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At the Jerusalem Magistrates Court

Jerusalem Magistrates Court
A 6879/07
B. Romanenko
Filing date: June 11, 2007
Legal procedure: regular
New file number: CC 18696 – 06/07

In the matter of: **1. Fakhuri (ID No. _____)**
2. Fakhuri (minor) (ID No. _____)
By his natural father and legal guardian
Represented by counsel, Adv. Muaiad Mi'ari
2 a-Zahra Street
POB 1634, Jerusalem 91016
Tel: 02-6262638, Fax: 02-6289109

The Plaintiffs

v.

- 1. Igor Romanenko, Badge number 72599687**
- 2. Michael Ben Arush, Badge Number 72491848**
- 3. Roi Barzilai, Badge Number 1094127**
- 4. State of Israel - the Israel Police**
Represented by the Jerusalem District Attorney's Office
4 Uzi Hason St. Jerusalem 94152
Tel: 02-6208177, fax: 02-6222385

The Defendants

Nature of Claim: Property damage and bodily harm
Amount of Claim: Maximum under the jurisdiction of the court.

Statement of Claim

1. Plaintiff 1, born in 1971, is a resident of Jerusalem, married and father of three children. Plaintiff 2, born in 1993, is the natural child of Plaintiff 1 and resides with his father in Jerusalem.
2. Defendants 1-3 served as Border Police officers in the Israel Police on the dates relevant to the claim and took part in the serious incident of assault and humiliation described below.

3. Defendant 4, the State of Israel was, at all the times relevant to this claim, the agency operating the Border Police and/or responsible for and/or overseeing the actions of Border Police officers including the actions of Defendants 1-3 during the incident described below.
4.
 - a. On June 3, 2003, at 4:00 P.M. or thereabout, Plaintiff 1 walked with his son, Plaintiff 2, through the Lions Gate – Bab al-Asbat, heading for prayers at the al-Aqsa mosque.
 - b. An Israel Police officer and a number of Border Police officers were standing at the entrance to the gate. The Israel Police officer asked the Plaintiff for his identity card, and when he did so, the officer mocked him saying “**look at that mug of yours**”.
 - c. This sparked an argument between Plaintiff 1 and the officer, culminating in the latter’s declaration that he wished to search the Plaintiff. Although there was no justifiable cause for a search, the Plaintiff agreed to it on condition that the search take place in the station rather than on the street in front of passersby, and particularly in the presence of his son. The officer refused and asked the Plaintiff to move the child away. The Plaintiff asked why he had to move his son away and the officer replied “**so he does not see what we are about to do to his father**”. The officers spoke among themselves and the police officer asked two of the Border Police officers to put the Plaintiff’s face against the wall. The officer said “**put him against the wall and if he resists, we will I say that he attacked you**”.
 - d. Two Border police officers held the Plaintiff and pushed his head against the wall. As a result, the Plaintiff was injured on the left side of the head and the left shoulder. Suddenly, and for no reason, the Border Police officers began beating the Plaintiff all over his body, particularly on the right side of his lower back and the upper back.
 - e. Following the beating, a police patrol car was called to the scene. There were two soldiers inside. They transferred the Plaintiff, his son and two Border Police officers to the Kishleh police station where the Plaintiff was questioned on suspicion of assaulting a police officer.
 - f. The Plaintiff gave his account of the incident to the investigator but for some reason, the investigator kept record of only part of the Plaintiff’s testimony and refrained from writing down everything he said. When asked why he did not write everything the Plaintiff had said, the investigator stated that he had only recorded specifics concerning the assault on the police officer and nothing else. At the end of the interrogation the Plaintiff was asked to sign a statement but refused to do so as it did not properly reflect his testimony. The investigator lost his temper and began swearing at the Plaintiff for no fault of his own.
 - g. The Plaintiff was also asked to sign a personal guarantee so that he could be released to his home. He signed it, received his identity card and left the station with his son.

