



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Cause 1449 of 2011

KENYA NATIONAL PRIVATE SECURITY WORKERS' UNION.....CLAIMANT

VERSUS

KENYA KAZI SECURITY SERVICES LIMITED.....RESPONDENT

Rika J

CC. Elizabeth Anyango

M/S Onyancha instructed by D.B. Wati and Company Advocates for the Claimant;

Mr. Abisai Ambenge instructed by the Federation of Kenya Employers for the Respondent.

ISSUE IN DISPUTE: COLLECTIVE BARGAINING AGREEMENT

SECOND AWARD

1. This is the Second Award to be delivered by this Court, between the two parties, relating to the subject of an unconcluded Collective Bargaining Agreement. The First Award was delivered by this Court on 6th December 2011. It was ordered *inter alia* that-

§ The parties to immediately enter into collective negotiations and collective bargaining with respect to the unionisable employees working at the US Embassy in Nairobi; and

§ The process to be concluded within 60 days of the delivery of this Award by registration at the Industrial Court of a CBA.

2. Owing to lack of good faith collective bargaining, the parties have not been able to comply with these orders, up to today, well over one year later. The Recognition Agreement was concluded in 2007, but not a single CBA has materialized. The parties voluntarily negotiated at the Federation of Kenya Employers Office, in a process chaired by Mr. Ambenge. They agreed on non-monetary collective bargaining subjects, but failed to agree on the monetary ones. They asked for the neutral intervention of the Nairobi Provincial Labour Officer. They were not able to agree on the outstanding issues, and have come back to the Industrial Court for its decision.

3. The Court will begin by adopting the agreed non-monetary issues as the Award of the Court. The monetary subjects, as certified by the parties in their memorandum of disagreement are identified to

comprise-

- a. Hours of work.
- b. Leave traveling allowance.
- c. Night shift allowance.
- d. Health and welfare.
- e. Change of hands.
- f. Acting appointment.
- g. Long service pay.
- h. House allowance.
- i. Holiday bonus.
- j. Meal allowance.
- k. Transport / commuter allowance.
- l. Shop Steward annuity.
- m. Training allowance.
- n. Hardship allowance.
- o. Death of an employee.
- p. Renewal of driving license.
- q. Cleaning allowance.
- r. Guard monitoring system.
- s. Risk allowance.
- t. General wage increase.
- u. Basic minimum wages.
- v. Effective date of the CBA implementation.

4. The Court will restate the offer and counter offer of each party on every item, and at the tail end in each case, give its specific Award and reason or reasons for that Award. In doing this, it has been considered as in the first Award, that the Respondent has a 5 year periodic contract with the US Embassy Nairobi for provision of security services; the parties have a longstanding Recognition Agreement, but not a single Collective Bargaining Agreement; that the delay in concluding the CBA in all these years and particularly as ordered by the Court, has economic consequences for both the employer and the employee; and that the effective date of the CBA should be weighed carefully against the interests of the employer and the employees.

5. **[a]. Hours of Work.** The Claimant appreciates that under Section 27 of the Employment Act 2007, the

employer has an obligation to regulate the working hours of each employee, in accordance with the provisions of the Act. An employee is entitled to at least one rest day in every period of seven days. The guards work for twelve hours. The Union argues that the normal working hours are forty, spread over five days. The four extra hours are not accounted for as overtime. They work on holidays and are not compensated. They used to have Kshs. 6,000 per month as fixed overtime pay in 2003. Their current pay slips are based on eight hours per day. **The Union proposes they work a normal eight hours a day, to sustain alertness while on duty.**

The Respondent counters that the guards currently work for twelve hours over five days in a week. They are granted two rest days every week. The additional hours are compensated as overtime. The General Order LN/No. 120/82 provides for sixty hours of work, spread over six days a week for night guards. The trend now is to increase the hours of work. **The Respondent proposes to have the guards work fifty two hours, spread over five days, as contained in the Protective Security Order LN/ No. 78/98.**

