relating to the goods. It could be about the way in which they are made e.g. “handmade”; it can be about the material of which they are made, e.g. “genuine leather” or “100% silk”; it can be about physical properties e.g. “rust-proof”; it can be about performance e.g. “guaranteed 16km/litre”; it can be about previous ownership e.g. “formerly the property of lord and lady so and so”, etc. The only safe rule is that anything which is said about goods which are supplied or are to be supplied can constitute an offence if untrue.

3.3.3 How Does the Act Protect the Consumer against Misdescription of goods?

The Act creates two basic criminal offences in relation to false trade descriptions. The first is that of “applying a false statement to goods”. The second is “supplying or offering to supply goods to which a false trade description is applied”. The term “supply” as used here can mean much more than “sale” for it would include letting, hiring, or other physical transfer of goods, which have been sold at some other time or by some other person. But what are goods? For the purpose of this Act the term goods means absolutely anything normally sold by a trader (or businessman). Such things as food, domestic supplies, furnishings, clothing, vehicles with accessories and parts, plants and seeds, books, newspapers and periodicals, etc.

As stated earlier, a “false trade description” can be applied to goods by word of mouth, label, notice or advertisement. Additionally, an offence can be committed by what is called an “implied false trade Description”. By this we mean for example the case where a customer asks for something specific and a shopkeeper supplies him with something else without telling the customer that it

is not what he asked for. If a customer asks for stainless steel knives and is supplied with nickel – plated ones without being told that they were not of stainless steel, the supplier would have committed an offence even though he uttered no words.

It should be noted at this juncture that if a trade description relating to a class of goods is false, then each of the goods in that class constitutes a separate offence. For example, if one of a number of similar Ladies handbags displayed in a shop is labeled as being of “genuine leather” when in fact the handbags are made of simulated leather produced from plastic, each handbag in the shop would be a separate offence.

3.3.4 What are "goods" and does every "false statement" constitute an offence?

For the purposes of the Act the term "goods" means absolutely anything normally sold by shopkeepers such things as food, domestic supplies, furnishings, clothing, vehicles and their accessories and parts, plants and seeds, books, newspapers and periodicals, etc. The only thing specifically excluded from the definition is "real property" i.e. permanent building.

In order to constitute an offence a false trade description must be false to a "material degree." False to a material degree is a matter for the court to decide in each case, but generally speaking it means that the false statement must be of some significance. For example, a statement like “washes whiter than white” in a detergent advertisement is not false to a material degree. However, every statement which is false to a material degree does constitute an offence.

For example. in the case of ladies' handbags labelled as being made of "genuine leather" when in fact they are made of simulated leather produced from plastic, each handbag would constitute a separate offence.

3.3.5 How does the Act protect the Consumer against misleading statements about services, accommodation and facilities?

As stated earlier, a false trade description can be applied to goods by word of mouth, label, notice, or advertisement. Additionally, an offence can be committed by what is called an "implied false trade description." By this we mean, for example, the case where a customer asks for something specific and a shopkeeper supplies him with something else without telling the customer that it is not what he asked for. If a customer asks for some stainless steel knives and is supplied with nickel-plated ones without being told that they were not of stainless steel, the supplier would have committed an offence even though he uttered no words.

Section 6 of the Act relates to the provision of services and accommodation. It makes it an offence for any person to make a statement which he knows to be false or to recklessly make a statement which is false. The word "recklessly" as used in the Act means "regardless of whether it is true or false." This section mostly applies to holiday industry and concerns also those traders who are offering repair services, maintenance, hiring or leasing etc. As in the case of goods, the statement about services must be "false to a material degree" for there to be an offence.

The sort of offences committed in relation to services are:- charging for parts on repair or service of watches, or domestic appliances such as radios , T.Vs, etc. which have not been fitted'. Statements about laundering or dry- cleaning in "24hrs" when it is impossible to do it in that time, and so on.

3.3.6 Protection against misleading prices and statements about the origin of goods?

As regards prices there are two basic principles involved. First, it is an offence to give a false indication that goods are being offered at a price which is less than a recommended price or a previous price offered by the seller, and secondly, the goods are being offered at a price less than that at which they are actually being offered.

The first type of offence refers to claimed discounts such as "1/=off" label, or to false claims of reduced price in sales such as "normal price sh. 75/= -our price sh. 50/= " when the goods were never sold at sh. 75/=. Where prices of goods are claimed to have been reduced it is assumed by the Act that the original price was charged by the shopkeeper concerned unless the contrary is stated and, unless a lesser period is stated, the goods must have been on sale in that shop for a continuous period of not less than 28 days during the preceding six months.

