



**In the Supreme Court in its capacity as the High Court of Justice**

**HCJ 5163/13**

Before:

Hon. President (ret.) A. Grunis  
Hon. Judge N. Hendel  
Hon. Judge U. Vogelman

The petitioners:

1. Beit Jala Municipality
2. Issa Haliliah
3. Issa Shatla
4. Salivah Zidan
5. Hanna Teet
6. Odeh Haliliah
7. Nasri Najar
8. Nidal Mubarak
9. Gouda Abu Sa'ad
10. Riad Abu Muhar
11. Yousef Shatla
12. Nachaleh Abu Eid
13. Mina Zidan
14. Ibrahim Abu Awad
15. Yaacoub Abu Amasheh
16. Nader Abu Jatass
17. Louris Haliliah
18. Hachaleh Abu Eid
19. Johnny Shahawan
20. Perach Elallem
21. Emile Elallemouda Elaraj
22. Lamieh Elaraj
23. Bshara Awad
24. Issa Kasfasah
25. Na'ama Abu Mouhar



26. Riad Abu Mouhar
27. Gariss Abu Mouhar
28. Yousrah Salem Nawauwieh
29. Hanna Salivah Kosateh
30. Eskandar Abu Roman
31. Karim Hadawah
32. Akram Hadawah
33. Dr. Bshara Elias Nassrallah
34. Eliad Na'im Jarayes Lachsini
35. Victor Hani

Vs.

The respondents:

1. The General Director of the Ministry of Defense
2. The Ministry of Defense
3. The Seam Line (Barrier) Administration
4. The Military Commander in the West Bank
5. Har Gilo Local Committee
6. Salesian Sisters Convent
7. Salesian of Don Bosco
8. The Peace and Security Council
9. The Nature and Parks Authority

Request under the Contempt of Court Regulations. 10.6.2015

On behalf of the Petitioners:	Ghayyath Nasser, Adv.
On behalf of Respondents 1-4:	Channy Ofek, Adv.
On behalf of Respondent 5:	Dr. Gershon Gontovnik, Adv.
On behalf of Respondent 6:	Zvi Avni, Adv.
On behalf of Respondent 7:	Nahad Arshid, Adv.
On behalf of Respondent 8:	Talia Sasson, Adv.
On behalf of Respondent 9:	Nirit Aharon, Adv.



### Ruling

Before us is a request under the contempt of court regulations regarding the allegation of preventing the implementation the Court's verdict on this case (building the separation wall in Beit Jala) as well as a request for an injunction order.

1. On 2/4/2015 the court issued a final decision (court order 5163/13: Beit Jala Municipality v the Public Administration of the Israeli Ministry of Defense) in which the Court asked the respondents to consider alternative routes for that section of the separation wall mentioned in the petition (the petition was addressed by judge Grunis (retired), Judge Hendel, Judge Vogelmann. Judge Naor replaced Grunis as President after his retirement). The route of the wall addressed in the petition passes through the South of Jerusalem adjacent to Har Gilo, across Beit Jala near two Monasteries; the Salesian Sister's Convent and the Salesian Monks Monastery. Under the planned route, the Sister's Convent and the educational institutions connected to it would be on the West Bank side of the wall and the wall would separate it from part of its lands. On the other hand, the Monks Monastery would remain on the Israeli side of the wall. On the 7th of August 2014 we asked the respondents to consider alternatives where both the Convent and the Monastery would remain on the Palestinian side of the wall. The Court indicated that alternative under which the Monks were to remain on the Israeli side against their will is not acceptable to the Court. The respondents presented two alternative suggestions which were rejected by the petitioners. In the Court's final decision, we indicated that based on the previous assertions we can't assess the reasoning of these alternatives or their rationality as compared to the end results of these alternatives. (paragraph 22 of President's opinion). We added that regardless of the time factor, the route must be altered in such a way which prevents geographical disconnection between the Monastery and the Convent or between them and the local Christian community in Beit Jala and Bethlehem (opinion of Judge Vogelmann, joint by Judge Hendel). As a result, this conditional term was unanimously changed to a final decision in the following sense: "the respondents have to consider once more, in the near future, alternatives to that section of the route of the wall referred to in the petition."
2. On the 10th of June 2015, the petitioners submitted a request under the contempt of court regulations. In the allegation, the petitioners pointed that they received on the 29th of April 2015 a notification from the legal advisor of the Ministry of Defense informing them that irrespective of considering alternative routes as requested by the Court, which is still



