

**Ethical Fashion Africa Limited**  
**Restructuring and Closure Investigation**

**Report**

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**Submitted by:**

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**Submitted to:**

Fair Labor Association

Located in the Godown Art Centre, Nairobi Industrial Area (HUB), Ethical Fashion Africa Limited (EFAL), was a manufacturing enterprise with a social mission. It was a non-dividend distribution company that provided a business infrastructure where micro producers conducted manufacturing work for international markets. EFAL produced fashion accessories (bags, belts, purses), jewellery and footwear for both local and international markets. The aim of this enterprise was to have sustainable profits in order to continue operations. EFAL was responsible for the organization of production in community groups, administration, financial management, quality control, packing, shipping, and other business and trade operations. EFAL worked closely with a marketing organisation called International Trade Centre (ITC). The role of the ITC was to facilitate market access and to guide and mentor social enterprises to achieve market in the international value chains. The main work of the ITC was “EXPORT FOR GOOD” in the countries that various projects were run.

This independent investigation was performed by Leonard Nawiri at the request of the Fair Labor Association (FLA) and relates to the treatment of workers and suppliers with respect to the restructuring and closure of Ethical Fashion Africa Ltd. (EFAL), in Nairobi, Kenya. The investigation was carried out for three days (field work) and one day (report writing) from 8<sup>th</sup> December to 11<sup>th</sup> December 2015. The investigation methodology involved interviews with former employees of EFAL, interviews with EFAL consultants for HR and two ITC staff. One of the two ITC interviewees was a consultant responsible for conducting impact assessments but also assisted with monitoring with particular emphasis on the communities and the work they received and how they were involved in the value chain; monitoring for fair labour conditions, keeping on track with all the work flows to the communities as per information supplied by the social enterprise. The other ITC interviewee’s role was to guide and mentor the organisation and assist in capacity building of the business, especially on the methodologies and structure to include marginalised communities in the value chain to ensure the inclusive model and the issues of export [quality, export processes, etc] to international markets. Beside the EFAL consultant and two ITC staff, four artisan groups that EFAL was sourcing products from were also visited and interviewed. Other than the interviews with the respondents mentioned above, the independent investigator reviewed official company documents, and employees’ personal files, ministry of labour letters, time and wage records as well as community groups’ delivery notes and payment records for the period 2013 to 2015 on a sampling basis. Documents for the previous years were missing, although the consultant and

her team were able to put together the monthly salary transfer and statutory payment documents from the other finance records. The information given was that the former General Manager was responsible for payroll preparation and record keeping. The said GM had resigned abruptly on 30th June 2014, without giving any notice or handing over her charge

This report provides a summary of the independent investigation on the restructuring and eventual closure of EFAL. A detailed assessment of each objective as outlined in the Terms of Reference (TOR) is provided under section 3 of the report. A total of 8 individuals (all former employees of EFAL) and 4 community groups were involved in the investigation.

The TOR for this assignment provided the scope of the investigation as:

1. To review documentation regarding the closure/restructuring of EFAL and confirm that the process followed Kenyan law.
2. To investigate the dismissal of EFAL workers in August 2014. Confirm that workers were paid “final dues,” that includes accrued leave, overtime and service for the years worked.
3. To confirm that EFAL paid amounts due to community groups for services rendered. The services rendered were stitching activities conducted in their homes, among others.
4. To investigate whether EFAL workers were treated in accordance with Kenyan law with respect to leave; in particular, investigate whether workers were getting the requisite amount of leave during their tenure and whether they were compensated for such leave when they left the company.
5. To investigate whether EFAL workers were treated in accordance with Kenyan law with respect to enjoying one day off each week.

The investigator was engaged to investigate issues regarding the treatment of workers and suppliers related to the restructuring and closure of EFAL, in particular those specified in the TOR section of the report above. The investigation was done independently with impartiality and in a fair and equitable manner ensuring inclusion and participation of key stakeholders relevant to the investigation.

