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At the Jerusalem Magistrate Court

In the matter of: **1. _____ Abu Diab**
ID No. _____
Mazari' an Nubani, Ramallah District
Al-Kabir Quarter
Um Samir House

Represented by counsel, Adv. Eliahu Abram and/or
Hisham Shabaita and/or Michal Pinchuk
Of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Plaintiff

v.

1. The State of Israel

Represented by the Tel Aviv District Attorney's Office (Civil)
1 Henrietta Szold Street
Tel Aviv 64921
Tel: 03-6970222; Fax: 03-6918541

The Defendant

Nature of Claim: Monetary
Amount of Claim: 140,800 ILS

Statement of Claim

1. The plaintiff is the holder and proprietor of the rights in plot 23, block 1, at 'Ein Qiniya village, Ramallah district adjacent to the main road (hereinafter: the "**plot**").

2. The defendant holds, and has been holding during all times relevant to this statement of claim the Ein Qiniya village under belligerent occupation and IDF soldiers acted therein on its behalf.
3. Until July 15, 1991, the plot consisted of a house which had been built by plaintiff's grandfather (hereinafter: the "**house**"): a two and a half story stone house surrounded by a courtyard and a garden with deciduous trees and olive trees. It was a corner house. One of its fronts was facing the main road and the other front was facing a western alley. The house consisted of two and a half stories and had a flat roof. The lower floor of the house which consisted of about 25 gross square meters was partly built and was used as a storage space. The residential level which consisted of about 75 gross square meters had four rooms and bathrooms. The upper level which consisted of about 35 gross square meters had two bed rooms. The house was located in the center of the village. The place is fully developed: road infrastructure, electricity and water.
4. Prior to July 15, 1991, the plaintiff and her spouse as well as nine of their thirteen children were living in the house.
5. On July 10, 1991, Colonel Joseph Mishlav, Commander of the West Bank on behalf of the defendant, issued a demolition order for the house (hereinafter: the "**order**").

The order is attached as an integral part to this claim and is marked **A**.

6.
 - A. On July 15, 1991, IDF soldiers acting on behalf of the defendant arrived to the house and demolished it.
 - B. The soldiers did not inform the plaintiff or her family members prior to the demolition that an order had been issued and did not give her the opportunity to be heard, to appeal the order or to apply to judicial instances.
 - C. Shortly after the demolition IDF forces have cleared off most of the ruins.
7. Until this present day the house is ruined and the plaintiff is not allowed to re-build it.
8. After the house was demolished the plaintiff and her family members moved to live with plaintiff's relative, who put at their disposal two rooms, a kitchen and a bathroom.
9. Two years later the plaintiff moved to live at her present address, where she pays rent at the rate of 50 dinars per month. At this address she had a residential unit which consisted of two rooms, a kitchen and a bathroom, and for the last few months, following a re-arrangement of the rooms of the house, said residential unit consists of two rooms, a living room, a kitchen and a bathroom.

The plaintiff, her spouse and seven of their thirteen children are living in this residential unit.

10. In correspondences exchanged between plaintiff's counsel and defendant's legal representatives, Colonel Moshe Rozenberg, the legal advisor for the West Bank, informed plaintiff's counsel on September 9, 1992 that:

"Your client is entitled to be compensated for the damage caused to her as a result of the demolition in accordance with her share in the rights concerning the property".

The letter is attached to this statement of claim as Exhibit **B**.

11. Until this present day the plaintiff has not been compensated for her damages.

The Legal Argument

12. The plaintiff will argue that the defendant must compensate her for her damages in accordance with the law which applies in the Area and in accordance with the provisions of the house demolishing order dated July 10, 1991(Exhibit A).
13.
 - A. The plaintiff will further argue that the demolition of the house constitutes the tort of trespass in real property as defined in section 29 of the Torts Ordinance (New Version), 5728-1968 (hereinafter: the **Ordinance**), causing unlawful damage to real property.
 - B. Under section 30 of the Ordinance the burden to prove that the demolition of the house was lawful, lies on the defendant.

The plaintiff will claim that the defendant must prove, *inter alia*, that the issuance of the order was duly authorized and that it was issued based on proper grounds and in compliance with a proper procedure under which plaintiff's procedural rights were maintained.
 - C. The defendant is liable for the tort of trespass in real property which was committed by its organs and/or employees and/or representatives acting on its behalf.
14. The plaintiff will further claim that the defendant is responsible for the damages caused to the plaintiff as a result of the acts and omissions of the defendant and/or its organs and/or its employees and/or its agents acting on its behalf, which amount to negligence, as this term is defined in section 35 of the Ordinance:
 - A. They failed to properly weigh plaintiff's proprietary rights and chose to protect the safety of passers-by by employing an extreme measure which exceeds proper standards of proportionality.
 - B. They failed to consider and did not try to use any other measures to achieve their purpose which would have caused the plaintiff a less drastic injury.
 - C. They did not grant the plaintiff an opportunity to be heard before the issuance of the order and did not grant her the right to appeal after the order had been issued, and in so doing they did not enable her to protect her rights and to prevent the demolition of the house.
 - D. They breached, without reasonable justification and unnecessarily, their duty to respect human dignity, family's honor and rights and plaintiff's personal property.
15.
 - A. The plaintiff will further claim that the defendant is also responsible for the damages caused to the plaintiff on the grounds that by demolishing the house without giving compensation therefore, the defendant and/or its organs and/or its employees and/or agents acting on its behalf have breached statutory duties, which are intended, as correctly interpreted, to protect the class of people that the plaintiff belongs to, and that plaintiff's damage was caused as a result of the breach of such duties.
 - B. The following are the statutory duties which were breached:
 1. The duty under section 452 of the Penal Law, 5737-1977 not to destroy an asset and not to maliciously and unlawfully damage it.

2. The duty under regulation 46 of the regulations annexed to the Hague Convention of 1907 concerning the Laws and Customs of War on Land, to respect family's honor and rights and private property and not to confiscate private property.
16. In addition the plaintiff will claim that it is entitled to be compensated for her damages by the defendant in accordance with unlawful enrichment laws, due to the fact that plaintiff's assets were destroyed for the purpose of protecting defendant's vehicles, defendant's security forces and defendant's citizens.

The Damages

17. The following are plaintiff's monetary damages:

The value of the house	113,500 ILS
Development of a rural residential unit	14,500 ILS
Loss of use of the land in the past	12,800 ILS

Concerning the amount of her damages the plaintiff attaches an opinion of the real estate appraiser, Mr. Eliahu Kazaz, which is marked C and constitutes an integral part of this statement of claim.

18. The house which was demolished is plaintiff's family house, which is transferred in the family from one generation to the other. The plaintiff was living in this house for her entire life, until its demolition. Since the house has been demolished the plaintiff, who had been previously independent, had to depend on the goodwill of family members. In addition, she had to relocate her residence twice, to live in an overly crowded apartment and to considerably decrease the quality of her life.

The amount of the damages for the pain and suffering caused to the plaintiff is left to the discretion of the honorable court.

19. The plaintiff retains the right to file a claim in the future for her damages arising from the prohibition to use the land, for as long a new house may not be erected on the plot.
20. The honorable court has the local and subject matter jurisdiction to adjudicate the claim.
21. Therefore, the honorable court is hereby requested to summon the defendant and order it to pay the plaintiff the full amount of her damages, as specified above, including linkage differentials and interest, from the date of filing of the claim until the date of actual payment, together with costs of trial.

Jerusalem, today July 12, 1998.

(signed)

Eliahu Abram, Advocate
Counsel to Plaintiff

(File No. 2218, 21103)