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The Courts

<u>The Court for Local Affairs</u>		CrimC 22/07 CrimC 23/07
Before:	The Honorable Judge Aviv Malca	Date: 19 December 2007

In the matter of: IDF Commander in the Judea and Samaria Area

The Accuser

v.

Bar'ali Shlomo

The Defendant

Two fine alternative indictments (Nos. 25 and 26) were served against the defendant by the IDF commander in the Judea and Samaria Area in the Court for Local Affairs in Maale Adummim.

The indictments were served for a dog running at large without being led by a person, without being on a leash and without being muzzled.

According to the indictments, the offences were perpetrated on July 4, 2006 with two dogs and therefore two indictments were served.

The defendant filed a motion to have the indictments revoked (App. 43/06).

The defendant is a retired judge.

The Honorable Judge Tzur, who reviewed these files in the Court for Local Affairs in Maale Adummim recused himself since he knows the defendant.

In the same decision, Honorable Judge Stein was also recused as he is the defendant's neighbor (decision dated August 1, 2006).

As per the instructions of Honorable Judge Tzur, the files, including the motion for revocation of the indictment, were transferred to the President of the Court, Honorable Judge Amnon Cohen for a decision on the bench to be reviewing these cases.

Honorable President Cohen referred the request to the President of the Supreme Court for a decision on the competent court (decision dated August 6, 2006).

As per the decision of the President, the files were transferred to the Ramla Magistrates' Court (decision dated October 19, 2006).

Honorable Judge Yemini of the Ramla Magistrates' Court disqualified himself from reviewing the cases as he lacks authorization by the IDF commander in the Judea and Samaria Area (decision dated March 25, 2007).

Subsequently, the files returned to the President of the Supreme Court who instructed the President of the Magistrates' Court would appoint a judge to review the case (decision dated May 16, 2007).

Honorable President Amnon Cohen transferred the files to me as I am authorized by the IDF commander as a judge of the Court for Local Affairs in Kiryat Arba and since I have no knowledge of the defendant.

Since the files were transferred to me in view of the authorization given to me by the IDF Commander, I have decreed that the files would be reviewed by me as files of the Court for Local Affairs in Kiryat Arba, which is my jurisdiction, pursuant to same authorization (decision dated October 29, 2007).

However, as the number of days on which I preside in Kiryat Arba is very restricted, I have ruled that the hearings will actually be held in the court in Jerusalem in my capacity as judge of the Court for Local Affairs in Kiryat Arba.

Due to an error, the secretariat registered these files as Jerusalem Magistrates' Court files. This is an insignificant error and has no validity in regards to the propriety of the proceedings. I refer to my decision dated October 29, 2007.

This error has been clarified and corrected in the aforesaid decision and, in the meantime, the cases were opened in the Court for Local Affairs in Kiryat Arba.

The defendant challenges this and provides a long list of complaints and grievances.

I see no room to review each and every of the defendant's grievances.

I also see no need to receive the accuser's position on this document.

All of the defendant's arguments are to be rejected.

First, in view of the chain of events described above, the conclusion is clear and unequivocal; the files have been lawfully transferred to me and I am authorized to review them.

Second, the saga of the files' being shifted around among different judges in different courts must come to an end, and it has come to an end, before me.

On this issue, one would do well to learn from the logic in Section 79(b) of the Courts Law [incorporated version] 5744-1984, which stipulates that the court to which the file has been transferred "**shall not transfer it further**".

The reference to Section 79(a) of the Courts Law is not just logical but also based on the provision of Section 134 of the Order regarding the Administration of Local Councils (Judea and Samaria Area) (No. 892) 5741-1981 pursuant to which the Courts for Local Affairs in Kiryat Arba and in Maale Adummim operate.

As an aside, I call the defendant's attention to the fact that the motion which was filed with the Court for Local Affairs in Maale Adummim and marked App. 43/06 is not before me.

The motion is mentioned in the decision of Honorable Judge Tzur dated August 1, 2006.

Inasmuch as the defendant wishes me to review it, I instruct him to reconstruct the motion and file it with the court again. I again refer him to my decision of October 29, 2007.

Beyond the requirements of the law, I permit the applicant to submit it to me tomorrow during the hearing, with a copy for counsel for the accuser.

To remove doubt, I stress that the hearing will be held tomorrow in the Jerusalem court room, as stipulated in my decision of October 29, 2007, in the presence of the defendant.

Inasmuch as the defendant does not appear at the hearing a bench warrant will be issued against him.

Before I conclude, I cannot but remark that the defendant would have done well to maintain a more pleasant culture in his motion, as the defendant's style does not do him service. (I refer the defendant to the Rules of Ethics for Judges 5767-2007, particularly Section 10).

Aviv Malca 54678313-7/22

Issued today, 10 Tevet 5768 (19 December 2007) in the absence of the parties.

Malca Aviv, Judge

Einat Israeli

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