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The Magistrates Court in Jerusalem
Civ. 2738/97
Kusbeh et al. v. Shemesh et al.
Opening date: 4 February 1997

At the Magistrates Court in Jerusalem

In the matter of:

1. _____ **Kusbeh**
 2. _____ **Kusbeh**
 3. _____ **Kusbeh**
- all from Kalandia Refugee Camp

all represented by attorneys Hala Huri and/or Eliahu
Abram and/or Hisham Shabaita of HaMoked: Center for
the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6276317

The Plaintiffs

v.

1. _____ **Shemesh**
from Jerusalem
2. _____ **Epstein**
from Haifa
3. _____ **Makably**
from Hadera
4. _____ **Zur**
from Natania
5. _____ **Sucar**
from Bat-Yam
6. _____ **Geva**
from Rishon Lezion
7. _____ **Fleischmann**
from Natania
8. _____ **Leibovitz**
from Ma'ale Efraim
9. _____ **Noni**
from Mevaseret Zion

The Defendants

Nature of the claim: **Monetary**
Amount of the claim: **NIS 86,683**

Complaint

1. Plaintiff 1 (hereinafter: the Plaintiff) was born in 1954, is married and a mother of seven, and is a resident of the refugee camp Qalandiya.
2. Plaintiff 2, who is the Plaintiff's son, was born in 1974, is married and is a resident of the refugee camp Qalandiya.

In the period of time pertaining to this Complaint, Plaintiff 2 was 15 years old.

3. Plaintiff 3, who is the Plaintiff's brother-in-law, was born in 1976, is married and is a resident of the refugee camp Qalandiya.

In the period of time pertaining to this Complaint, Plaintiff 3 was 13 years old.

4. In the period of time pertaining to this Complaint, the Defendants were soldiers in the regular forces of the IDF, in the Armored Infantry (*Hermesh*) Unit, which was at that time in charge of the refugee camp Qalandiya.
5. In the period of time pertaining to this Complaint, the Plaintiff was the lawful occupant of a house at the refugee camp Qalandiya. At that time, the house comprised a ground level which was used for residential purposes, a second floor with a finished frame and a roof (hereinafter: the House).

The Incident

6. In the period of time pertaining to this Complaint, the roof of the House was regularly used for daytime observations by IDF soldiers.
7. IDF soldiers would illegally enter also the second floor of the House (which was under construction) and, among other things, start fires there while using wood that was intended for the construction.
8. Against the background of the said use of the second floor of the House, friction developed between the Plaintiff's family and the IDF soldiers. On 7 February 1990 in the early morning hours, the aforesaid also led to a violent incident, in which several family members and an IDF officer were injured.
9. On the same day, i.e. 7 February 1990, the observation from the roof was carried out by Defendants 7-9.
10. Defendants 1-6 agreed among themselves and resolved to come to the House for "retaliatory action", following the morning incident, and to take revenge on the family, to terrify and to deter it.

11. On 7 February 1990 in the late afternoon hours (at around 15:00), the Defendants arrived at the House to carry out their intention. At that time the House was occupied by the Plaintiff, Plaintiffs 2-3, two little girls and an 18-month old baby.
12. Defendants 1-6 entered the House on the residential floor.
13. Immediately upon entering the House, one of Defendants 1-6 shattered the sideboard which stood close to the front door: with the butt of his rifle, one of Defendants 1-6 broke the glass parts of the sideboard which stood close to the front door of the House. The same Defendant emptied the contents of the sideboard onto the floor, and the glassware that was inside it smashed to smithereens.
14. Defendants 1-6 continued turning the apartment upside down and ruining its contents.
15. In the children's bedroom they:
 - a. Emptied out the wardrobe in the boys' bedroom and threw its contents onto the floor.
 - b. Tore off and broke two doors of the wardrobe.
 - c. Broke the wardrobe shelves.
 - d. Turned the mattresses and the bedding and threw them down on the floor.
 - e. Broke the wooden boards of the beds.
16. In the Plaintiff's bedroom they:
 - a. Emptied out the entire contents of the closet on the floor.
 - b. Turned the bedding and the mattress.
 - c. Threw out the contents of the dressing table and threw the perfumes therefrom onto the floor.
 - d. Tore up pictures of the Plaintiff's children that were in an envelope in the closet and trampled them with their feet.
 - e. Tore up personal documents.
 - f. Turned over the television, which, however, did not break, since it fell on the clothes that were lying on the floor.
17. In the vestibule they broke an interior door, half of which was made of wood and the other half of glass.