The second type of offence refers to the situation where goods are marked with a particular price and a higher one is charged on sale.

From the foregoing it is apparent that offences relating to misleading prices are the easiest to avoid, but the fondness of some companies and shopkeepers for "flash" offers and continuous "sale" signs keep ; getting them into all sorts of trouble which they could : avoid by straightforward pricing.

As regards the origin of goods it's an offence to make, statements indicating that goods originated from a particular place when they did not. For example, statements like "made in England", imported from Italy" etc. when the goods have been locally made is an offence. How can a trader or businessman avoid committing offences created by the Trade Descriptions Act? What follows below may supply the answer to that question.

3.3.7 How to avoid the offence of "applying a false description to goods"

The offence of applying a false trade description relates to the application of false trade descriptions to goods by the accused person, and it there- fore only applies to retailers who add something to a description already applicable to goods bought else- where, or to "own-branded" goods. The simple rule, therefore, in order to avoid trouble is to say nothing about the goods unless the accuracy of the statement is known. The most likely problems arise be- cause of the enthusiasm of the shopkeeper or his assistant to clinch a sale where some

unwise assurance about the suitability or properties of the goods is given. The most usual traders to fall foul of this offence are in respect of clothing, furnishing, and domestic appliances. Having made sure that all goods sold in the shop are properly described, it is important to give precise instructions to staff, preferably in writing, as to exactly what they can say when dealing with customers. Do not overlook the possibility of implied trade descriptions. An example is the customer who informs an assistant that he wants a food mixer for a particular purpose. The assistant says nothing and sells a mixer, but he has implied, by his silence, that the mixer will do what the customer wants.

3.3.8 How to avoid the offence of "Supplying goods to which a false trade description has been applied"

It is important to note here that it is an offence simply to supply something to which someone else has applied a false trade description. The general principle here is that "people in business are expected to know their business". This means that a shop-keeper is expected to be able to spot false descriptions which would be within the knowledge of a reasonably competent retailer in his trade. Take the case of a shop selling washing machines for example. If a machine was sold to a customer who had obtained a brochure from the shop in which it was falsely claimed that it would take a certain weight of clothes on each wash, the shopkeeper would be liable even though the false statement was made by the manufacturer. The only safe rule for the shopkeeper therefore, is to ensure that goods are checked before being sold.

If a consignment of goods arrive in the shop and there is anything on the label, invoice, advertisement material, or the product itself, which appears doubtful, contact the supplier at once and ask for assurance in writing that the goods do comply with all descriptions applied to them. When you get a written reply from the manufacturer you have established a defence for yourself in the event of trouble at a later date.

3.3.9 How to avoid the offence of "giving a false indication to the effect that the price at which the goods are offered is equal to or less than a recommended price or is less than the price at which the goods (or goods of the same description) were previously offered, or is less than such price by specified amount"

This kind of offence can best be explained with examples. Each of the following statements will constitute an offence if any part of the statement is untrue;-

(a) "Recommended price sh. 200/=, our price sh. 50/=, This statement would constitute an offence if in fact sh. 200/= was never recommended by the manufacturer.

(b) "Prices slashed -now only sh. 50/=". This would be an offence if in fact the price has always been sh, 50/= and there is therefore no reduction;

(c) "20% off on all goods." This would be an offence if the prices being previously charged in that shop.

(d) A statement like "Reduced from sh.2,500.00 to sh. 2,000.00" would constitute an offence if, despite the fact that the price has been actually reduced to sh. 2,000.00, the original price of sh.2,500.00 had not been in operation for a continuous period of not less than 28 days in the preceding six months.

It is plain from the above examples that the only way trader can safeguard himself from this offence is by merely telling the strict truth and taking great care to ensure that all claims of reduced price are actually correct. If it is desired to claim a reduction from price previously charged, make quite sure that the original price has been in operation for a continuous period of not less than 28 days in the preceding six months.

3.3.10 "How to avoid the offence of making a false statement or

recklessly making a statement which is false, about the provision of services"

The golden rule here, if one is to avoid committing this offence, is to be truthful about all services provided. In case of a repair service, if, after the repair has begun new faults previously unknown are discovered in the appliance and these are likely to increase the price charged above that quoted on estimate, contact the owner of the appliance and discuss it with him before proceeding with the repair. Where new parts are to be fitted and charged for, ensure that they are itemised on account and that the old parts are available for inspection by the customer. Do not make exaggerated claims about the effectiveness or longevity of a repair. Such statements as "as good as new" can lead into trouble.