The investigator conducted the investigation from December 8<sup>th</sup> to December 11<sup>th</sup>, 2015 devoting three working days to field work and one day to report writing. The investigation relied heavily on documentation regarding the restructuring and closure of the EFAL facility that was located at the Godown Art Centre Nairobi Industrial Area, primarily obtained from a HR consultant who had extensive records on the policies and procedures regarding the restructuring as well as rosters of employees, tenure in the enterprise (2013 to 2015), payments made, among others. The period prior to 2013 could not be investigated because according to the HR consultant and the communication between EFAL and the complainant made available to the investigator, “these documents were not handed over by the former General Manager” of the enterprise. The investigator spot checked the information provided by the HR consultant by contacting and holding confidential interviews with a sample of workers and community groups to confirm the accuracy of the documentation provided through physical review of hard and soft copy documents. The investigator interviewed the complainant and obtained information from the complainant alleging mistreatment of workers and suppliers. The investigator followed up mistreatment allegations with three individuals brought up by the complainant and an additional five others referred by the three individuals the complainant had brought up to verify and corroborate their cases. The investigator cross-checked the individuals’ feedback with the information that was provided by the HR consultant.

The investigator spot checked affidavits of payments received and any outstanding balances at 4 out of 20 community groups that did work for EFAL. These affidavits had been made available by EFAL management and therefore their accuracy and completeness needed to be confirmed. The four groups were picked randomly from the list provided by FLA.

The investigator has used the data collected from the various sources highlighted above to compile this narrative report in English which will form the basis for further consideration by the assigning organisation, FLA.

#### 4.1 Process of closure/restructuring of EFAL and the Kenyan law

Based on the documents reviewed and interviews with sampled workers and HR consultant, the investigator notes that the proper procedure for company closure was followed, with the following steps being taken:-

- a. Employees were briefed in staff meetings in the office on the intended change of management, the change to a new entity and the eventual closure of their contracts of employment with the company as from 30<sup>th</sup> August 2014, which was later moved to 30<sup>th</sup> April 2015. Subsequent meetings were held with staff on a weekly basis to update them on the progress towards the changeover. Memos to this effect were posted on the company notice board and copies maintained on file.
- b. Formal letters were issued to all employees giving them one month notice pending the closure of the company, by which time their contracts would have ceased. All employees signed an acknowledgement of the notice given and the signed copies were filed in their respective personal files.
- c. The Ministry of Labour, through the Nairobi County Labour Office, was formally advised by way of a letter dated March 4<sup>th</sup> 2015 and stamped received on March 9<sup>th</sup> 2015, one month in advance of the impending closure of the company. This is in accordance with section 40: 1 (a) of the Employment Act, 2007 which provides that; "An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions - (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy and - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer."
- d. All EFAL correspondences in this regard were reviewed for compliance with Kenyan law by the company advocates, Coulson Harney Advocates.
- e. Termination notices issued to the workers verified during this investigation comprised exit payment packages with the following elements:

1. Salary up to and including 30<sup>th</sup> August 2014 or 30<sup>th</sup> April 2015 depending on when the worker was exiting;
2. Any unutilized leave days for the period served were encashed and paid to the employees that had balances;
3. Any outstanding overtime was paid, at the rate of 1.5 or 2.0 times the hourly rate, depending on when such overtime work was done;
4. Severance pay equivalent to 15 days pay was paid to the employees on fixed contracts (January to April 2015) at a prorated scale. This was a good will consideration by the company as none of the employees had completed a year of continuous service as required by the local law. This was explained to the employees and they signed in acknowledgement for receipt of the same. Letters signed to this effect are available in the employees' personal files and were available to the investigator for review.
5. All the payments due to the employees were paid on the 28<sup>th</sup> of August 2014 and 30<sup>th</sup> April 2015 and transferred to the employee's respective bank accounts.

