

**The Supreme Court of Jerusalem
in its Capacity as High Court of Justice**

HCJ - 8887 /06

Yousif Musa 'abdel Razek el-Nabut *et al*

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The Petitioners

VS

1-4 – The Minister of Defense *et al*

Respondents 1-4 are represented by
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5. – Avi Teksler, Secretary of the Migron Settlement

Respondent no. 5 is represented by
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The Respondents

PRELIMINARY RESPONSE BY RESPONDENTS 1-4

1. In accordance with the ruling handed down by His Honor Judge Rubinstein, Respondents 1-4 (hereinafter: **The State**) respectfully submit their response to this Petition.
2. The Petition deals with a request by the Petitioners to instruct the State to provide a reason as to why all necessary actions should not be taken to evacuate the illegal outpost of “Migron” (hereinafter: **Migron or the Outpost**), including the issue of an injunction aimed at area delineation and its implementation, the issuing of injunctions to stop the work and demolition injunctions and their implementation.
3. As will be stipulated below, the Minister of Defense has ordered that attempts be made to try and reach an understanding with the settlement factors in Judea and Samaria, in an effort to reach an inclusive solution for voluntarily evacuating illegal outposts in Judea and Samaria, including the voluntary evacuation of Migron in the near future. Should these contacts fail and bear no fruit, the

Minister of Defense intends to evacuate Migron within a few months, after having exhausted all other options.

It is important to stress the fact that the timing and date of the evacuation of the outpost will have to be coordinated with the Prime Minister, and that the timetable for the evacuation of the outpost will also, of course, be subject to changes due to circumstances, as well as to relevant restrictions – be they security, legal or others – which may or may not be present.

4. Under these circumstances, the State shall ask that it be allowed to submit an update in four-five months.

FOLLOWING ARE THE MAIN FACTS RELATING TO THE ISSUE

The Migron Outpost

5. The Migron outpost was established in May 2001 upon Hill N.G. 748,. The outpost is located northeast of Ramallah, beyond the jurisdictional boundaries of any local or regional council in Judea and Samaria. Today, 42 families reside in the outpost.
6. The land upon which the buildings of the outpost were constructed is registered privately owned Palestinian land, part of the agricultural terrain within the boundaries of Burka and Dir Debwan.
7. The structures that truly stand out on Migron today are some 62 caravans (two of which have been faced with stone, some which have been appended to others and some which have been enlarged), foundations for three additional caravans, 3 prefabricated buildings (one of which serves as a synagogue), one permanent building which is presently under construction, intended to serve as a *mikveh*, a shelter, two cellular antennae (one of them consisting of a pole and two structures, and the second one, one pole and one structure), a water tower, containers, a sports field, a playground, a guardhouse, a bus stop, light poles, fencing with a dog run, the early stages of roads and two access roads.
8. It should be pointed out that no permit has been issued for connecting the outpost's infrastructure, with the exception of electricity to a cellular transmission installation.

The fact that the outpost is being connected to the electricity grid is due to the need to connect transmission equipment, and even that was carried out without the proper permits. Apparently, the connection was effected on or around 11.7.02.

In addition, the outpost was connected to the water, waste and telephone systems illegally.

9. We should like to add that the construction of one of the cellular transmission installations was approved on 19.7.01 at the request of Partner. On 24.2.03, an additional permit was issued for the erection of transmission equipment for Pelephone, to which Celcom was linked, in accordance with the permit it received on 12.5.03.

The erection of this transmission equipment was approved due to difficulties encountered in covering cellular reception on Road no. 60 (the ring road around Ramallah), taking into consideration security risks involved in travel along that road.

We should like to point out that the sites of cellular transmission also fall within the confines of illegal construction, since despite the fact that a permit was issued for their placement in accordance with the communications ruling issued by the Communications Officer of the Civil Administration, no installation plan was submitted prior to their erection, as required by law.

10. We should like to add that at the time, the Ministry of Construction and Housing transferred money to the Mateh Binyamin Regional Council, most of which was used to carry out infrastructure work in Migron.

DESCRIPTION OF THE OUTPOST'S DEVELOPMENT AND THE SUPERVISORY PROCEDURES OVER CONSTRUCTION

11. On 21.6.99, a container was discovered on the future site of the outpost, as well as the beginning of a road, measuring some 2.5 kms, used to carry out archeological work on the site. The Civil Administration issued an injunction to halt all such work.
12. On 11.7.99, construction was discovered under cloth/plastic sheeting (construction which was removed voluntarily on 23.9.99, together with the container mentioned in the above paragraph) as well as a generator, for which a work stoppage injunction was also issued.
13. It should be pointed out that Plan 245, requesting that a site be designated for road services and an emergency center and for planning the outpost was submitted in July 1999, however, since the land was privately owned, the Head of the Civil Administration denied the request to proceed with the plan's submission process on 24.11.99.