The Court has considered that it is the responsibility of the employer to fix hours of work, under Section 27 of the Employment Act 2007. This must be done in accordance with the relevant Wage Orders referred to by the Respondent in the preceding paragraph. The employees must be accorded at least one rest day in every period of seven days. The Court does not have to look beyond the Regulation of Wages [Protective Security Services] Order, 1998. Regulation 6 states, **'the normal working week of all employees, including day and night guards shall be fifty two hours of work spread over six days a week'** Regulation 7 provides for overtime pay for any time worked in excess of the fifty two hours specified under Regulation 6. The rate of overtime compensation is detailed under Regulation 7. This covers time worked on a rest day. Compensation for work done during holidays is covered under Regulation 9. The guards work over a period of five days. They have two days rest. Spreading the fifty two hours over a period of five days would result in ten-and-a-half hours of work each day. Spread over six days, the average comes to eight-and-a-half hours a day. **The Court orders that the guards work for a maximum of eight-and-a-half hours a day, spread over five days. Any work done beyond this limit shall be treated as overtime, and compensated in accordance with Regulations 6,7,8 and 9.**

5. **[b]. Leave Traveling Allowance.** The Claimant argues that the Respondent has a fixed leave traveling allowance of Kshs. 1,200. The amount is only paid when the guard takes leave. The Respondent does not consider where the guard comes from and the variance in traveling costs. The former employer at the Embassy used to vary this allowance according to the distance to be traveled by the respective guard, subject to a minimum of Kshs.5,000. The Claimant demands Kshs. 6,000 as leave traveling allowance across the board.

The Respondent holds that leave traveling allowance is not meant to pay fares for the guards, but only meant to assist them travel while on leave. The guards do not in any event, have to travel to their rural homes for leave. The Respondent currently pays Kshs. 1,250 in leave allowance, and for the sake of good working relations, proposes to raise this to Kshs. 1,450.

The Regulation of Wages [Protective Security Services] Order 1998 provides for Kshs. 850 in leave traveling allowance. This rate was fixed some years ago. It cannot be sufficient to cover the travel needs of the guards today. The Respondent has offered Kshs. 1,450 from Kshs. 1,250. Leave traveling allowance is remuneration provided by the employer to the employee, to compensate the employee for travel expenses incurred while on leave. In some jurisdictions, this is treated as a reimbursable item, paid to the employee by the employer on return from leave, upon the production of travel receipts. It also, sometimes, covers the employee and his family. In Kenya the position is not well articulated in law. It is not clear if leave travel allowance should include the employee's family, or even whether it should include foreign travel. It is not correct to say as submitted by Mr. Ambenge however, that leave traveling allowance does not include an employee's fare to his village. It includes that, and many other expenses the employee may incur, sometimes together with his/her family, while taking the break from work. Employers and employees in Kenya have the latitude to set a reasonable leave traveling allowance in their contracts of employment. The Court has considered the minimum set in the 1998 Order, the offer by the Respondent, and the spiraled cost of travel in Kenya, as well as the need for employees to be facilitated to link up with their families, as advocated in the decent work agenda. **The employees are granted leave**

traveling allowance of Kshs. 3,000, payable when such an employee proceeds on leave.

5. [c] **Night Shift Allowance.** The Claimant has proposed a grant of Kshs. 250 per night for every guard serving at night. It is submitted that this period carries additional work related risks for the guard. It is normally cold, and the night guard is prone to falling sick due to inhospitable weather. If found sleeping by the supervisor, the guard is summarily dismissed. The Claimant argues that the US Intelligence had apportioned Kshs. 50, and a meal, for every guard on night shift, thirteen years ago. The Claimant prays for Kshs. 250 per night for every guard doing duty at night.

The Respondent does not know of Kshs. 50 night shift allowance that was offered by other parties under other contracts. It has a specific contract of five years to carry out. It does not know about any offers made by the US Intelligence. The nature of security service is to work at night. No evidence was provided to show any guard had fallen sick for working the night shift.

