



**SUMMARY REPORT
THIRD PARTY COMPLAINT
ETHICAL FASHION AFRICA LTD
(KENYA)**

On June 30, 2015, the Fair Labor Association (FLA) accepted for review a Third Party Complaint filed by a worker alleging violations of the FLA Workplace Code of Conduct regarding compensation and hours of work by FLA-affiliated company Ethical Fashion Africa Ltd (hereinafter EFAL) in Kenya. The allegations related to a time period when EFAL was in the process of restructuring due to moving locations.¹ The allegations raised in the Third Party Complaint appeared to violate a number of FLA compliance benchmarks in the areas of Compensation and Hours of Work.²

The FLA accepted the case for review, informing EFAL of the action, and moving the case to Step 2. Pursuant to Step 2, the Participating Company or College or University Licensee has up to 45 days to investigate the alleged noncompliance internally and inform the FLA or waive this assessment and move the case to Step 3. Pursuant to Step 3, the FLA designates an independent expert or monitor to conduct the assessment. EFAL agreed to waive the internal assessment and to move the case directly to Step 3.

Assessment by Third Party Expert

The FLA selected independent expert Leonard Nawiri, based in Nairobi, Kenya, to conduct an assessment of the allegations and prepare a report and relevant recommendations.³ The expert conducted field work from December 8 to 11, 2015, in Nairobi and its environs. In its assessment, the independent expert received cooperation from local staff of the International Trade Centre (ITC) in Geneva, whose Poor Communities Trade Programme (PCTP) engaged with EFAL while it existed and continues to be active in working with artisans and micro-entrepreneurs in fashion industries in creating productive employment and promoting exports.

Investigation Methodology: The investigation methodology involved interviews with former employees of EFAL, with EFAL consultants for HR (particularly the consultant who was responsible for developing and executing the restructuring of EFAL), with two ITC staff -- including one who assisted with labor standards monitoring with particular emphasis on the work carried out by the artisan communities and their involvement in the value chain – and with artisan groups from which EFAL sourced products. The expert interviewed a total of eight individuals (all former employees of EFAL) and four community groups.

¹ The FLA conducted independent external monitoring (IEM) at EFAL in December 2013, at which time compliance with the full FLA Benchmark Code of Conduct was assessed, all the report and the regulations and procedures concerning the payment of compensation (wages and benefits) to workers and C.4, timely payment of wages; Hours of Work Benchmark HOW.1, general compliance with all national laws, regulations and procedures regarding hours of work, public holidays and leave; and HOW.2, rest day.

³The full report of the expert is available at <http://www.fairlabor.org/report/ethical-fashion-africa-ltd-kenya>.

The expert also reviewed official company documents, employees' personnel files, correspondence with government agencies, time and wage records, and community groups' delivery notes and payment records for the period 2013 to 2015, on a sampling basis. Finally, the expert also met with the complainant, who was in Nairobi at the time of the field visit, and obtained additional information related to the allegations.

Findings: The main findings of the expert's report, arranged according to the Terms of Reference of the engagement developed by the FLA, are as follows:

1. Compliance of restructuring/closure of EFAL with Kenyan law.

Based on documents review and interviews with a sample of workers and the HR consultant, the expert concluded that EFAL followed the proper procedures for restructuring/closure, including notice and meetings with employees, formal communication and notice, formal communication with the Nairobi County Labor Office, and issuance of termination notices. EFAL also made all required severance payments to eligible employees. The expert noted that no adverse incidents or litigation have emanated from the restructuring/closure (other than the Third Party Complaint).

2. Dismissal of workers and payment of their final dues.

The expert concluded that all outstanding payments to employees were paid, including transportation allowances for the period worked, service pay those workers who had worked for a full year, and accrued overtime pay. This was confirmed through the examination of payroll summaries and bank remittance records reviewed by the expert. All statutory payments on behalf of workers to the National Hospital Insurance Fund and the National Security Fund were made and documented. Upon formal completion of procedures, permanent and fixed term employees were issued certificates of service consistent with provisions of the Employment Act of 2007.

3. Payment to community groups for services rendered.

Based on an indepth investigation of relations with 4 of 20 community groups affiliated with EFAL chosen at random, the expert concluded that EFAL had settled all accounts with these groups for services rendered, primarily stitching activities conducted in the homes of community members or the community centers located in the vicinity of workers' residence. The expert reviewed signed affidavits and confirmed their authenticity with group leaders. The expert did not identify any instances of non-payment by EFAL to community groups.

4. Treatment of EFAL workers with respect to leave.

The expert concluded that EFAL treated employees in a manner consistent with Kenyan law with respect to leave. About 90 percent of EFAL workers were categorized by law as "casual" employees and therefore did not have the legal right to earn paid leave; with respect to the 10 percent who were on fixed term and permanent contracts did earn leave

and were compensated for such leave upon the termination of their contracts.

5. Treatment of EFAL workers with respect to one day off per week.

The expert found through the examination of payroll data that for the period 2013-2015, the vast majority of EFAL workers (90 percent) enjoyed one day off per week. Similarly, the expert found that in some instances (10 percent of the workers), production demands required work on a rest day. In these instances, managers had to request the extraordinary work, and workers individually had to consent to working the overtime. The overtime was paid at the appropriate premium rate.

FLA Assessment and Next Steps

The report by the expert did not corroborate the allegations made by the complainant. Thus, the FLA considers that this case is closed and no remediation is required. The FLA recommends to the ITC, as it develops entities in Kenya and elsewhere to create income-generating activities for artisans and micro-entrepreneurs in fashion industries, to be mindful of the importance of continuing to maintain high labor standards.