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At the Magistrates Court in Jerusalem

CC 020965/98

Before: Honorable Justice Refael Yacobi

In the matter of: Judah

Represented by counsel, Adv. Michal Pinchuk

The Plaintiff

- Versus -

1. _____ Avraham,
2. _____ Zvi,
3. The State of Israel

Represented by Counsel, Adv. Ram Zvieli

The Defendants

Judgment

1. The Plaintiff was born in 1969, and is a resident of East Jerusalem. The Claim herein was filed against two Border Guards and against the State of Israel due to an incident that occurred on February 14, 1992, during and following which, according to the Plaintiff, the Defendants committed various grave civil wrongs against him.
2. In the Statement of Claim, the Plaintiff describes a very grave chain of events, with regard to the conduct of Defendants 1 and 2 towards him.

This is how the events were described in the Statement of Claim:

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 women 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.

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.

3. In the Statement of Defense, the Defendants turn the spotlight on the Plaintiff's conduct, and interpret the course of events as such that the steps taken by Defendants 1 and 2 came as a reaction to the Plaintiff's unacceptable conduct. The Defendants point out that their use of force was reasonable under the circumstances of the incident.

This is how the events are presented in the Statement of Defense:

4. a. On February 14, 1992, while Defendants 1 and 2 were on security duty in the area of the central bus station in Jerusalem, Defendant 1 checked the personal information of a Nablus resident who was there.
- b. The Plaintiff, for no reason evident to Defendants 1 and 2, interfered with the inspection and hindered the conclusion thereof by Defendant 1. The Plaintiff did not heed the instructions of Defendant 1 to cease from interfering, and was therefore detained for questioning and taken to the nearby police post.
- c. Since the police post was closed, Defendant 1 wanted to search the Plaintiff's body and instructed him to stand, according to the police search procedure, with his face to the wall and his hands raised and placed on the wall.
- d. The Plaintiff disobeyed Defendant 1, and disrupted him from performing the search, by turning his head and body towards Defendant 1, while removing his hand from the wall. In response, Defendant 1 gently turned the Plaintiff's head back towards the wall. We shall note, in this context, that contrary to the impression which might be formed by reading the Statement of Claim, the Plaintiff was not left in the search position for longer than necessary to conduct the search.
- e. In response to Defendant 1's turning his head, the Plaintiff turned towards Defendant 1, and started beating him. At this point, Defendant 1 started to defend himself from the Plaintiff and

Defendant 2, who was standing in a security post approximately two meters away from the Plaintiff and Defendant 1, approached them and began assisting Defendant to subdue the Plaintiff.

- f. During the attempt to subdue the Plaintiff, the Plaintiff pulled Defendant 1's personal weapon with force, and the rifle strap detached from the butt.
- g. Defendants 1 and 2 subdued the Plaintiff, arrested and handcuffed him, all of which while using reasonable force under the circumstances of the case

Regarding the indictment which was filed against the Plaintiff and ultimately withdrawn, the Defendants do not deny this fact, although, for some reason, they add technical details, the significance of which is entirely unclear (see paragraph 6 of the Statement of Defense).

- 4. The Plaintiff reiterates the version he presented in the Statement of Claim, also in his affidavit in lieu of direct testimony (P/1). To support and establish this version, the affidavit of said resident of the Territories, _____ (Harubi), was also filed (P/2). The Plaintiff was examined at length, and the aforementioned witness was examined briefly. No inconsistencies appeared in their accounts, even after the examination, and their testimonies left a very credible impression.
- 5. The situation insofar as the Defendants are concerned is quite different, and on this matter I shall elaborate below. At this point I shall note only that both of them submitted affidavits (D/1, D/2). Their affidavits were accompanied by statements that they had given to the Border Guard Ombudsman – two by Defendant 1 (D/3, D/4) and one by Defendant 2 (P[sic]/4). The Defendants were examined in court, and their examination left a poor impression.
- 6. **Final Result in Brief**

In view of my impression of the witnesses who testified before me, and having reviewed all the evidence and parties' summations (in writing), I have reached the clear conclusion that the entire factual portion of the Statement of Claim has been proven, and that the Claim should be granted.