Night duty allowance is normally paid as a percentage, additional to the hourly plain rate. It is applicable to employees who work between 8.00 p.m. and 6.00 a.m. It cannot be denied a night guard, on the ground that the nature of security work is to work at night. The US Embassy needs security guards round the clock. Night shift guards need some cushion against the risks associated with the night. They need some distinctive motivation to remain awake. The Respondent has offered Kshs. 50 against a demand of Kshs. 250. **The Court grants Kshs. 120 per guard, per night, in night shift allowance.**

5. [d]. **Health and Welfare.** The Claimant seeks provision of medical cover by the Respondent to the guards, their spouses, and children below the age of 18 years. The Respondent's position is that it covers the guards for both inpatient and outpatient treatment. The employees contribute to the National Hospital Insurance Fund, which covers spouses and children. Section 34 of the Employment Act only obliges the employer to meet the medical costs of the employee, not those of his spouse and children.

The Court is persuaded by the argument of the Respondent. Section 34 creates limited obligation on the employer to meet the employee's medical bills. Regulation 25 of the 1998 Order states that, ' **all employees shall be provided with free medical attention when they fall sick while in service, as specified in the Employment Act.**' The Court does not have any justification to go outside these provisions of the law. The employees are advised to take full advantage of the restructured social medical insurance facility that is being implemented by the N.H.I.F, with the benefit of the enhanced monthly employee contributions. **Parties shall retain the status quo, with regard to health and welfare.**

5. [e]. **Change of Hands.** The Claimant explains this to involve the restraining of the Respondent, from deploying other guards other than the ones currently deployed at the US Embassy. They allege that the current guards are specially trained in weapons of mass destruction; biological and chemical warfare; and in handling of hi-tech security equipment. They cannot be compared to their brothers and sisters serving in the supermarkets. Some are university graduates specialized in document examination.

The Respondent answers that this item was never explained to the Respondent by the Claimant satisfactorily. During the negotiations, the Claimant was requested by the Respondent to supply more details, undertook to consult, but has not done so to -date. The Respondent feels that, recruitment of employees, is not the mandate of the Claimant.

The Court entirely agrees with the Respondent. The Claimant has no basis to advise the Respondent on which guard it should employ. The Court cannot sanction a contractual term that is not workable, and which would prevent other guards from serving at the US Embassy. **The claim under change of hands is rejected.**

5. [f]. **Acting Appointment.** The guards demand that they are given additional incentive for performing another person's duty, while the substantive office holder is absent. The incentive given should vary with the rank of that person, tied down to what the person earns.

The Respondent urges the Court to uphold Regulation 10 of the General Order which states, ' **where an**

employee is required to work for a period not less than one month in an occupation or grade for which the basic minimum wage prescribed under paragraph 3 is higher than the basic wage normally earned by the employee, he shall be paid an acting allowance at a rate not less than the difference between that higher basic minimum wage and his basic wage.’

The Court is satisfied that this should be the correct position guiding the parties' CBA on the subject of acting appointment. **The Court orders that parties shall adopt Regulation No. 10 of the General Order on acting appointment.**

5. [g]. **Long Service Pay.** The Claimant states that the guards should be paid Kshs. 1,000 'depending on service rendered.' This is characterized as long service pay. The Claimant submits that the Respondent has been paying Kshs. 100 after the CBA deadlock. The amount given is below what the former employer used to give.

The Respondent did not quite understand what the Claimant means by long service pay. The Respondent provides security services to the US Embassy on a five year contract. No clear justification has been made for this claim.

The Claimant has failed to make the Court understand what this clause is about. It proposes Kshs. 1,000 to be paid to which guard after what length of service? What length of service is Kshs. 100 being paid applicable to? What is long service in a five year contract? These questions have not been answered by the Claimant. Long service pay is normally given to recognize and celebrate the longevity and loyalty of the experienced employee. It also serves to enculturate newer employees with the legends and stories that have made the company a success. It serves to recognize as well as motivate. In a case where the employer has a five year contract, the Claimant should first suggest what should be considered as long service, before attaching monetary value in a vacuum. This item on **long service pay is declined.**

5. [h] **House Allowance.** Current house rent allowance paid to the guards stands at Kshs. 2,500. It has been so since 1999. Reasonable accommodation in Nairobi now costs between Kshs. 15,000 and Kshs.20,000. Section 31 of the Employment Act obligates employers to provide reasonable housing accommodation to their employees, or reasonable house rent allowance.