- h. Before leaving the station, the Plaintiff asked for the names of all of the officers involved in the incident, but the police station investigator only gave him the name of one of the Border Police officers (hereinafter: Defendant 2) without a badge number.
- i. The Plaintiff returned to the site of the incident in order to take the personal information of the other security personnel who had been involved in the incident. The two Border Police officers who had beaten him gave him their information (hereinafter: Defendants 1-2). The Israel Police officer initially refused to provide the information, but ultimately gave his name and badge number as noted above (hereinafter: Defendant 3).
5. Because of and due to the above incident, the Plaintiff sustained injuries to most parts of his body and suffered acute pain, particularly in the head, shoulder, upper back and lower back. In addition, the Plaintiff suffered severe mental anguish due to the grave violation of his dignity and his humiliation in front of passersby, and particularly in front of his minor son.
6. Moreover, following and due to the aforementioned grave incident, Plaintiff 2 began suffering from anxiety attacks and various mental disorders manifested by the inability to sleep, depression, incontinence and more.
7. Because of and due to the above incident, the Plaintiff and his son were rushed to a Clalit Health Services clinic for preliminary medical treatment.

Processing of the Plaintiff's Complaint

8. On June 22, 2003, the Plaintiff filed a complaint through HaMoked: Center for the Defence (hereinafter: HaMoked) of the Individual to the Department for the Investigation of the Police (DIP) demanding that the matter be investigated and that those involved in the aforementioned grave incident be brought to justice.

A copy of the above complaint is attached hereto and marked Appendix A.

9. On July 29, 2003, after no reply whatsoever was received for a protracted period of time, HaMoked sent a reminder to the DIP. On August 7, 2003, the DIP'S reply was received, stating that the file was still under investigation.

A copy of the memorandum is attached hereto and marked Appendix B. the DIP's reply is attached hereto and marked Appendix C.

10. On September 10, 2003, the DIP requested to summon the Plaintiff to give testimony. On September 29, 2003, he gave his testimony as requested.

A copy of the summons is attached hereto and marked Appendix D.

11. On December 18, 2003 and December 29, 2003, HaMoked wrote the DIP requesting an update on the results of the investigation.

Copies of the above letters are attached hereto and marked Appendixes E and F.

12. On February 5, 2004, a response was received from the DIP stating that it had been decided to close the file and discontinue the investigations due to public interest considerations.

A copy of the above letter is attached hereto and marked Appendix G.

13. On February 19, 2004, following the aforementioned DIP response, HaMoked requested to photocopy the file, and after coordinating with the DIP offices, the investigation material was photocopied.

A copy of the DIP file is attached hereto and marked Appendix H.

14. After the file was closed and following receipt of the investigation material, HaMoked submitted an appeal to the Attorney General against the decision, and on May 31, 2004, a reply was received from the Attorney General stating that it had been decided to reopen the file.

A copy of the above appeal is attached hereto and marked Appendix I, a copy of the Attorney General's reply is attached hereto and marked Appendix J.

15. Following submission of the appeal and reopening of the file, a recommendation was ultimately made to bring disciplinary action against the Border Police officer who had been involved in the incident, as specified in the DIP's reply of November 28, 2004.

A copy of the aforementioned reply of the DIP is attached hereto and marked Appendix K.

16. The Disciplinary Tribunal secretariat reported that Plaintiff 3 was charged in a disciplinary proceeding with abuse of power, however, to date, neither the Plaintiff nor his counsel have been informed of the results of the disciplinary proceeding and/or whether any measures were taken against the Border Police officer.

The Plaintiffs' Arguments

Assault and Degradation

17. Assault and degradation by the Defendants constitutes assault as defined in Section 23 of the Torts Ordinance [New Version] 5728-1968.
18. Defendant 4 is vicariously liable for the assault committed by the Defendants as they were its agents and/or acted on its behalf and as it retroactively sanctioned their actions by refraining from bringing them to justice. It is also vicariously liable for their negligence.

Violation of Statutory Duties

19. The Plaintiffs will additionally argue that the Defendants violated the following statutory duties the purpose of which is to protect persons such as the Plaintiff, and that the breach of these duties caused the damage claimed by the Plaintiff.

The Defendants violated the following statutory duties:

- a. Sections 4 and 11 of Basic Law: Human Dignity and Liberty, that forbid harm to the body and dignity of all persons and obligate all governmental authorities, including the police and the Defendants as officers of the Israel Police, to respect and protect these rights.
- b. Section 80 (1) of the Penal Law 5737-1977 (hereinafter: the law) obligates all public employees, including a police officer, not to commit an arbitrary act that violates a person's rights through abuse of his power.
- c. Sections 379, 380 and 382 (a) of the law that prohibit assault and aggravated assault.
- d. Section 2 of the Second Addendum to the Police Ordinance [New Version] 5731-1971 (hereinafter: the Second Addendum) concerning negligence in the discharge of one's duty.
- e. Section 3 of the Second Addendum concerning misconduct by a police officer.
- f. Article 19 (a) of the Second Addendum concerning the use of force against a person in the line of duty in breach of the Israel Police Ordinance.
- g. Section 1 of the Second Addendum concerning the failure to implement any of the provisions of the Israel Police Ordinance.