We should like to point out that since the land on which the outpost is situated is not considered to be “State property”, but rather privately owned Palestinian land, no approval was issued for proceeding with any planning procedure whatsoever that might make it possible to establish the outpost and construct structures without the agreement of the registered owners.

14. On 3.5.01, initial construction was noticed on the site, consisting of the placement of a container, the start of construction on a road and the laying of platforms.

Steps were taken against this initial construction by issuing an injunction for stopping the work, issued and delivered by the Supervisory Unit of the Civil Administration. It should be pointed out that the relevant container was indeed removed in January 2002.

15. Apparently, the major development work of the outpost began in the beginning of 2002, when three containers were placed there to serve as habitations, and development and fencing work began adjacent to the first cellular transmission installation established there.

Proceedings re stopping the work and issuing demolition injunctions were also carried out against this construction and against additional construction work carried out on the outpost site at a later time. The Supervisory Unit of the Civil Administration issued injunctions to stop the work, ordering the elements carrying out the construction to appear before the Supervisory Sub-committee of the Supreme Planning Council; a number of meetings were held by supervisory sub-committees, to which, for the most part, the persons involved did not appear despite having been ordered to do so, and final demolition and work stoppage injunctions were issued regarding the construction that had already been carried out.

16. After having begun supervisory proceedings regarding the construction on the outpost as described above, some of the construction elements on the outpost were removed voluntarily. In addition, in October 2003, two containers were removed in the same manner and on 10.12.03, another caravan was removed.

17. **We should like to emphasize that the final demolition injunctions regarding all of the structures on the outpost are still valid.**

An aerial photograph of the outpost, with references to all of the supervisory cases regarding the final demolition injunctions that were issued, as well as the cases in which structures were removed voluntarily, is attached and marked **MS/1**.

18. It should be pointed out that as part of its routine supervisory and enforcement activities, the Supervisory Unit of the Civil Administration carried out, and continues to carry out patrols in the region of the outpost. In addition, the Ramallah office of the Liaison and Coordination Offices of the Civil

Administration also carries out patrols in the area. As a result of these patrols, the Supervisory Unit confiscated various tools and equipment when there was probably cause to suspect that these were being used to commit offences that violated the work stoppage injunctions or that structures/containers were being moved there without legal permits. For example, on 20.8.03, three transport vehicles were confiscated; on 15.12.04m four transport vehicles were confiscated; on 28.9.04, heavy machinery used to prepare plots on the outpost was confiscated; and on 16.2.05, a cement truck and attendant equipment was confiscated.

LAND OWNERSHIP IN MIGRON

19. As stated above, the land upon which the outpost is situated is privately owned, registered land, belonging to local Palestinian residents.
20. It should be mentioned that several acquisition claims on the part of Israeli elements were submitted with regard to part of the land on the site of the outpost and adjacent to it, such as:
 - A. A claim by “Al Watan” Company for the purchase of plots 19 and 28 in bloc 26 of the Dir Debwan lands – it should be pointed out that at the time, applications were submitted to receive “transaction permits” regarding this issue as well as business permits (applications 10/03 and 11/03), however the documents necessary to continue the registration process were never provided. In addition, the Land Registration Officer informed the Al Watan company on 10.5.06 that the application regarding plot 28 in bloc 26 had been stricken from file 11/03.

Photocopies of the application for transaction permits are attached and marked **MS/2 and MS/3**.

A photocopy of the notification that the application for a transaction permit had been stricken from file 11/03 is attached and marked **MS/4**.

A photocopy of the application for a business permit is attached and marked **MS/5**.

- B. The Bnei Rachel Company’s claim for the purchase of plots 23 and 27 in bloc 26 of the Dir Debwan lands – it should be pointed out that according to the claim, a request was submitted at the time to receive a business permit regarding the abovementioned plots, however, the documents required for continuing the process were not provided.

- C. The claim submitted by Mr. Itai Harel within the context of a session of the Supervisory Sub-committee on 21.10.04, in case marked R. 249/04 regarding illegal construction, according to which he owns the land rights to plot 23 in bloc 26 of the Dir Debwan lands.

A photocopy of the minutes of the Sub-committee meeting of 21.10.04 in case R 249/04 are attached and marked MS/6.

- D. The claim submitted by Mr. Itai Halevy within the context of a session of the Supervisory Sub-committee on 8.11.05, in case R 123/05 regarding illegal construction, according to which plot 23 in bloc 26 of the Dir Debwan lands was purchased by the Al Watan Company and subsequently leased to him.