I cannot avoid noting that the clear impression I got was that of an extremely severe case of abuse of power and authority, in an unbridled manner. It is even more regrettable that the incident should never have begun, let alone ended as it did. The intervention of Defendants 1 and 2 was never required in this case in the first place. The entire matter should have and could have ended with the two female soldiers on the service of the police checking the Plaintiff's and his colleague's I.D. cards and were satisfied. Defendants 1 and 2 are the ones who inserted themselves, without anyone having needed or wanted them to do so, thus putting themselves along with the Plaintiff in an unnecessary and problematic situation. Even in the framework of this situation they did

not conduct themselves properly, since despite the fact that the Plaintiff's behavior was moderate all along, their reactions towards him were in no proportion to his behavior, and to what was called for under the circumstances. Furthermore, the Defendants' behavior continuously aggravated the situation, dragging the Plaintiff to certain reactions, which afterwards – and even then without any justification – infuriated them and caused them to inflict bodily and mental harm on the Plaintiff.

The Defendants' conduct was unacceptable throughout the incident: at the time of the additional inspection they performed on the Plaintiff and his colleague, while speaking harshly to the Plaintiff; in the mere performance of the detention procedure, which had no real justification under the circumstances; in the mere performance of the search on the Plaintiff; and in the brutal manner in which they did so – both in the unnecessary wait and in beating the Plaintiff during said search. The Defendants added insult to injury when, trying to cover their tracks and make their actions against the Defendant seem justified, they filed a complaint against the Plaintiff in a manner which did not fit the true circumstances, thus causing the Plaintiff's false arrest for 48 hours, following which an indictment was filed against him in vain and, indeed, ultimately dismissed.

I therefore accept the Plaintiff's claim that Defendants 1 and 2 assaulted him – using physical and verbal violence, unlawfully detained and searched him, and brought about his arrest for 48 hours, with no real justification, following which an utterly uncalled for indictment was filed against him. In view of the above, the elements of the tort of battery, the tort of negligence and of breaching a statutory duty have clearly been fulfilled here. In his summations, the Plaintiff abandoned his claims regarding the torts of false imprisonment and malicious prosecution and in fact, all the aforesaid is sufficient to make the Defendants liable to compensate the Plaintiff.

7. **Clear Preference of the Plaintiff's account over the Defendants' account (accounts)**

Following on my remarks above in paragraphs 5-6, I would like to add the following to further establish my conclusions and the final result which I reached:

- a. Plaintiff's counsel is correct in that contradictions were found in the Defendants' accounts, that many questions arise in respect thereto and that they suffer from the most conspicuous inconsistency. The impression given is that the Defendants attempted, retroactively and with post factum wisdom, to weave a web of facts which would result in their being found innocent, whilst the Plaintiff is smeared. This, however, they failed to achieve. Many contradictions and inconsistencies, which clearly indicate unreliability, were found both within the accounts given by each one of the Defendants, as well as between their accounts. Regarding this matter, I accept all the detailed arguments made by Plaintiff's counsel in pp. 9-12 of her summations. The specifics are clear; there is no point in repeating them, and the remarks contained therein in this context are to be deemed to have been repeated in this part of my judgment.

The lack of credibility in the Defendants' accounts was predominantly evident in their fabrications regarding the alleged rifle snatching, as detailed therein, in

paragraphs a-e. It should be noted that the matter of the rifle snatching is such that had it actually occurred, is the kind of event that would never be forgotten by whoever experienced it. This is due to the fact that if indeed the Plaintiff had snatched a weapon, with which he might have shot the Defendants, it would have caused such a trauma that it would not have been forgotten for all eternity. The existence of contradictions with regard to the weapon event is conspicuous, and decidedly works against the Defendants.

It might be added that the claim that the Plaintiff ostensibly laughed in the Defendants' faces, was mentioned in the statement of Defendant 2 (P/3 + P/3a), and then forgotten for some reason (see p. 6 of the transcript, lines 17 – 20). There were also substantial contradictions regarding the period of time during which the Plaintiff stood with his hands against the wall, until the Defendants deigned to search him (paragraph 10 of the affidavit D/2, as opposed to D/3 and as opposed to p. 10 of the transcript, line 14 and forth).