18. At this point, two of Defendants 1-6 caught Plaintiffs 2-3, who were in the kitchen at that time, and dragged them to the roof of the House. On the way, one of Defendants 1-6 shouted at Plaintiff 2: “You [derogatory term], don’t say anything, shut up”, and punched him with his fist.
19. Plaintiffs 2-3 were sat down at the top of the stairs of the House, in a space leading to the roof of the House.
20. Meanwhile, the rest of Defendants 1-6 entered the kitchen of the House, took out all of the kitchenware from its place, broke plates and chairs, opened the pantry, tore up sacks of rice, sugar, lentils and tea and poured their contents onto the floor.
21. Once they had finished demolishing the kitchen, the Defendants who were not yet on the roof joined their friends who were already up there.
22. One of the Defendants put his foot on Plaintiff 2’s forehead and pushed his head against the wall.
23. That act signaled the commencement of the bout of abuse of Plaintiffs 2-3, which lasted several hours and in which all of the Defendants 1-9 (hereinafter: the Defendants) participated together.
24. The details of the abuse are as follows:
 - a. The Defendants ordered Plaintiffs 2-3 (hereinafter: the Boys) to lie on their backs in a puddle of water that had formed on the roof. It should be noted that that February day was a cold and rainy winter day.
 - b. Plaintiff 2, before being laid down in the puddle, was beaten up by some of the Defendants and forcefully thrown into the puddle.
 - c. Even as they were lying on their backs in the water puddle, the Defendants kicked the Boys and shoved them with their feet. The kicks were aimed, *inter alia*, at the Boys’ heads.
 - d. The Defendants took 30 x 30 cm floor tiles, which were placed on the roof of the passageway leading to the roof, and threw them from above close to the two lying Boys in order to scare them.
 - e. The Defendants also took several tiles and piled them one on top of the other on the Boys’ abdomens.
 - f. The Defendants poured water from a plastic container that was on the roof on the Boys’ faces.

- g. When Plaintiff 2 dared to move in such a manner that the tiles fell off of him, he was taken by one of the Defendants to the corner of the roof, where he was beaten by the said Defendant, with especially strong kicks to his ankles.
 - h. One of the Defendants stepped onto the Plaintiff 2 with his full weight and stood on him for several seconds.
 - i. The foregoing abuse of the Boys was accompanied by cursing, threats and mockery.
 - j. The Boys were made to stay lying in the water for several hours, and only thereafter were allowed to go back down into the House, wet, shivering and with blue lips.
25. It should be noted that the Plaintiff tried to go up to the roof to find out what had happened to the Boys, but the Defendants prevented her from doing so.
26. All of the Defendants took part in the bout of abuse that took place on the roof. Each one of the Defendants took part in the violent acts which were inflicted on the body of the Plaintiff Boys and/or took part in the decision to lay them down and leave them in the puddle and/or encouraged his friends to keep up the violence and/or did nothing to prevent and cease the said abuse.
27. The Plaintiffs are unable to ascribe any one of the violent acts described above to any one of the Defendants but, as aforesaid, the Defendants acted as in unison.
28. Following the incident described above in great detail, an investigation was initiated by the Investigating Military Police, and Defendant 1 was brought to trial before the District Military Court of Central Command and, on 30 October 1990, was convicted on the basis of his admission of the offenses of Battery pursuant to Section 379 of the Penal Law, 5737 and of Unbecoming Conduct, pursuant to Section 130 of the Court-Martial Law.