A photocopy of the minutes of the Sub-committee meeting of 8.11.05 is attached and marked MS/7.

12. Thus, since none of the required documents required to prove such claims were submitted regarding any of the claims of acquisition mentioned above, the case is that of unsubstantiated claims. Therefore, these cannot be taken into account when considering the fact that the land upon which the outpost stands is not Israeli-registered land, since it is owned by Palestinian residents.

An aerial photograph upon which the data re the plots in the area of Migron are marked, including the plot about which acquisition claims were made, but whose acquisition was unsubstantiated, is attached and marked MS/8.

EXAMINATION OF POSSIBLE WAYS OF REACHING AN AGREEMENT RE THE EVACUATION OF THE MIGRON OUTPOST

22. In order to remove all and any doubt, it should be emphasized that since the reference is to an outpost which was established a few years ago on privately owned Palestinian land, there is no legal way which permits the acceptance of its existence for any period of time.

It should also be clarified that the circumstances of the Migron case, no one, regardless of how senior his/her position, was authorized to approve the construction of the outpost on the site upon which it was constructed at the time and under the circumstances under which it was built, nor was he/she authorized to accept the existence of the outpost for any length of time or guarantee that it would not be evacuated (compare: HCJ 5853/04 “**Amanah**” **Settlement Movement of the Gush Emunim Cooperative Association vs. the Prime Minister of Israel**, PD NT(2) 189) (2004))

23. The only issues that remain are, in fact, the timing of the outpost's evacuation and whether the outpost will be evacuated voluntarily by the residents, whether they themselves will demolish the structures on the outpost, or whether it will be necessary to involve the authorities.
24. Under these circumstances, the Minister of Defense, as stated above, has given instructions that attempts be made to try to reach an understanding with the settlement factors in Judea and Samaria, in an effort to reach an inclusive solution for voluntarily evacuating the illegal outposts in Judea and Samaria, in particular, to bring about a voluntary evacuation of Migron in the near future.
25. It should be pointed out that should no agreement regarding voluntary evacuation within a reasonable amount of time be reached within the next few weeks, the Minister of Defense intends to have the outpost of Migron evacuated by the authorities. This will occur within a few months.

As stated above, the timing and date of the evacuation of the outpost will have to be coordinated with the Prime Minister, and that the timetable for the evacuation of the outpost will also, of course, be subject to changes due to circumstances or relevant constraints – be they security, legal or other – which may or may not be present.

Regarding the exact timing for the evacuation of Migron, we should like to refer to the words of Her Honor Judge (as she was then called) Beinisch in H CJ 1555/06 **King vs. the Municipality of Jerusalem**' file no. 2006(2) 2841(2006) as follows:

“... now that it has been decided to proceed with handling the issue of illegal construction in Jerusalem, professional elements who are responsible for enforcing the law and determining priorities with regard to the means used to enforce the law and to what extent are charged with this.

We must take into account that the resources required for carrying out the objective are in the hands of the operational authority and enforcement policy is determined according to priorities set out for itself; this depends upon the focal points of violations of the law, the resources available to the various branches of authority, and taking into account practical and operational capabilities. In each of these cases, there is no room for intervention as long as the relevant authority does not disregard its obligation to enforce the law.”

26. It should be pointed out that within the context of procedures for the evacuation of Migron, there is also a reasonable possibility that area delineation of the outpost might be declared by the Commander of the IDF forces in the region of Judea and Samaria, the basis for which will be written instructions by the Prime Minister and the Minister of Defense.

For more information, see:

HCJ 548/04 – Amanah – the Settlement Movement of Gush Emunim vs. Commander of the IDF Forces in the Region of Judea and Samaria, File no. NH(3) 373 (2004)

HCJ 5843/04 “Amanah, the Settlement Movement of Gush Emunim – Cooperative Association vs. the Prime Minister of Israel, file NT (2) 289 (2004)

In Summary

27. The Minister of Defense intends to evacuate Migron in the near future, while it would be preferable to come to an agreement with the settlers that such an evacuation and demolition of the structures on the site of the outpost be voluntary.
28. Therefore, the State proposes that it be allowed to update the response to this petition in another four-five months.
29. The facts spelled out in paras. 5-21, with the exception of para. 10, are supported by the statement made by Brigadier General Kamil abu Rokon, Head of the Civil Administration in Judea and Samaria.

The facts spelled out in para. 10 of the response are supported by the statement made by Mr. Avri Livni, Head of the Rural Construction Administration of the Ministry of Construction and Housing.

26 Kislev 5767

17 December 2007

Anat Helman, Adv.

Head, HCJ issues

State Attorney's Office