The investigation noted that lapsed employment contracts were regularized to end of August 2014, when all the contracts for both the fixed and casual employees were allowed to lapse. Employees were prepared for the eventual closure of the Company by 18<sup>th</sup> August 2014 through regular update meetings and internal memos, copies of which were made available to the investigator and contents confirmed through interviews with the former employees. In this regard therefore, it can be concluded that the closure process of EFAL was done in a manner consistent with the Kenyan law. No adverse incidents including litigations have been received so far other than the allegations emanating from the complainant.

#### **4.2 Dismissal of EFAL workers and payment of their "final dues,"**

Section 35 (1) of the Employment Act, 2007 provides that "contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be—(a) where the contract is to pay wages daily, a contract terminable by either party at the close of any day without notice; (b) where the contract is to pay wages periodically at intervals of less than one month, a contract terminable by either party at the end of the period next following the giving of notice in

writing; or (c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing”.

In respect to these provisions of the law, EFAL had these three types of employment conditions and payment terms in its employment practice and did provide the required notice verbally and in writing to the concerned employees who were paid daily, weekly or every fortnight and those paid monthly as required by the law. Minutes of meetings where oral submissions were made as well as memos and copies of termination letters were made available to the investigator for review and the issuance of notices was corroborated by former employee’s testimony.

Subsection (3) of the same section of the Employment Act, 2007, provides that: “if an employee who receives notice of termination is not able to understand the notice, the employer shall ensure that the notice is explained orally to the employee in a language the employee understands”. Based on interview results and review of former employee’s personal files, largely, EFAL workforce had attained basic primary and secondary level of education and therefore understood both Swahili and English which were the languages of communication in the facility. Despite this, management held a total of 16 meetings on different dates during the restructuring period to explain to the workers the restructuring process and impending closure of the facility as required by the law. Evidence of oral meeting minutes were generated and maintained on file. Sampled employee testimonies did confirm that indeed these meetings took place and workers had an opportunity to ask questions and seek further clarifications.

Sub-section (5) of the same section of the Employment Act, 2007, provides that: “an employee whose contract of service has been terminated under subsection (1) (c) shall be entitled to service pay for every year worked, the terms of which shall be fixed”. Due to the casual nature of employment at EFAL for 90% of the workers (on casual and fixed term weekly/monthly contracts) a number of these workers did not work for a full calendar year of 12 months to be entitled to service pay. Whereas the majority of the workers at EFAL had been in employment since 2010, documents reviewed for the period 2013 to 2015 and worker testimony revealed that the majority of these employees had worked an average of 10 to 20 days in a month, 8 months in a year, thereby not attaining the threshold of 12 full continuous months in employment for a worker to be entitled to service pay. The investigation further notes that the

workers were not aware of this legal provision on service pay thus the presumption of automatic entitlement to service pay upon the closure of the facility.

Sub section (4) of the same section of the Employment Act, 2007, provides that: “Nothing in this section affects the right-(a) of an employee whose services have been terminated to dispute the lawfulness or fairness of the termination in accordance with the provisions of section 46; or of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law”. In respect to these provisions, it would appear from the investigation that all the workers interviewed (other than the complainant and another employee, who were both in senior management positions and were involved in some disciplinary issues with the company at the time of their disengagement with EFAL) did express they had cleared with the company and had no dispute arising from the termination of their employment with the company.

All outstanding payments to employees were paid, which included transport allowance for the period worked, service pay for those who had worked for a full year, and accrued overtime pay. This was evidenced in the December, 2013 for employment period 2013; January to August 2014, September to December 2014 and January to March 2015 pay roll summaries and bank remittance records reviewed by the investigator. Contributions made earlier to the investment club in 2014 were also refunded to the concerned employees. Other outstanding payments that were paid, including any outstanding salaries for the periods mentioned above, training allowance and unpaid leaves, and piece rate works. All statutory payments emanating from deductions on employees’ salaries were remitted to the statutory bodies as evidenced by the payment remittance slips to the National Hospital Insurance Fund and National Social Security Fund. All payments were done by bank transfer to individual bank accounts on various dates in 2013, 2014 and 2015. All employees confirmed receipt of their funds in the respective bank accounts. All employees did a complete handover of their roles and charge before exiting the company. Upon handing over and clearance by EFAL, all permanent and fixed term contract employees were issued with certificates of service upon termination of their employment with EFAL as required by section 51(1) of the Employment Act, 2007.