The Defendants' Liability

29. Trespass to Land

In entering the House, Defendants 1-6 committed the tort of Trespass to Land, within the meaning of this term in Section 29 of the Torts Ordinance (New Version), 5728-1968 (hereinafter: the Ordinance).

The entry into the House and the acts committed therein, which constitute interference with land, were all unlawful.

There is no dispute that IDF soldiers in the West Bank are authorized to enter and search houses without a warrant in order to maintain the security of the region, but in this case the entry into the House was performed for no military need, against orders and solely as an illegal penal action.

30. **Trespass to Chattel**

In turning the various household articles, throwing the contents of the closets onto the floor, breaking and ruining objects and doors, and tearing up the documents and pictures, Defendants 1-6 committed torts of Trespass to Chattel, within the meaning of this term in Section 31 of the Ordinance.

There is no dispute that IDF soldiers in the West Bank were authorized to search houses for security purposes, while taking strict caution not to cause damage to property during the search.

In this case, however, it was not a search that was performed, but an act of abuse. Defendants 1-6 had no intention whatsoever of finding anything by their said actions. All that they wished to do was terrorize the Plaintiff's family following the incident of the same morning. Defendants 1-6 exercised no caution with the Plaintiff's property but, on the contrary, damaged it intentionally.

31. **False Imprisonment**

Defendants 1-9 committed the tort of False Imprisonment, within the meaning thereof in Section 26 of the Ordinance, by utterly and unlawfully denying Plaintiffs 2-3 their freedom, by forcing them to remain lying on their backs in the water puddle and preventing them from getting up and descending the roof, for several hours.

The denial of freedom to Plaintiffs 2-3 by Defendants 1-9 was performed by the use of physical violence and by abusing the appearance of Defendants 1-9 in IDF uniform and while armed with rifles.

32. **Battery**

- a. Defendants 1-9 committed the tort of Battery, within the meaning of this term in Section 23 of the Ordinance, against Plaintiffs 2-3, by using intentional force against their body, including by beating them up in various manners, shoving them, pouring water on them and piling tiles on the abdomens, and all without their consent.
- b. Plaintiffs 2-3 shall further claim that Defendants 1-9 assaulted them by trying and/or threatening by acts and/or gestures to use such force against their

body, and all while Defendants 1-9 caused the Plaintiffs to believe that they did indeed have, at that time, the intention and the ability to carry out their intentions.

33. **Negligence**

The Plaintiffs shall further claim that the foregoing incident and their damage were caused due to the negligence and/or disregard of the Defendants, as expressed in the following cumulative acts and/or omissions, namely that they:

- a. Exceeded their authority and acted against general staff orders and/or IDF directives and/or orders.
- b. Behaved recklessly and/or contemptuously and/or indifferently towards the Plaintiffs' property and the body of Plaintiffs 2-3.
- c. Failed to do everything within the power and ability of reasonable soldiers to prevent the occurrence of the damage.
- d. The Defendants who were in positions of command neglected their duty of supervising the soldiers under their command and ensuring that they abided by the orders of the army and behaved in a manner becoming IDF soldiers.
- e. Abused their authority by taking the law into their own hands and using force against Plaintiffs 2-3 and damaging the property of Plaintiff 1 without any lawful justification and/or reasonable cause.
- f. The Defendants failed to fulfill their duty to the Plaintiffs, a duty imposed on them as IDF soldiers, who are entrusted with maintaining public order in the refugee camp Qalandiya, preserving property and bodily integrity and preventing offenses.

34. **Negligence Per Se**

- a. The Plaintiffs shall further claim that Defendants 1-9 were negligent per se by violating statutory duties which are designed, according to their rightful meaning, to protect the type of persons to which the Plaintiffs belong, and that the incident and its resultant damage were caused due to the violation of such duties.
- b. The Plaintiffs shall claim that, *inter alia*, Defendants 1-9 violated the statutory duties set forth in the Penal Law, 5737-1977 (hereinafter: the Law) and in the Court-Martial Law, 5715-1955 (hereinafter: the CML).