The Respondent answers that the house rent allowance is paid to the employee to enable the employee secure accommodation. There is no obligation on the employer to pay the rent. The General Order provides for 15% of the basic salary. The Respondent is currently paying Kshs. 2,500, and offered at the negotiations to raise this to Kshs. 2,565. The Respondent states that the Claimant demanded Kshs. 8,000 at the negotiation, which is not sustainable.

Section 31 of the Employment Act provides that an employer '**shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at, or near the place of employment, or shall pay the employee such sufficient sum as rent, in addition to the wages or salary of the employee as will enable the employee to obtain reasonable accommodation.**' It is the duty of the Respondent to provide its guards with free housing accommodation at or near the US Embassy. Alternatively, the Respondent should provide sufficient rent to enable the employee obtain such accommodation. No free accommodation is offered. Kshs. 2,500, or the proposed raise of Kshs. 2,565, is not sufficient rent that would secure any reasonable accommodation anywhere in Nairobi. Kshs. 5,000 may not suffice, but the Court feels it would be a fair improvement of the current rate. **House rent allowance is allowed at Kshs. 5,000.**

5. [i]. **Holiday Bonus.** The Claimant demands a holiday bonus, equivalent of one month basic salary for each guard, each year. This holiday bonus was initially given to the guards by their former employer.

The Respondent's position is that bonus is paid depending on the employer's and the employee's performance. Holiday bonus is not known to the Respondent, and is not negotiable. The Respondent states it will continue to pay end of year bonus based on the individual performance of the employee. Holiday bonus equivalent to one month basic salary for each guard would not be sustainable.

The Court understands the Claimant to be asking for the 13th month payment. This is an annual bonus, equivalent to one month basic pay, paid to the employee at the end of the year. It is fixed by law, and is invariable, independent of performances of the employer and the employee. It is well established in some Asian economies such as Singapore. Ordinary bonus that is not fixed by law is given through the generosity of the employer. It is variable, depending on the performance of the business. It is not grounded on any law, but rests on the discretion of the employer. It is not demandable. The Respondent states it has been paying this form of bonus, and will continue to pay, based on the individual employee's performance. The Court agrees with the Respondent that this is not an item that can be imposed on the Respondent. The Claimant should lobby Parliament to legislate the 13th month payment, or persuade the Respondent to change the current bonus arrangement. The Court is not of much assistance in the introduction of this concept to the contract of employment. The claim for **holiday bonus is rejected.**

5. [j] **Meal Allowance.** Kshs. 25 is given to the guards in meal allowance per day. The Claimant argues that this is inadequate. The guard is required to be alert all the time. He is expected to be in good physical condition, standing up while on duty for most of the time. The hotels around the US Embassy are exorbitant. Hawkers are not allowed to sell meals to the guards. The working hours do not allow the guards to prepare their meals at home. The Claimant asks the Court to order that the guards are paid breakfast of Kshs. 100; lunch of Kshs. 250; and supper of Kshs. 250- total Kshs. 600 per day.

The Respondent pays Kshs. 550 per guard, per month. It is an allowance, and not payment for meals. The Claimant initially demanded for Kshs. 600 and revised this to Kshs. 400 at the collective bargaining forum. What is demanded appears to the Respondent to be safari allowance. The Respondent does not have any obligation to provide meals to the employees. It is only supposed to provide an allowance to assist the employee secure a meal. As a basis of settlement, the Respondent proposes to raise the monthly rate of meal allowance to Kshs. 615.

