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**In the Supreme Court**  
**sitting as the High Court of Justice**

**H CJ 6807/94**

In the matter of:        **Abbas**

both represented by Attorney Andre  
Rosenthal (Lic. No. 11864)  
33 Jaffa Street, Jerusalem  
Tel. 250458 Fax. 259626

**The Petitioners**

v.

- 1. State of Israel**
- 2. Commander of IDF Forces in the Gaza Strip**

represented by the State Attorney's  
Office

**The Respondent**

## **Petition for Order Nisi**

The Honorable Court is requested to summon the Respondents and order them to show cause why they do not hand over the body of the Petitioner's brother, which is presently held at the pathology institute in Abu Kabir, so that it may be buried in the Gaza Strip.

**The grounds for the petition are as follows:**

1. The Petitioner is the brother of \_\_\_ Abbas, holder of identity card number \_\_\_\_, who died on 9 October 1994 during an attack on the streets of Jerusalem. Immediately after the attack, the body was taken to the pathology institute in Abu Kabir and has remained there ever since.
2. The Petitioner's affidavit, received by facsimile, and its translation are attached hereto and marked P/1-A and P/1-B, respectively.
3. On 26 October 1994 and 31 October 1994, Ms. Dalia Kerstein, executive director of HaMoked: Center for the Defence of the Individual, wrote, on behalf of the Petitioner, to Lt. Col. Ozenboi, assistant to the Coordinator of Activities in the Territories, requesting that arrangements be made to transfer the body to the Gaza Strip for burial. A copy of Ms. Kerstein's letter is attached hereto and marked P/2.
4. On 14 November 1994, HaMoked sent a reminder letter. A copy of the reminder letter is attached hereto and marked P/3.
5. On 30 November 1994, the Petitioner's Attorney wrote to Attorney Nili Arad, head of High Court of Justice Petitions Division at the State Attorney's Office, requesting her to arrange transfer of the body. It should be mentioned that the Petitioner's attorney said that he would petition this Honorable Court within twenty-four hours if the matter were not resolved. Following a conversation with Attorney Blass, of the State Attorney's Office, held on 1 December 1994, it was agreed that twenty-four hours was insufficient time in view of the fact that the body had been kept at the pathology institute at Abu Kabir since 9 October 1994, and it was agreed that the Petitioner's attorney would wait until 5 December 1994. A copy of this letter is attached hereto and marked P/4.
6. On 5 December 1994, Petitioner's attorney spoke with Attorney Blass, who informed him that transfer of the body had not yet been arranged.
7. As a result of the above, the petition herein was filed.
8. The Honorable Court held in HCJ 5688/92, *Wekselbaum et al. v. Minister of Defense et al.*, *Pisqe Din* 47 (2) 812, 828, as follows:

**12. Human dignity means, as we have seen, the dignity of the deceased himself. "The aspiration of every person for a proper burial is natural" (Civ. App. 294/91, *Kehilat Yerushalayim Burial Society v. Kastenbaum*, *Pisqe Din* 46 ((2) 464, 520). Also involved is the dignity of the family of the deceased (see HCJ 3933/92, *Mustafa Barakat et al. vs. OC Central Command*, *Pisqe Din* 46 (5) 1 (hereafter: *Barakat*). I**

mentioned this in Civ. App. 294/91, stating, “The relatives of the deceased have rights and freedoms, that the memory of their loved one be respected as they see fit, and that they be given the opportunity to express their emotions toward him as they deem appropriate.”

In similar manner, Justice Etzioni pointed out in a different case:

No one would dispute that every person has the right to honor, in a proper way, the memory of his loved one who passed away, in accordance with his customs and traditions as long as it does not affect the sensitivities or legitimate interests of others. It is clear there that “cemetery is a place not only for burial of the dead, but also to express the love and respect that the living give to the dead...” (Civ. App. 280/71, *Gidon v. GHSHA Burial Society et al.*, at p. 23).

And in the same vein, the vice-president, Justice Elon, stated:

This, too, is the common law, that “human dignity” in our matter means, first and foremost, dignity of the deceased. The express or assumed wish of the deceased, and the dignity of the living, is the wish of the family of the deceased, the persons he loved and those who loved him, who wish to honor the memory of the deceased (Civ. App. 1482/92, *A. Haggar v. H. Haggar et al.*, and the counterclaim, *Pisqe Din* 47 (2) 793, at pages 801-802).

9. Therefore, the Honorable Court is requested to give the order as requested above and to make it absolute.

Jerusalem, 6 December 1994

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[signed]

Andre Rosenthal, Attorney  
Counsel for the Petitioner