#### **4.3 Payment of amounts due to community groups for services rendered**

4 out of 20 community groups affiliated to EFAL across Kenya were sampled at random and

included in the investigation. The rationale of their participation was to confirm if EFAL paid amounts due to the groups for services rendered. The services rendered were stitching activities conducted in their homes, among others. The investigator conducted focused group and individual interviews with group leaders and spot checked affidavits of payments received and any outstanding balances at 4 out of 20 community groups. These affidavits had been made available by EFAL management and therefore their accuracy and completeness needed to be confirmed.

The investigation found that all payments due to the groups (based on the sample) were fully honoured by EFAL. Affidavits signed (copies of which were made available to the investigator) were found to be authentic with group leaders having kept a copy of the signed affidavit. The said affidavits were signed willingly by the group leaders without any undue pressure from EFAL. No non-payment amount payable to the groups for services rendered was found.

#### **4.4 Treatment of EFAL workers with respect to leave**

In accordance with section 28 (1) of the Employment Act, 2007: "An employee shall be entitled- (a) after every twelve consecutive months of service with his employer to not less than twenty-one working days of leave with full pay; and (b) where employment is terminated after the completion of two or more consecutive months of service during any twelve months' leave-earning period, to not less than one and three-quarter days of leave with full pay, in respect of each completed month of service in that period, to be taken consecutively".

Due to the casual nature of the employment relationship between EFAL and 90% of the workers (casuals), this category of employees could not legally earn leave during their tenure at EFAL. According to the attendance rolls reviewed, January to December 2013 and May to August 2014, the employees worked an average 2 to 3 weeks in a month, thereby not fulfilling the legal requirement for a worker to earn prorated leave. However the remaining 10% of employees on fixed term and permanent contracts were allowed to proceed on leave from 15<sup>th</sup>& 18<sup>th</sup> to 31<sup>st</sup> August 2014 to utilize any outstanding leave in the year for the year 2014 while compensation for leave days accruing in the year 2013 was cleared through leave encashment pay for the workers concerned at the beginning of 2014.

#### **4.5 Treatment of EFAL workers with respect to enjoying one day off each week**

Attendance logs, payroll registers and workers testimony for the period (2013 to 2015) revealed that majority (90%) of the workers enjoyed one day off each week. However, there were isolated incidences of working on a rest day in order to meet production demands; 10% of the workers would come in to work on their rest day but only after their consent to come for such overtime was sought and agreed to. According to the overtime requisition forms reviewed, sampled workers and HR consultant testimony, all rest day work and any regular overtime hours requested by the departmental heads had to be authorized by management. The authorization document clearly indicated the name of the worker (s), section, work to be done and the anticipated number of hours to be worked. The concerned workers counter signed against the hours worked to authenticate them. All the summaries of approved overtime hours were then used as a primary data to generate compensation for the workers concerned. As stated in 4.2 above, all overtime hours worked in a given month were compensated at premium rates in subsequent payrolls and pay out to the workers through the payroll bank transfers.

Based on the aforementioned terms of reference, this investigation concludes that the closure of EFAL and the preceding process adhered to Kenyan labour laws. This is underpinned by the relevant reviewed documents and interviews carried out by the investigator over a three-day period.

All of the services rendered to the company by its former employees and the community groups were duly paid at the prescribed rates.

The exit payment package was paid out as well in a manner consistent with national law. With regards to leave and off days, the report found that the legal requirements were followed as stipulated. For instance, the department heads sought permission from the management and employees' consent for overtime as required.

This report thus affirms the findings of the investigation that the restructuring and subsequent closure of EFAL was undertaken properly by following the stipulated legal regulations as consequently no treatment of workers and suppliers was noted as alleged.