See also p. 7 of the transcript, line 6 and forth – contradictions and difficulties regarding the Plaintiff's turning his head while awaiting the search.

I believe that what has been said so far will suffice, and there is no need to add anything further.

- b. The situation described by the Defendants wherein after the Plaintiff behaved impudently towards them, by turning his head while awaiting the search and talking provokingly to them, and yet in response, they turned his head gently, is entirely inconceivable when the entire chain of the events is considered. In fact, it points to the manufacture of a version for the purpose of self-defense and warding off the claim, rather than for providing a real account. Whoever testifies about himself that: “at the end of the incident I remember kicking the Plaintiff twice in his testicles and then we handcuffed him” (p. 11, line 16), and who (along with his colleague) had been far from gentle before then, yet claims to have been gentle in-between, cannot expect to be deemed trustworthy.
- c. Also the fact that severe steps were taken only against the Plaintiff, despite his being an Israeli resident, while nothing was done to his colleague, strengthens the conclusion that the Defendants were not acting pertinently and for the purpose of carrying out their mission, but out of extraneous considerations – an attempt to impress the female soldiers and/or self release at the Plaintiff's expense. For further illustration, Defendant 1 confirmed that “they were both suspicious” (p. 9, line 10). We would have expected, at least *prima facie*, that the colleague, who was a resident of the Territories, be treated with greater caution, and that his inspection be more extensive. And yet he was released immediately, whereas the Plaintiff underwent what he did. A peculiarity, indeed.
- d. The fact that the soldiers in the service of the police did what was required themselves, and did not need the Defendants' assistance, greatly strengthens my conclusion that the Defendants' entire intervention was unnecessary. Furthermore,

in my opinion, in this case, the soldiers served as a catalyst, spurring the Defendants to act so as to impress them, showing off the power and authority with which they were entrusted. The Defendants confirmed that they had contact and communications with the aforementioned soldiers about the incident in question (see, for instance, p. 4, lines 18-21; p. 8, line 34). The plaintiff implied that this affinity was the “root of all evil” (see p. 2, lines 18-19), and, upon evaluating the evidence on the whole, I agree with him on this matter.

“Cherchez La Femme” (look for the woman), the Frenchman would say, meaning that it was the presence of the soldiers that set the snowball in motion. “Pandora”, the Greek would counter, namely that it was the female soldiers' presence in the field that caused the box of agony to open upon the Plaintiff's head. The Cosmopolitan would come, holding the Book of Books under his arm, and defy them both, saying that the prophet Jeremiah already alluded to this (although he had a different meaning in mind), by saying: “A female shall turn a man” (Jeremiah 31, 21). In our case, he would interpret this phrase to mean that at times, the presence of a woman disrupts a man's mind, causing him to behave irrationally. This scenario, hinted in the Book of Books, seconded by the Greeks and tripled by the French – occurred, I believe, in the case before us.

More could be added to the above, but it is my opinion that the extent of my conviction regarding the liability of Defendants 1 and 2 may stand in direct proportion to the relative brevity of detail in the judgment, and therefore, in the words of Job (18, 2), I shall end my words, and elaborate no further.

8. **Contributory Fault**

Under the circumstances of the incident, no contributory fault should be attributed to the Plaintiff. Since the Defendants' version was entirely rejected, and his version was accepted, the conclusion is that no contributory fault on his part had been established.

Furthermore, I have positively determined above that the Plaintiff's responses were moderate in the situations in which the Defendants placed him. It is undisputed that he surrendered his I.D. card with no problem whatsoever (p. 4, line 35 – p. 5, line 1). It is also agreed that “the Plaintiff did not resist. Agreed to come with us to the police post” (p. 5, line 25). With regard to the rest of his reactions, his version, rather than the Defendants' version is acceptable to me. It should be kept in mind that a person facing wrongful detention, arrest and illegal search procedures is entitled to defend himself against them, even with the use of force. I accept that the Plaintiff in this case used no force at any stage. Nevertheless, he should not be expected to stand before the Defendants like a “sheep before its shearers”. Even if he responded by uttering something or other, such as asking why the search was being delayed, and this is the most I am willing to attribute to him, and even had I accepted the Defendants' version regarding his reactions in full, this would still not amount to contributory fault, under the over-all circumstances of the incident.