Negligence

20. In addition, the Plaintiffs will argue that Defendants 1-3 discharged their duties negligently and that their negligence was manifested in the following actions and/or omissions:
 - a. They beat Plaintiff 1 and abused him without cause and/or lawful justification.
 - b. They employed excessive and unreasonable force against the Plaintiffs in the circumstances of the incident.
 - c. They unlawfully held Plaintiff 1 for an unreasonable period of time without cause.
 - d. They did not employ the skills acquired through their police training in order to conduct a professional and efficient examination of the Plaintiff's identity.
 - e. Their actions and conduct was unlike that expected from reasonable and sensible members of the police force under the same circumstances.

21. The Plaintiffs will argue that Defendant 4 is vicariously liable for the above actions and/or omissions of Defendants 1-3, as they were its agents and/or employees and/or its long arm and/or acted on its behalf.
22. Additionally or alternately, the Plaintiffs will argue that Defendant 4 is directly liable for the damage caused them due to its negligence which is manifested by the following actions and/or omissions:
 - a. It failed to ensure that the Defendants, who are under its supervision and act on its behalf are aware of and follow the instructions of the Police Commissioner and/or statutory provisions.
 - b. It failed to supervise and/or did not adequately supervise the actions and omissions of security personnel including the Defendants.
 - c. It failed to do all it in its power and/or all it was required to do to prevent the incident and its resulting damage.
 - d. It failed to anticipate, despite the fact that it could and should have anticipated the incident and/or the chain of events that caused the incident.
 - e. It sent an unqualified and/or unsuitable force to discharge police duties.
 - f. It did not fulfill its lawful duties to ensure the safety of the residents of the Area.

The Damage Sustained by the Plaintiffs

23. As a result of the Defendants' aforementioned actions, Plaintiff 1 was injured, predominantly on the left side of the head, as well as the left shoulder, back and right lower back. Plaintiff 1 suffered excruciating pain in the back and was forced to take a long leave from work, during which he suffered a considerable loss of income.
24. In addition, because of and due to the above incident, Plaintiff 2 suffered grave mental harm that is manifested in anxiety attacks, depression, incontinence, inability to sleep... and additional psychological disorders. He was forced to be absent from school for a long period of time which disrupted his progress.
25. Until the incident, Plaintiff 2's development was impressive. However, due to the incident that is the subject of the claim, he has deteriorated and has been suffering, *inter alia*, from developmental disorders and poor mental health.
26. Moreover, because of and due to the above incident, the Plaintiffs have suffered from indescribably severe harm to their dignity and self-esteem ensuing from the feelings of

humiliation, helplessness, fear and abandonment they experienced during the incident and thereafter.

27. Because of and due to the above incident, the Plaintiffs sought medical and psychological treatment and it is expected that these will continue in light of the difficulties they continue to suffer from to this day.
28. Moreover, the Plaintiffs were forced to frequently and disproportionately rely on the help of family members.
29. The damage caused to the Plaintiffs, for which they are entitled to compensation from the Defendants are as follows:

Outstanding Damages

- | | |
|---|------------|
| a. Loss of past income | 50,000 NIS |
| b. Assistance from family members | 20,000 NIS |
| c. Medical treatments, travel for medical Treatments and medication | 30,000 NIS |

General Damages

Loss of future income by the father
Loss of future income by Plaintiff 2
Pain and anguish

30. The Honorable Court is vested with the geographic and material jurisdiction to hear this claim.
31. Therefore, the Honorable Court is hereby requested to summon the Defendants and order them to jointly and severally pay the Plaintiff full damages as specified above in addition to trial costs, including linkage differentials and interest under the law, from the date of the incident until the date of actual payment.

Jerusalem, today ____ June 2007

[signed]

Muaiad Mi'ari, Adv.
Counsel for the Plaintiffs