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The Magistrates Court in Jerusalem

Civ. 4350/97

Abu Hassan v. Kusayev

Opening date: 11 March 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

1. _____ **Abu Hassan**

2. _____ **Abu Hassan**

both 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. _____ **Kusayev**

2. **The State of Israel**

both represented by the Tel Aviv District
Attorney's Office (Civil Department)
1 Henrietta Szold Street
Tel Aviv 64924

The Defendants

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 40,000**

Complaint

1. Plaintiff 1, who was born in 1930 and is a resident of Kafr Battir in the District of Bethlehem, was 60 years old at the timeframe relevant to this Complaint.
2. Plaintiff 2, son of Plaintiff 1, was born in 1965 and is a resident of Kafr Battir in the District of Bethlehem.

3. Defendant 1 was born in 1966, and is a resident of Kiryat Gat. At the timeframe relevant to the Complaint, Defendant 1 was a Platoon Sergeant in an IDF armored infantry (*Hermesh*) unit.
4. Defendant 2 was, at the timeframe relevant to the Complaint, in charge of the actions of IDF soldiers in the area of Kafr Battir in the District of Bethlehem.

The Incident

5. On 26 April 1990, in the afternoon and evening hours, in Kafr Battir and on the road leading toward Canada Forest, Defendant 1 and other soldiers under his command attacked the Plaintiffs.
6. Defendant 1 and the soldiers under his command beat the Plaintiffs all over their bodies, using their hands, legs and rifle butts.
7. Defendant 1 and the soldiers under his command also pulled the Plaintiffs' hair and cursed them using vulgar and degrading language, including '*ya manyak*' and '*ya sharmut*'.
8. The said beating started in Kafr Battir itself, and continued in the Jeep in which the Plaintiffs, Defendant 1 and the soldiers under his command were traveling on the road leading from Kafr Battir to Canada Forest, which crosses the railroad at the entrance to Kafr Battir and passes through the territory of the State of Israel.

Following is the Chain of Events that Took Place:

9. 26 April 1990 was the *Id El-Fiter* holiday. Before the holiday, representatives of Kafr Battir spoke with the officer in charge of the military outpost located near the railroad at the entrance to the village, and reached an arrangement whereby peace would be maintained during the holiday: village residents would not throw stones at the passing train, and soldiers would not enter the village.
10. And so, the day of the holiday was indeed peaceful.
11. This peace was, however, breached in the afternoon hours.
12. Suddenly, without any explanation or justification and in deviation from the army procedures, an IDF patrol Jeep under the command of Defendant 1 emerged from the direction of Beit Jala. The Jeep's provocative entrance into the village was not coordinated with the appropriate authorities in the IDF, and indeed, Defendant 1 was subsequently brought to disciplinary trial therefor.

13. Once the Jeep entered the village, Defendant 1 and the soldiers under his command began detaining people, demanding their ID's and even ordering some young men, including Plaintiff 2, to run before the Jeep, while the soldiers shot in the air.
14. Defendant 1 and the soldiers under his command picked especially on Plaintiff 2, due to both Defendant 1's prior acquaintance with him, and his full figure (Defendant 1 used expressions such as "fatty" in reference to him).
15. By this stage, Defendant 1 and the soldiers under his command had already badly beaten up Plaintiff 2 and others.
16. When Plaintiff 1 arrived on the scene and tried to find out why his son was being beaten up and detained, he too was beaten by Defendant 1 and the soldiers under his command.
17. When other people from the village, having heard the shots, approached the area, the soldiers put Plaintiff 2 on the Jeep and Plaintiff 1 joined him.
18. The Jeep left the village with the soldiers still shooting in the air.
19. On the road leading out of the village and running near the railroad, the Jeep, under the command of Defendant 1, came across soldiers from the permanent outpost near the railroad, who had also gathered after having heard the shots. An argument developed between the officer in charge of the permanent outpost near the railroad and Defendant 1, due to Defendant 1's irresponsible behavior in entering Kafr Battir provocatively and of his own accord, causing a riot.
20. The patrol Jeep under Defendant 1's command started moving again, while evading the officer and the soldiers at the outpost. The Jeep crossed the railroad and went up in the direction of Canada Forest.
21. On the way, Defendant 1 and the soldiers under his command beat up the Plaintiffs, pulled their hair, bent their heads down and cursed them incessantly. After some distance, they stopped the Jeep, and three soldiers dragged Plaintiff 1 out of the Jeep. Even though Plaintiff 1 begged the soldiers to let him stay in the Jeep and accompany his son, for whose fate he feared due to the previous occurrences, the soldiers refused his request, left him on the road and drove on.
22. On the very same day, the Plaintiff went to the administration building in Bethlehem and complained to the officer in charge of the incident.
23. Plaintiff 1 also arrived at Al-Makassed Hospital on the Mount of Olives in Jerusalem, where he was examined and treated.