ongoing, the Ministry of Defense intends to initiate constructing a section of the wall included in the petition at the length of 1.2 Km with leaving an opening of about 225 meters. The petitioners view these actions which the respondent intends to initiate as contempt to the court's decision; any measures undertaken in the route of the wall addressed in the petition violates the court's decision. Respondents 6 and 7 (the Monastery and the Convent) joint the contempt of Court request.

3. The respondents 1-4 (hereafter the State) claimed that their decision to build a section of the wall serves the purpose of reducing evident security threats in the area, and that this - in conjunction with considering alternatives for the remainder of the route and concluding the requested legal procedures for building it – is directly proportional with the Court's decision. These actions guarantee free access and connection between the two monasteries and further guarantees free access for the people of Beit Jala and Bethlehem to both monasteries. The final decision in the petition, in the opinion of the State, does not prohibit these actions, but aims to guarantee a new consideration of an alternative route which would be executed and advanced, despite the fact that it was not built yet. The State further added that the partial construction of the wall is inevitable in any future route and there is no place for doubt that it will disappear in the future. The State elaborated that at the moment, they haven't started implementing the planned work until a decision is reached on this current request. Respondent No. 5 (The Local Committee of Har Gilo) joined the State's response. Respondent No. 9 (the Nature and National Parks Authority) informed us that it reached an agreement with the State that the work will be implemented following a joint discussion in which they would indicate the means to be taken in order to reduce environmental harm to the area.
4. After discussion and weighing the different allegations and responses before us, we decided to reject the request. The contempt of Court procedures aim to guarantee the implementation of decisions issued by the Court; non-implementation of the Court's decisions would lead to social disorder and will harm the credibility and the decisions which the Court aims to implement. (criminal appeal No. 517/06 Manor v KPMG Inc, Para. 12, 24/7/2007), see also; request for permission for civil appeal No. 3888/04 Cherbt v Cherbt, Court Decision N.T. 4(49), 58 (2004)). The works planned for by the State do not contempt the Court's decision, as there is no conflict between them and the Court's final decision in this petition. This Court's decision stresses the importance of finding an alternative route which would prevent disconnecting the Monasteries from each other or from the community they serve. For



plausible reasons, they abstained from clearly specifying the suitable alternative (see and compare with the Court's Decision No. 8414/05 Yaseen v State of Israel, Para 8, 15/12/2015). However, we don't dispute that in light of our final decision, the works of building the wall cannot be implemented in such a way that would disconnect the Monasteries from each other or from the community. As mentioned in the State's response, to which a map of the planned route was attached, the planned work does not intend to geographically disconnect the Convent and the Monastery from each other, the Monasteries from their lands or from the local community (assuming that the planned works should not only guarantee access, but also not to hinder or make it burdensome). The State further affirms, in response to the petitioners claim that building the wall will hinder free access of farmers from Beit Jala to the lands used by them, that their connection and access to their lands will be guaranteed to remain free and in the same manner as happens today. Based on the above, there is no reason for why the contempt of Court procedures should be used. In addition to that, we do not see a need to decide on whether the planned works in the route of the wall are inevitable in any future route or not, as that State has pointed. It is enough for us that these works, which are being implemented to reduce security risk, do not contradict with the Court's decision as it does not contradict the Court's instructions (which as mentioned earlier, do not request annulling the whole of the planned route.)

Based on the above, the request is denied including the request to issue an injunction order. No expenses will be ordered.

Given today, 19<sup>th</sup> of Tamuz, 5775 (6.7.2015)

President

Judge

Judge