

# Let them eat bread: Consumer protection in Kenya

25 May 2021

On May 24, 2021, the Competition Authority of Kenya (CAK or Authority) issued a notice to the manufacturers of bread on how to label the breads sold to consumers. The CAK claimed the producers were in contravention of Section 55 of the Competition Act 12 of 2012 (“Act”). Section 55(a)(i) of the Act states that *“a person commits an offence when, in trade in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, he— (a) falsely represents that— (i) goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use”*. This section found application in, *inter alia*, relation to the labelling of FMCG such as bread sold to consumers.

The CAK’s first concern was that the labels on the bread were illegible, thereby denying the consumer sufficient information. Second, the producers were directed to adjust the information on the wrappers from **“Best before”** to **“Sell by”** to indicate the date of expiration. This adjustment will make this information clearer to the consumers, according to the Authority. Sources close to the investigation stated that bread manufacturers had taken liberties with proper labeling previously and had been ‘mischievous’ with labels, as they initially placed the expiration date on the disposable part of the wrapper, thereby depriving consumers of reliable information after opening the packaging. Thereafter, upon being directed by the regulator that the information should be on the actual bread wrapper, the manufacturers purportedly caused the printing of the information to be illegible.



**Ruth Mosoti**  
In-Country Partner  
Kenya

[r.mosoti@primerio.international](mailto:r.mosoti@primerio.international)



**Fidel Mwaki**  
In-Country Partner  
Kenya

[f.mwaki@primerio.international](mailto:f.mwaki@primerio.international)

## Contact details

### Johannesburg, South Africa

John Oxenham, Michael-James Currie  
[j.oxenham@primerio.international](mailto:j.oxenham@primerio.international)  
[m.currie@primerio.international](mailto:m.currie@primerio.international)  
135 Daisy Street Sandton, Johannesburg, 2031

### Nairobi, Kenya

Ruth Mosoti, Fidel Mwaki  
[r.mosoti@primerio.international](mailto:r.mosoti@primerio.international)  
[f.mwaki@primerio.international](mailto:f.mwaki@primerio.international)  
Kalsion Towers, 2nd Floor, The Crescent,  
Off Parklands Road, Nairobi

### Port Louis, Mauritius

Gilbert Noël  
[g.noel@primerio.international](mailto:g.noel@primerio.international)  
Suite 401, St James Court, St Denis Street, Port Louis

Email: [info@primerio.international](mailto:info@primerio.international)  
Tel: +27 (0) 11 083 2411



Regarding the issue of weight and ingredients, the bread manufacturers now have an obligation to indicate the correct weight as well as the ingredients of their breads. It was found that some breads alleged to have milk or butter while in reality they did not. Such conduct by manufactures amount to false information. This is itself a breach of the law under both the Competition Act and the Standards Act.

The CAK has the **overarching consumer protection mandate**, as provided under the Constitution and the *Competition Act* of Kenya. While carrying out this consumer protection mandate, the Authority must consult with the Kenya Bureau of Standards in all matters involving definition and specification of goods and the grading of goods by quality. Indeed in 2016, the Authority entered into a memorandum of understanding (MOU) to enhance cooperation with Kenya Bureau of Standards. Section 60 (1) of the Competition Act also makes it an offence for any person to supply goods which do not meet the consumer information standards prescribed by law.

**Ruth Mosoti**, a competition and consumer protection attorney with [Primerio Ltd.](#) in Nairobi, notes that the Authority's chief "**essentially informed the producers that compliance with the law was not a pick-and-choose buffet style option.** In this instance, the consumer information standard is defined under the Standards Act and that is why the bread manufacturers have been directed to comply as Authority head Mr. Wang'ombe Kariuki correctly put it." Kariuki stated: "**manufacturers have no latitude to elect which laws to adhere to**". The specific standards in question refer to labeling.

The Authority has taken a soft enforcement approach with a focus on compliance rather than imposing the maximum penalty as prescribed by law. Contraventions of the consumer protection provisions attract a penalty of a maximum of ten million Shillings (\$100,000) or imprisonment for a term not exceeding five years. One can only assume that the assertion by the Authority that no actual harm to consumers had been recorded yet as a result of the contraventions by the bread manufacturers must have influenced this soft-enforcement approach.

## About Primerio

Our team operates on a global scale, ensuring full compliance with African, European, and U.S./North-American Laws. Our business advisory practice has over 60 years of combined legal and commercial expertise. It includes regulatory compliance, litigation and arbitration, M&A, cartel counselling, antitrust / competition law, anti-money-laundering, anti-corruption / FCPA and fraud investigations.

[Visit our website](#)

[Subscribe to our newsletter](#)

Copyright © 2014-2021 Primerio: Pr1merioTM and PrimerioTM are common-law trademarks of Primerio Ltd. and Primerio Entre Iguais, Ltd. (together, "Primerio"). Prior results do not guarantee a similar outcome. Use of this web site does not establish any attorney-client or other commercial relationship. Information provided on this web site (or on any sites linked to by this site) is given without any warranties of any kind, either express or implied. Any linked sites that are not hosted on primerio.international are not under the control of Primerio and the firm is not responsible for their content. Although this web site may provide information concerning potential legal issues, it is not a substitute for legal advice from qualified counsel. You should not and are not authorized to rely on the website as a source of legal advice. Unless you have an attorney-client relationship with any member of the firm, we are not obliged to keep confidential information you may send us.