Section 33 [1] of the Employment Act states, '**An employer shall, where the provision of food has expressly been agreed to in or at the time of entering into a contract of service, ensure that an employee is properly fed and supplied with sufficient and proper cooking utensils and means of cooking, at the employer's expense.**' This law does not impose any obligation on the employer, when the employee is absent from work without authorization or lawful excuse, to provide food. The Security Services Order 1998 provides for meal allowance as part of subsistence allowance, when an employee is required to work away from his principal place of work. It is part of safari allowance. The Respondent is providing Kshs. 550 per month in meal allowance. The Claimant submits guards are given Kshs. 25 per day. The reading of the Court is that the provision of food has expressly been agreed, the only question being whether what is given ensures the guards are properly fed. They are not seeking to be availed cooking charcoal, gas and utensils as they would be entitled to demand under Section 33; they are only asking for a reasonable allowance to properly feed. The Court is persuaded the nature of their calling makes it critical that they are properly fed. It is true that the Embassy is located in the exclusive, high end, part of Nairobi, where cheap food is not accessible. Hawkers are not allowed to sell their merchandise to the guards. The work schedule does not permit the guards to shop at the cheaper markets in the lower end of Nairobi, and there is no time to prepare meals at home. Kshs. 25 per day, Kshs. 550 or Kshs. 615 per month, is not anywhere close to ensuring the guards are properly fed. **The Court grants them breakfast of Kshs. 50; lunch of Kshs. 100; and supper of Kshs. 100 per day- total Kshs. 250 per day.**

5. [k] **Transport/ Commuter Allowance.** United International Services, the previous contractor at the Embassy who employed the guards, had proposed Kshs. 3,000 in commuter allowance. The Claimant alleges rather ambiguously, that the '*Respondent refused and proposed bicycles which were given once per five years.....*' Transportation to work has become very expensive. On average each guard spends about Kshs. 4,600 on transport every month. They demand a sum of Kshs. 4,000 as traveling/ commuter allowance.

The Respondent did not understand what the Claimant means by allusion to the proposal by the former employer to pay Kshs. 3000. In any event, the Respondent cannot raise the proposed Kshs. 4,000 as commuter allowance. The Respondent is ready to facilitate loans for the guards to buy bicycles.

Regulation 18 of the 1998 Order states, ‘ **Employers shall endeavour to assign work to guards or watchmen near their places of residence, but where it is not possible to do so, an employer shall either provide transport to and from the employees’ places of residence or pay them a minimum public transport allowance.**’ It is therefore an obligation for the employer in the private security services industry, to provide transport to work for the guards. The law, as seen in the case of housing accommodation, desires that the place of work and the residence of the worker are in close proximity. The obligation is not discharged by the employer standing in for the employee as a guarantor, in securing money from a bank to buy a bicycle, as the Respondent has proposed to do in this dispute. The Respondent must provide proximate residence, or pay a minimum public transport allowance. The figure suggested by the Claimant at Kshs. 200 per day is not way too off the mark. **For a start however, the Court grants commuter allowance at Kshs. 2,500 per month.**

5. [l]. **Shop Steward Allowance.** The Claimants seek to have their shop stewards paid an allowance by the Respondent. Each guard unit is manned by a shop steward. The shop stewards assist in the resolution of disputes at the workplace, thus creating good industrial relations. They need to be recognized by the company.

The Respondent states that this demand is anomalous. It is an attempt to corrupt shop stewards. It is likely to cause industrial unrest, not be a source of industrial harmony. The workers pay union dues. It is the prerogative of the union to pay such allowances to their shop stewards as provided for by section 39 of the Labour Relations Act. The Respondent prays for dismissal of the claim.

The Court does agree with the Respondent that the trade union should assume this responsibility of paying allowances to its shop stewards. The Respondent fulfills its role by deducting trade union dues from the guards and remitting to the trade union. It pays the shop stewards salaries and other allowances for work done for the Respondent, in their capacities as employees of the respondent. Their roles as shop stewards are given by the trade union. They are elected by the trade union members at the shop floor. The employer not only remits trade union dues and pays salaries, but also allows the shop stewards many hours out of work, while they are pursuing trade union and workers interests. The employer loses these man-hours, and it would not be a fair work practice to burden the employer with shop steward allowances. **The claim for shop steward allowances is rejected.**

5. [m]. **Training Allowance.** The guards are normally taken for training at Race Course for two days. They are paid Kshs. 80, which they feel is not sufficient to transport them from the city centre, to the training ground. The training is done on rest days. No compensation is given. They feel this should be treated as work done on rest days, for which overtime is paid. They ask for Kshs. 400 as training allowance.