9. **The Liability of Defendant 3**

The Defendants' summations entirely fail to address the arguments made in the Plaintiff's summations regarding the liability - direct and vicarious - of Defendant 3 toward the Plaintiff. In any event, the claim should be accepted, if merely for the procedural reason that abstaining from confronting the claim should be deemed as the acceptance thereof.

Furthermore, said abstention, added to the fact that Defendants 1 and 2 were represented by Defendant 3 and the support given by Defendant 3 Defendants 1 and 2 by making arguments for them, should be deemed as a sanctioning the Defendants' actions.

This derives from all the references cited by the Plaintiff in his summations, and especially from the opinion of Hon. Justice H. Cohen In CA 667/77 **Dadon v. Atias**, PDI 32(2), 169, 174 that:

Once the State, as a litigant, has taken a clear position that the act of battery committed by the defendant was not a civil wrong, it is deemed to have sanctioned the battery and chosen to assert its lawfulness.

Thus, as aforesaid, with regard to battery, as well as with regard to the Defendants' overall behavior and the consequences thereof. Consequently, the same responsibility and the same scope of liability which have been determined with regard to Defendants 1 and 2, namely, full responsibility and liability, absent any contributory fault, also apply to Defendant 3. The liability of all of the Defendants is, therefore, joint and several.

The Damage

10. The Plaintiff did not file a medical opinion on his behalf.

He specifies his claims regarding the damage in paragraphs 13-17 of the statement of claim, and in paragraphs 14-16 of his affidavit in lieu of direct testimony.

The Plaintiff notes that his main damage is the non-pecuniary damage – the distress, the fear and the humiliation he experienced throughout his direct contact with the Defendants, and thereafter – the 48-hour long false arrest.

To this he adds that the aforementioned affair has caused him to be defined as having a “criminal record”, and that this has damaged his earning capacity in the past and might do so in the future as well.

In his summations, he claimed that since he was not examined on the damage, his claims with regard to this matter should be accepted in full.

11. The Plaintiff's claims regarding loss of earning capacity should be dismissed. The Defendants' counsel rightfully noted (in paragraph 23 of his summations) that since the criminal file against the Plaintiff had been closed, it was not likely that there was or would be any loss of earnings with connection to the incident. And indeed, insofar as the past is concerned, and even though this is special damage, the Plaintiff has proven

nothing regarding such damage. I accept the contention that he is not expected to suffer any damage in connection with this. Furthermore, equipped with this judgment, clearing him of any wrongdoing in connection with the events contemplated herein, his earning capacity is not expected to be harmed at all due to the said events.

12. What remains is to compensate the Plaintiff for the non-pecuniary damage. Here it is indeed my opinion that the Plaintiff was severely harmed. The severe disgrace, the humiliation he underwent, along with the physical beating, indeed constitute bodily and mental injury (compare: CA 328/76 **The Competent Authority v. Angel**, PDI 31(1) 169, 173–174, and the references cited therein). When the denial of liberty due to the false arrest is added thereto, the damage is substantial. The damage was mostly expressed in the past, but it should not be ruled out that it has made its mark for the future as well, in a way that the Plaintiff carries with him sorrow and insult that will doubtfully ever fade away entirely.

The proper amount of compensation is subject to judicial assessment. I have come to the conclusion that under the circumstances of the event, it would be appropriate to charge the Defendants with payment to the Plaintiff, jointly and severally, of the sum total of ILS 13,000 as of the date of the judgment. This amount already includes the interest for the period of approximately eight years and three months, from the date of the events and until the date of the judgment.

13. **Conclusion**

As aforesaid, the Defendants, jointly and severally, shall pay the Plaintiff damages in the amount of ILS 13,000 as of the date of this judgment. In addition, the Defendants, jointly and severally, shall pay the Plaintiff trial expenses and, additionally, legal fees in the sum of ILS 3,000, plus VAT.

The aforementioned sums shall bear interest and linkage differentials from the date of the judgment.

**Issued today, 20 Iyar 5760 (May 25, 2000), in the absence of the parties.
The Office of the Court Clerk shall send a copy of the judgment to parties' counsel.**

Justice Refael Yacobi

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