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The Magistrates Court in Jerusalem  
CC 20965/98

Juda v. Abraham

Opening date: October 14, 1998

Type of matter: 202 Procedure: Ordinary

### **At the Magistrates Court in Jerusalem**

In the matter of: Judah

Represented by counsel, Adv. Michal Pinchuk  
(License No. 21600) and/or Eliahu Abram  
(License No. 11851) and/or Hisham Shabaita  
(License No. 17362)  
of the HaMoked: Center for the Defence of the  
Individual  
founded by Dr. Lotte Saltzberger  
4 Abu Obeidah St., Jerusalem  
Tel. 02-6283555, Fax 02-6276317

### **The Plaintiff**

- Versus -

1. \_\_\_\_\_ Avraham,
2. \_\_\_\_\_ Zvi,
3. The State of Israel

Represented by the Office of the District  
Attorney of Jerusalem  
4 Uzi Hasson St.  
Jerusalem 94152  
Tel. 02-6208122, Fax 02-6252457

### **The Defendants**

Nature of the claim: Torts, Bodily Injury

Amount of the claim: According to the Sum of the Court's Jurisdiction

### **Statement of Claim**

1. The Plaintiff, born in 1969, is married and a father of three.
2. At the timeframe relevant to this Claim, Defendants 1 and 2 served as Border Guards with the Israel Police, and took part in the incident described below.
3. Throughout the timeframe relevant to this Claim, Defendant 3, the State of Israel, was in charge of and/or actuated and/or supervised the actions of Border Guards in general and the actions of Defendants 1 and 2 in the incident described below.
4.
  - a. On February 14, 1992, at 9:20 or thereabouts, the Plaintiff and his work colleague were detained near the Shekem store in the old central bus station in Jerusalem by two Israeli soldiers on auxiliary service to the police for an I.D. inspection. During the inspection, Defendants 1 and 2 arrived at the scene and they too asked to check the Plaintiff's and his colleague's I.D. cards.
  - b. The Plaintiff's friend did not speak Hebrew well, and the Plaintiff helped him answer the Defendants' questions.

This "intervention" by the Plaintiff aroused the anger of the Defendants, who, in response, swore at the Plaintiff and ordered him to accompany them to the police post at the Egged bus depot (hereinafter: the "**Police Post**"). The Plaintiff joined the Defendants without any resistance, while protesting their illegal behavior and revealing his intention to complain about them.

- c. When they arrived at the Police Post, they discovered that it was closed. Defendant 1 intended to search the Plaintiff in the stairwell, near the door to the Police Post. At the request of Defendant 1, the Plaintiff took off the coat and he was wearing, and stood with his legs spread apart and his hands on the wall.

The Plaintiff waited for several minutes, and when he saw that the Defendant 1 was not performing the search, he turned his head to see why it was being delayed. In

response, Defendant 1 turned the Plaintiff's face forcefully while banging it against the wall.

- d. Defendant 1 called his friend, Defendant 2, and together they started beating the Plaintiff, with Defendant 2 holding the Plaintiff and Defendant 1 beating him forcefully.

The Plaintiff's cries and calls for police help remained unanswered.

- e. After several minutes, during which the Plaintiff received a severe beating, the Defendants ceased beating him, handcuffed him and called the field officer in charge.
  - f. From the Police Post, the Plaintiff was rushed to the police station, where he was arrested on the basis of the complaint of Defendants 1 and 2. The Defendants gave statements in which they accused the Plaintiff of being "disrespectful", of attacking them and of attempting to pull the Defendant 1's weapon. The Plaintiff was interrogated about these suspicions and denied them.
  - g. On February 16, 1992, at 10:50, the Plaintiff was released on his own recognizance.
5.
    - a. On February 19, 1992, the Plaintiff complained against the Defendants 1 and 2 to the Border Guard Ombudsman. The Plaintiff's complaint was investigated, and on June 30, 1992, the Director of Police Investigation Unit (PIU) at the Ministry of Justice decided to file disciplinary charges against Defendant 1 for use of force in violation of the orders of the Israel Police. The PIU director further recommended to consider filing disciplinary charges against the two Defendants for conducting an unlawful search and for conduct unbecoming a policeman.
    - b. The Israel Police did not indict Defendants 1 and 2 in a disciplinary tribunal, but did nothing more than try them in accordance with the complaints [*sic*] before a sole judge. The Defendants' direct commander served as the sole judge, and he acquitted them.
  6. An indictment was filed against the Plaintiff for assaulting a police officer on duty, on the basis of the complaints of the Defendants. The Plaintiff pled not guilty, and on May 4, 1994 the prosecution withdrew the indictment.

The indictment against the Plaintiff was dismissed without prejudice.

7.
  - a. The Plaintiff's beating by the Defendants constitutes battery, within the meaning of this term in Article 23 of the Torts Ordinance [New Version], 5728-1968.
  - b. The Plaintiff's detention by the Defendants and his subsequent arrest for 48 hours, for no reason, constitute false imprisonment within the meaning of this term in Article 26 of the Torts Ordinance [New Version], 5728-1968.
  - c. The criminal investigation that was instituted against the Plaintiff by the Defendants, for the offense of assaulting a police officer on duty, was a wrongful criminal proceeding, that was opened maliciously and for the purpose of deterring him from filing a complaint against Defendants 1-2 - and which resulted in the denial of the Plaintiff's liberty and an injury to his good name, and constitutes malicious prosecution within the meaning of this term in Article 60 of the Torts Ordinance [New Version], 5728-1968.
8. The Plaintiff shall further claim that Defendants 1 and 2 were negligent in the performance of their duties, and that this negligence was expressed in the following acts and/or omissions, namely that they:
  - a. Unnecessarily and unlawfully detained the Plaintiff and demanded that he accompany them to the Police Post.
  - b. Beat and abused the Plaintiff without any lawful reason and/or justification.
  - c. Used force against the Plaintiff to a degree which was excessive and unreasonable under the circumstances.
  - d. Failed to use the skills they acquired in their police training to check the Plaintiff appropriately and efficiently.
  - e. Behaved and acted contrary to the conduct which could have been expected from reasonable and prudent police forces under the same circumstances.
  - f. Exceeded their authority and acted contrary to the Police Commissioner's orders and/or directives.
9. The Plaintiff shall further claim that the Defendants breached statutory duties as specified below, which are designed, according to their rightful meaning, to protect the type of persons to which the Plaintiff belongs, and that the violation of such duties caused the damage claimed by the Plaintiff.