The Respondent states that it is paying training allowance based on the number of hours. It is paid over and above the normal days. The Kshs. 40 is paid as transport allowance per day to the training ground. It is additional to the training allowance. The guards do not incur any losses.

Training should not be done during rest day. The rest day is given by law to an employee to enable him take a break from the exertions of the routine, re-energize, replenish and develop a healthy work-life balance. If it is agreed between the employer and the employee, that any form of training is to be taken during rest day, this should be treated as overtime done on rest day and compensated in accordance with Regulation 7[1] [b] of the 1998 Order. If the Respondent is compensating the guards under this Regulation, then a claim for training allowance of Kshs. 400 can have no justification. **The Respondent shall compensate, or continue to compensate the guards for training done on rest days under Regulation 7 [1] [b], of the 1998 Order. The additional Kshs. 80 for transport currently given shall be retained. The claim for Kshs. 400 per training is otherwise rejected.**

5. [n]. **Hardship Allowance.** The guards wish to be paid Kshs. 5,000 as hardship allowance. They claim that they are normally relocated to work in different stations. They have to move with their families. They are compelled to hire motor cycles at an average cost of Kshs. 300. Areas assigned to them such as Runda, are not accessible by public transport.

The Respondents answer is that hardship allowance is paid to employees who serve in hardship areas. Nairobi is not a hardship area. If the Claimant intended to ask for transfer allowance, this is provided for under the 1998 Order. The Respondent asks the Court to reject this demand.

The Court understood this prayer to entail transfer allowance as explained by Mr. Ambenge. Hardship allowance cannot be claimed by an employee who has simply been moved from one corner of the city to another. Hardship allowance is normally paid to employees who have been expatriated from their familiar work environment. Every work environment has its unique characteristics, cultures and charm. The employee and his family may suffer stress and considerable disturbance during the assignment in unfamiliar surroundings. Hardship allowance is paid in recognition of these difficulties. This is not quite the same thing as transfer allowance. Regulation 20 [1] of the 1998 Order states, '**Where an employee is transferred to a branch of the employer's business, or to a place either within or outside the district, and the transfer results in disturbance to housing arrangement, the cost of transporting the employee's personal and household effects, his wife and up to three children [if living with him] shall be borne by the employer.**' Sub- Regulation 2 adds, '**In addition to the amount payable under sub-paragraph [1] the employee shall be paid one hundred and fifty shillings per day for the first fifteen days.**' The Respondent does not require the guards to serve outside Nairobi. They are moved within the city, and do not suffer much change in their work environment. The traditional hardship allowance would not apply in their case. **The Court orders that the parties shall adopt Regulation 20[1] and 20 [2] of the 1998 Order verbatim.**

5. [o]. **Death of an Employee.** The guards demand that the Respondent affords them a good coffin when they die. They wish the Respondent to pay their medical bills, presumably the medical bills incurred in the days leading to their death. They demand that the Respondent pays for the cost of transporting their remains to their final resting grounds. They would like this cost of transportation extended to their immediate family members. The Claimant argues that the present provision of Kshs. 12,000 in death allowance does not suffice.

The Respondent states that it is complying with Regulation 22 of the 1998 Order with regard to the death of an employee. It has been providing a coffin and transport. Death is not the responsibility of an employer alone. The Respondent urges the Court to uphold its current provision of Kshs. 12,000 death allowance.

