
Insiders' Jerusalem - August 2 Hearing on Sheikh Jarrah

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Insiders' Jerusalem

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Special Sheikh Jarrah Edition:

Q&A:

What to Expect from the August 2, 2021 Supreme Court Hearing on Sheikh Jarrah

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This report can be downloaded [here](#).

1. What is the August 2 Supreme Court hearing on Sheikh Jarrah all about?

Operating under the auspices of a corporation, Nahlat Shimon Ltd., the settlers of East Jerusalem have filed eviction proceedings against tens of Palestinian families in the Shimon Tzadik area of Sheikh Jarrah. In an eviction suit against four of these

Palestinian families, the Court of first instance, the Jerusalem's Magistrate's Court, ruled in favor of the settlers, and the Jerusalem District Court rejected the appeal filed by the Palestinian residents. The residents have [taken](#) the matter to the Israeli Supreme Court, moving to grant a leave for appeal.

[See our recent in-depth analysis](#): " Large scale Displacement- from Sheikh Jarrah to Silwan"

2. What is a leave of appeal?

In general, party to a legal proceeding is entitled under law to one appeal against a judgment they wish to challenge. It is only under special circumstances in which the Court will grant leave for a second appeal, among else for the following reasons: the case is a matter of great public importance; it raises fundamental legal or constitutional issues; the ruling of the lower Court contains a blatant factual or legal error, or in general, it is a matter that has ramifications that transcend those of the immediate parties. Cases in which the leave for appeal is granted are the exception, not the rule.

3. What is the question to be determined by the Court?

According to the settlers, two Jewish associations purchased the land in question in 1875, and the houses were built on that land. Under Israeli legislation, Jews who lost property in the 1948 war in East Jerusalem may recover their property; Palestinians who lost property in the same war in West Jerusalem may not. Acknowledging that the residents have the status of "protected tenants", the settlers claim that the residents are in breach of the tenancy laws. As detailed below, the residents reject these claims and assert their ownership and/or the right to maintain the possession of the property (see below). The lower Court and the Court of Appeal both ruled in favor of the settlers. The Palestinian residents have filed a motion to the Supreme Court for a leave to appeal these judgments.

4. What will take place at the August 2 hearing?

The appellants (the Palestinian residents) will present their claims before a panel of three Supreme Court justices, and the respondents (the settlers) will respond. The parties' written arguments and evidence have already been submitted in advance to the Court, and new evidence may be introduced only by permission of the Court. This will be of particular significance in the hearing on August 2. The residents recently filed an [expert legal](#) opinion by IDC Prof. Ronit Levine-Schnur (by means of attorneys Sami Ersheid and Hosni Abu Hussein) whereby the residents have full property rights to the houses in question. The opinion could be highly significant to the Court's ruling. The Court will need to grant permission to introduce the opinion into evidence.

5. What are the questions that are before the Court?

The most basic question is whether the leave for appeal raises legal or factual issues, or matters of public interest of such import they merit a second appeal. The Court generally will not intervene in the factual findings of the lower Court. Should the Court decide to hear arguments in this regard, the following matters will likely arise:

- Did the two Jewish associations indeed purchase rights to the property in 1875, and if so, did they acquire ownership?
- Have the residents acknowledged the rights of the Jewish associations in the past?
- The homes in question were built by the United Nations and UNRWA in the 1950s for Palestinian refugees, and the residents are living in those homes. What rights do the residents have to the property, and do the rights of the settlers take precedence over these rights.
- If the residents are protected tenants (and not, as they claim, owners) are they in violation of the tenancy laws in a manner that allows the settlers to evict them?
- What fiduciary duties do the Government of Israel's organs – the Custodian General and the Courts themselves – owe to the Palestinian residents and their right to decent housing?
- Does the fact that Israeli law allows Jews to recover property lost in the 1948 war, but denies that right to the Palestinians who lost property have any bearing on the ruling?
- The Courts are compelled to interpret Israeli domestic legislation in the light of International Law. ([An opinion](#) by prominent Israeli experts in international law has recently been filed in the case of the evictions in Silwan, and may be relevant to the Sheikh Jarrah case as well). What impact, if any, does this have on the matter at hand?

What bearing, if any, do the ramifications of these evictions in regard to Israel's national interests – security, standing in the international community, public order, etc. – have on the ruling. (It is noteworthy that the Attorney General was asked by the appellants to present the government's position in these matters, but he declined to do so).

6. What are the possible outcomes of the August 2 hearing?

There are numerous possible scenarios as to what can take place during and at the end of the hearing, These are the most prominent of them:

- The Court can dismiss the residents motion for leave to appeal in one laconic sentence: "The Court has decided not to intervene in the judgments of the lower Courts". In this case eviction proceedings may commence within a short period of time.
- The Court may rule that the hearing is taking place as if the leave for appeal has been granted, and to treat the hearing as the appeal itself to be adjudicated by the panel of three judges. In this case, each side will state their claims. The Court could rule that additional hearings or materials are required

before the judgment, or that summation arguments be made orally on the spot, or in writing within an allotted period of time.

- The Court may conduct the hearing on the leave to appeal alone, and either a) rule on the spot b) decide that the ruling will be handed down at a later date or c) refer the matter to a panel of Supreme Court Justices to hear the appeal.

In the event that the Court decides to hear the appeal on the spot, they may a) defer their decision to a later date b) rule to allow the judgments of the lower Court stand c) accept the appeal of the residents for reasons stated by the Court d) to return the case to the magistrates' Court to review factual and legal issues under guidelines determined by the Court.

7. If the residents' motion or appeal is rejected, when can the actual evictions take place?

Under these circumstances, the date after which the eviction may be executed will likely be determined in the Court's ruling. If no date is mentioned, the settlers may commence the execution of eviction proceedings by means of a warning delivered to the residents no earlier than ten days after the Court ruling, and the actual eviction may take place twenty days thereafter – all in all thirty days. The date of eviction may be deferred based on the police determining that it will endanger public order. Such a deferral is by its very nature temporary.

Which options may or may not exist regarding the possibilities of preventing the evictions in Sheikh Jarrah, will become more apparent after the August 2nd hearing.

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