The Defendants violated the following statutory duties:

- a. Articles 4 and 11 of Basic Law: Human Dignity and Liberty, which prohibit the violation of a person's body and dignity, and which require all state authorities, including the police and the Defendants as officers of the Israel Police, to respect and protect such rights.
  - b. Article 280(1) of the Penal Law, 5737-1977 (hereinafter: the "**Law**"), which requires all civil servants, including police officers, not to perform an arbitrary act which infringes on a person's right while abusing their authority.
  - c. Articles 379, 380 and 382(a) of the Law, which prohibit battery and aggravated battery.
  - d. Article 2 of the Second Schedule to the Police Ordinance [New Version], 5731-1971 (hereinafter: the "**Second Schedule**"), which discusses negligence in the fulfillment of a duty.
  - e. Article 3 of the Second Schedule, which discusses conduct unbecoming a policeman.
  - f. Article 8 of the Second Schedule, which discusses the performance of an arrest unlawfully and in bad faith.
  - g. Article 19(a) of the Second Schedule, which discusses the use of force against a person during the fulfillment of a duty contrary to the orders of the Israel Police.
  - h. Article 1 of the Second Schedule, which discusses the failure to fulfill any one of the orders of the Israel Police.
10. Defendant 3 bears vicarious liability for the battery and false arrest committed by the Defendants in their capacity as its agents and/or as acting on its behalf, because it sanctioned the performance thereof and/or retroactively approved the same; it also bears vicarious liability for their negligence.
  11. In addition, or alternatively, the Plaintiff shall claim that the Defendant 1 bears direct liability for the damage caused to him due to the malicious prosecution and due to its negligence, as expressed, *inter alia*, in the following acts and/or omissions, namely that it:
    - a. Failed to ensure that the Defendants, who were under its charge and who acted on its behalf, were familiar with and observed the orders of the Police Commissioner and/or the provisions of any law.

- b. Failed to supervise and/or improperly supervised the acts and omissions of members of the security forces, including the Defendants.
  - c. Failed to do everything within its power and/or everything it should have done in order to prevent the incident and the damage therefrom.
  - d. Failed to foresee, although it could and ought to have foreseen, the incident and/or the course of events which led to the incident.
  - e. Failed to fulfill its lawful duties to ensure the safety of the residents of the State of Israel.
  - f. Dispatched an unskilled and/or unsuitable force to carry out policing activities.
  - g. Failed to supervise and/or insufficiently supervised the police prosecution mechanism.
12. The Plaintiff shall further claim that the decisions of the PIU and the Israel Police, to opt for disciplinary proceeding before a sole judge against Defendants 1 and 2, for disciplinary offenses pursuant to Articles 1 and 19(a) of the Second Schedule to the Police Ordinance, and nothing more, are unreasonable decisions in view of the severity of the Defendant's [*sic*] complaint. In making these decisions through its authorities, Defendant 3 was negligent and infringed on the Plaintiff's right that his complaint against Defendants 1 and 2 be heard in a criminal proceeding in Court or in a full and open disciplinary proceeding in the Israel Police disciplinary tribunal.

### **The Plaintiff's Damage**

13. As a result of the Defendants' acts as described above, the Plaintiff was injured in all parts of his body.
14. a. During the incident and as a result thereof, the Plaintiff felt fear and humiliation. The Plaintiff helplessly faced the Defendants, stripped of any ability to defend himself against their arbitrariness and severe violence.
- b. The Plaintiff was unlawfully detained and arrested. The denial of the Plaintiff's freedom for more than 48 hours, without any reason or justification, constitutes a severe injury to the Plaintiff's dignity, liberty and freedom of movement.
15. The Honorable Court is moved to compensate the Plaintiff for the great pain, suffering and distress he experienced and for the sorrow, humiliation, inconvenience and denial of liberty he underwent.

16. In the period of time relevant to this Claim, the Plaintiff worked as a temporary employee in a gas station. Since the incident, the Plaintiff has changed jobs several times, and while looking for work he is repeatedly faced with comments about his criminal record, at times even told explicitly that it is barring his hiring. The Plaintiff shall claim that the false proceeding that the Defendants initiated against him damaged his good name and earning capacity in the past and in the future, and that he is confronting and is expected to continue to confront difficulties in finding work as a result thereof.
17. Following is a specification of the damage for which the Defendants are required to compensate the Plaintiff:

**Special Damage**

- a. Past lost earnings ILS 10,000

**General Damage**

- a. Injury to future earning capacity
- b. Non-pecuniary damage
18. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Claim.
19. The Honorable Court is therefore moved to summon the Defendants and to charge them with payment to the Plaintiff, jointly and severally, of his damage in full as specified above, and to charge the Defendants with payment of trial expenses, in addition to linkage differentials and interest as set out in the law from the date of the incident until the date of actual payment.

Jerusalem, October 14, 1998

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Michal Pinchuk, Adv.  
Counsel for the Plaintiff

(T.S. 2765, M.M. 21528)