A confirmation from Al-Makassed Hospital is attached to this Complaint as Exhibit A and constitutes an integral part hereof.

24. On 28 April 1990 Plaintiff 1 filed a complaint on the battery at the Bethlehem Police.

A confirmation on the filing of the complaint at the police is attached to this Complaint as Exhibit B and constitutes an integral part hereof.

Liability of Defendant 1 and the Soldiers under his Command

Assault and Battery

25. a. The Plaintiffs shall claim that the beating they received by the kicking and shoving by Defendant 1 and the soldiers under his command, constitutes Battery, within the meaning of this term in Section 23 of the Torts Ordinance (New Version), and that Defendant 1 and the soldiers under his command are directly liable for the Plaintiffs' beating without their consent.
- b. The Plaintiffs shall further claim that Defendant 1 and the soldiers under his command assaulted them when attempting and/or threatening, by an act and/or movement, to use force as aforesaid against their body, and all while causing the Plaintiffs to believe that they did indeed have, at that time, the intention and the ability to carry out their malevolent intentions.

Negligence

26. The Plaintiffs shall claim that the act of battery and assault of Defendant 1 and the soldiers under his command constitutes, in itself, the civil wrong of negligence.
27. Alternatively, the Plaintiffs shall claim that the incident and the damage therefrom were caused due to the negligence and/or lack of caution and/or recklessness and/or disregard and/or per se negligence of Defendant 1 and the soldiers under his command, who attacked the Plaintiffs, as expressed in the following acts and/or omissions, namely that they:
 - a. Exceeded their authority and acted against high command orders and/or against the general staff orders and/or against IDF commanding and/or regional orders and/or against orders given to them by law and/or against statutory duties designed to safeguard the body and health of persons of the Plaintiffs' type and/or
 - b. Behaved recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiffs' body and/or

- c. Failed to do everything within the power of reasonable soldiers to prevent the attack and/or
- d. Failed to act as would have reasonable soldiers under the circumstances and/or
- e. Used wrongful means to maintain public order and/or
- f. Abused their authority by taking the law into their own hands and using force against the Plaintiffs without any lawful justification and/or reasonable cause and/or that
- g. Defendant 1 failed to supervise and/or properly supervise the acts and derelictions of the soldiers under his command and/or that
- h. Defendant 1 failed to ensure that the soldiers under his command respected the law.

Liability of Defendant 2

- 28. Defendant 2 is liable for the battery committed by Defendant 1 and the soldiers under his command, in their capacity as its agents and/or as having acted on its behalf.
- 29. Defendant 2 is liable for the damage caused to the Plaintiffs due to the negligence and/or lack of caution and/or negligence per se on the part of itself and/or its agents and/or employees and/or others acting on its behalf, as expressed, *inter alia*, in the following acts and/or omissions, namely that it:
 - a. Failed to fulfill its lawful duty and/or mission to ensure the safety of the residents of the West Bank (hereinafter: the Region), including the Plaintiffs.
 - b. Failed to supervise and/or to properly supervise the acts and omissions of IDF soldiers in the Region in general and/or at the scene of the incident in particular.
 - c. Failed to instruct and/or direct the IDF soldiers not to abuse their authority and not to commit an arbitrary act violating the right of others, including the Plaintiffs.
 - d. Failed to instruct the IDF soldiers and/or make clear to them their duty of maintaining public order and human safety.
 - e. Dispatched an unskilled force and/or a force lacking the appropriate commanding functionary in an IDF patrol Jeep.
 - f. Appointed a person who was not skilled or fit to fill a position of command.

- g. Failed to observe and/or teach and/or supervise the observance of the instructions of the high command and/or the general staff orders and/or the orders and/or directives of the IDF and/or improperly supervised and taught the said orders and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, and particularly Defendant 1 and the soldiers under his command, who assaulted the Plaintiffs, were familiar with or observed the same.
 - h. Failed to do everything in its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the battery incident and the damage therefrom and/or acted recklessly and incautiously and failed to pay attention to and/or watch over the persons under its charge.
30. The Plaintiffs shall claim that they are entitled to compensation for the mental injuries and distress they suffered due to the beatings, the kicking, the slapping, the humiliation and the fear that they felt as a result of the cursing and threats directed at them, as specified above, and are fixing their claim due to such damages at the sum of NIS 40,000, the sum total of NIS 20,000 per Plaintiff.
31. 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 above, in addition to lawful indexation and interest from the date of filing of the Complaint until actual payment, and in addition to trial expenses.

Jerusalem, 11 March 1997

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Hala Huri, Adv.
Counsel for the Plaintiffs