

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**COMM CASE NO. 501 OF 2017**

**BETWEEN**

**BATA BRANDS SA.....1<sup>ST</sup> PLAINTIFF**  
**BATA SHOE COMPANY(KENYA) LIMITED.....2<sup>ND</sup> PLAINTIFF**  
**AND**  
**UMOJA RUBBER PRODUCTS LIMITED.....DEFENDANT**

**JUDGMENT**

**Introduction and Background**

1. By a Plaint dated 20<sup>th</sup> December 2017, the Plaintiffs("Bata") filed a suit against the Defendant("Umoja") in which Bata states that they are and have been the designer and owner of school shoes manufactured, sold, and advertised under the trademark "Toughees" for the last 15 years. According to Bata, the said shoe is characterized by a special, distinct, and unique shape, design, configuration, pattern, features and appearance. Bata allege that in January 2017, they became aware of the fact that Umoja was manufacturing, distributing, selling school shoes branded "Shupavu" which embody a design identical or substantially confusingly similar to that of Bata. That Umoja had reproduced and copied the alleged distinctive design shape, and that it was passing off its shoe as that of Bata. Bata