Regulation 22 of the 1998 Order states, '**[1] If an employee is killed or dies while on duty, the employer shall at his own expense provide a coffin and transport the deceased and his belongings to his place of burial. Provided that in event of an employee dying or being killed while not on duty, the employer shall at his own expense provide a coffin and pay six thousand and five hundred to the deceased's family for transportation purposes. [2] Where transport is provided, instead of six thousand and five hundred shillings, an employer shall pay bereavement allowance to the family of the deceased equal to two-and-a-half months' wages of the deceased.** The benefits under this regulation are not subject to be offset against any claims that arise under work injury compensation law. The provision of Kshs. 12,000 all-inclusive paid to the guards to cater for the funeral obviously, does not comply with these minimum provisions relating to the death of an employee. One cannot buy a coffin, transport the body and belongings, with an amount of Kshs. 12,000. The Court orders- **The Respondent shall pay to the family of the deceased guard Kshs. 20,000 for the coffin and Kshs 25,000 for transportation of the body and belongings. Payment shall be made within three days of the Respondent being notified of death.**

5. [p] **Renewal of Driving License.** The Claimant seeks to have the Respondent reimburse the guards the cost of renewing their driving licenses.

The Respondent does not accept to shoulder this responsibility. The driving license is not required for the discharge of the guards' core functions at the workplace.

The Court has not been given any justification why the employer should shoulder this cost. The driving license is not obtained or kept, for the benefit of the employer. It is a document the employee has of his

own volition, secured from the government. He should bear the cost of retaining a valid driving license. **This claim is refused.**

5. [q]. **Cleaning Allowance.** This is currently paid at Kshs. 400 per month. The guards are given white T-Shirts which have to be washed all the time. They have to be well groomed, iron their uniforms all the time. Electricity supply has become expensive. They demand the allowance be raised to Kshs. 1,000 per month.

The Respondent proposes Kshs. 450. The allowance is meant to enable the guards buy soap for cleaning their uniforms. Most CBAs provide for 1 or 2 bars of soap per month. Kshs. 450 is enough to buy 5 bars per month.

Regulation 21 of the 1998 Order provides for half kilogram of good quality bar soap to the guards, to be bought at the employer's own expense. The Court is satisfied that Kshs. 450 per month offered by the Respondent is sufficient to ensure the guards are well groomed. **The Respondent shall pay Kshs. 450 per month to every guard in grooming allowance.**

5. [r]. **Guard Monitoring System.** This system is normally pressed by the duty guard for 15 times a night. It is very exhausting and the guards should therefore be paid an allowance of Kshs. 200 per clocking.

The Respondent explains that the Guards Electronic Protection System [GEPS], is a working tool meant to ensure the safety of the guards. It is channeled to the control room. It is a supervisory device. The allowance would result in an unnecessary cost to the employer.

There is no justification in the claim for clocking allowance. Exhaustion is part of any work. One does not get an extra allowance for exhaustion. Compensation for exhaustion comes at the end of the month in the form of a salary. **The prayer for clocking allowance is declined.**

5. [s] **Risk Allowance.** The Claimant states that its members are exposed to high risks at the workplace. They work with risky tools of trade such as radiators, metal detectors, electronic and hydraulic barriers among others. They are in the first line of defense, followed by the General Service Unit officers and the US Marines at the rearguard. Guards were manning the entrance at the Nairobi US Embassy terrorist attack in 1998. The Claimant gave examples of Mr. Musilli Gilbert who lost his ear during the attack. He subsequently lost his hearing. His contract of employment was terminated because he could no longer take radio calls. Another guard Mr. Okindo lost his kidney.

The Respondent points out that the Claimant's demand is not specific. The risks mentioned in the claim are inherent in the nature of the work done by the guards. They consented to take up the job. They are well insured from any possible risks.