35. In further detail, and without derogating from the generality of the aforesaid, the Plaintiffs shall claim that Defendants 1-9 breached the following duties:
- a. Section 280(1) of the Law, which provides that a civil servant who, while abusing his authority, performs or orders the performance of an arbitrary act which infringes the right of another, is punishable by three years imprisonment and/or
 - b. Section 280(2) of the Law, which provides that a civil servant who enters the residence of a person against his will, when not lawfully permitted to do so, or other than in accordance with arrangements lawfully provided therefor, is punishable by three years imprisonment and/or
 - c. Sections 378, 379, 380 and 382 of the Law, which concern simple battery, battery causing material injury and aggravated battery and/or
 - d. Sections 368(b) and 368(c) of the Law which concern battery and abuse of minors and/or
 - e. Section 447 of the Law on trespassing, which provides, *inter alia*, that a person entering a property in order to frighten the occupant thereof while bearing firearms, is punishable by four years imprisonment and/or
 - f. Section 452 of the Law on the deliberate infliction of damage and/or
 - g. Sections 68, 70 and 72 of the CML, which concern the commitment of unauthorized acts and of unauthorized acts which entail the infliction of damage and injury.

The Plaintiffs' Damage

36. As a result of the incident contemplated in the Complaint, the Plaintiffs suffered the following damages:
- a. As a result of the breakage of the two doors of the wardrobe in the children's bedroom and the breakage of its shelves by Defendants 1-6, the Plaintiff had to replace the two doors and the shelves and to repair the wardrobe on the whole.
 - a.1. The Plaintiff shall claim that she is entitled to compensation for the cost of replacing the said broken parts of the wardrobe and repairing the same, in the sum total of NIS 1,600.

This sum, revaluated from the date of the incident until the date of filing of the Complaint, amounts to NIS 5,498.

- b. As a result of the breakage of the wooden boards of the double beds in the children's bedroom by Defendants 1-6, the Plaintiff had to replace the children's two beds.
- b.1. The Plaintiff shall claim that she is entitled to compensation for the cost of replacing the two said beds, in the sum total of NIS 1,300.

This sum, revaluated from the date of the incident until the date of filing of the Complaint, amounts to NIS 4,467.

- c. As a result of the breakage of the glass parts of the sideboard which stood near the front door of the House and of the interior door in the vestibule by Defendants 1-6, the Plaintiff had to replace all of the broken parts that were made of glass.
- c.1. The Plaintiff shall claim that she is entitled to compensation for the cost of replacing the said glass parts, in the sum total of NIS 500.

This amount, revaluated from the date of the incident until the date of filing of the Complaint, amounts to NIS 1,718.

- d. Furthermore, the Plaintiff is entitled to compensation for the vast grief and distress she suffered due to the illegal entry into her home, the overturning of the House and the contents thereof, the breakage and destruction of the household objects and the tearing up of the family photos, which carried great emotional value to her, and she is fixing her claim due to these damages at the sum total of NIS 15,000.

- 37. a. As a result of the battery, Plaintiffs 2-3 were unwell for several days and had to take tranquilizers to sooth the pain they felt all over the bodies.
 - b. Plaintiffs 2-3 shall claim that they are entitled to compensation for their mental injuries and for the distress they suffered due to the beatings, the kicking, having been laid down in the puddle, the piling of the tiles on their abdomens and the humiliation they underwent as specified above, and each one of them is fixing his claim due to such damages at the sum of NIS 30,000.
38. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.

The Honorable Court is therefore moved to summon the Defendants and to charge them with payment to the Plaintiffs of their damage as specified in the Complaint, in addition to lawful indexation differences and interest from the date of filing of the Complaint until the date of actual payment, in addition to trial expenses.

Jerusalem, this 4th day of February, 1997.

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Hala Huri, Adv.

Counsel for the Plaintiffs

(T.S. 1285, M.M. 17843)