The parties have not provided the Court with sufficient evidential material or submissions on this claim. The Claimant does not make a specific monetary demand. The Respondent states that the employees are insured, but gives no details of the insurance against this very real risk. The parties agree the work performed by the guards involve particularly high risk factors. There is however no material availed to the Court to grant a specific figure. No details of any existing insurance cover have been availed. The special nature of this type of allowance calls for more substantiation. It is a subject the parties should pursue in the future. For now, the Court cannot just pluck a figure from the air and award risk allowance. There has to be some legal or factual basis in coming up with a specific amount. **The claim for risk allowance is rejected.**

5. [t]. **General Wage Increase.** The Claimants demand for 40% wage increase in the first year, and 40% increase in the second year for security officer and senior guard [crew commander]. They wish to have an increase of 30% for the first year and 30% for the second year for supervisor and guard commander. The government has raised the general wage by 18% in 2009; 10% in 2010; 12.5% in 2011 and 13.1% in 2012. The Respondents has never effected these increments. The guards have not benefited from 1997.

The Respondent holds this proposal to be unsustainable. The Respondent has a 5 year contract with the US Embassy to provide security services. The individual contracts have a 3% annual wage increment which has always been acted upon. Wage increase is dictated to by the terms of the contract.

The Court has considered the prevailing cost of living; the rate of inflation; and the consumer price indices. It has also looked at the current basic salary enjoyed by the different cadre of employees at the US Embassy and the existing offer of 3% annual increment. **The Court grants a 10% wage increase for the first year, and 12% for the second year for all the guards across the board.**

5. [u]. **Basic Wage.** The guards demand their basic wage be fixed at Kshs. 22,375. The Respondent has the potential to pay. Some complimentary departments such as surveillance detection specialist receive over Kshs. 75,000 per month. They work less hours. Domestic workers are paid over Kshs.40,000. Drivers are paid over Kshs. 52,000. The Respondent has the potential to pay the basic wage of Kshs. 22, 357.

The Respondent rejects the claim that some employees in complimentary departments are paid the figures shown above. There are wages for new employees, determined by contract terms. These are far above the rates under the General Order. The guards have contracts offering them superior terms to what are the legal minimum standards set in law.

The basic monthly wage under the General Order 2012, for night guards in Nairobi is Kshs. 9,571.65. The Respondent offers basic salary of Kshs. 14,410 for the lowest cadre security officers. The Court does not think the current basic rates are unfair or unreasonable. The Court has adjusted allowances elsewhere. The basic wage aims at ensuring the employee has a minimum income necessary to meet basic needs such as housing, shelter and clothing. These allowances have been reviewed, making it unnecessary to place further wage burden on the Respondent with a raised basic wage floor. **The claim for fixation of basic wage at Kshs. 22,357 is not realistic and is rejected. The Respondent shall retain the prevailing basic wage.**

5. [v]. **Effective date of the CBA.** The Claimants argue that the effective date of this Award should be September 2011 to run for two consecutive years- ending August 2013. The Court gave an Award on 6th December 2011, where the parties were to conclude a CBA in 60 days. The Respondent was not willing to go by the orders of the Court, occasioning delay to the collective outcome. The Respondent has acted in a manner that is prejudicial to good industrial relations and contrary to the policy of the US government for Foreign Service contractors, to honour the domestic labour regimes of host countries. Recognition was granted to the Claimant a long time ago but no CBA has been concluded.

The Respondent answers that it has always been ready to conclude the CBA, but was hampered by the unreasonable demands of the Claimant. The date proposed by the Claimant would occasion the Respondent huge wage arrears. The effective date should therefore be the date the Award is delivered.

The Court gave its first Award on 6th December 2011. The order was that parties register their CBA within 60 days. The CBA should have been registered by mid-February 2012. There was no conclusion. The Court does not wish to apportion blame. Trade disputes are not like civil claims where liability is normally easily apportioned. Employers have legitimate interests, as do employees, in the process of collective negotiations. Courts should be slow to punish either party for their robust pursuit of their respective interests. The Court will therefore bring the parties to meet half way. **The effective date of this CBA shall be 1st June 2012. It will run for two years to 31st May 2014, and thereafter remain in force until amended by a subsequent CBA. Accruing benefits under this Award shall be computed and paid, within 60 days of the delivery of this AWARD. No order on the costs.**

Dated and delivered at Nairobi this 26th day of March 2013

James Rika

Judge