HCJ 5444/13

Petitioners: **1. Yonit (Yoneleh) Erez**

2. A.

3. Center for Women's Justice

v.

Respondents: **1. The Special Conversion Court**

2. Great Rabbinical Court of Appeals

3. Rabbinical Courts Administration

4. Chief Rabbi Shlomo Amar

The Supreme Court Sitting as High Court of Justice

(Dec. 17, 2014)

Before: Deputy President M. Naor, Justice E. Hayut, Justice N. Hendel

Petition for an order nisi

Israeli Supreme Court cases cited:

[1] CA 4682/92 *Estate of Salim Ezra Shaya, Deceased v. Beit Taltash Ltd.*, IsrSC 57(3) 366 (2003).

[2] CA 254/58 *Ingster v. Langfus*, IsrSC 13, 449 (1959).

[3] CFH 4546/96 *Hof Gai v. Mekorot Ltd*. (May 14, 1997).

[4] CA 9369/12 *Ivi v. Z.A.M.A. Gas Transport Ltd*. (July 7, 2014).

Judgment

Justice N. Hendel:

1. Are there situations in which the Special Conversion Court can revoke the conversion of a person who was converted by that court? That is the question raised by the Petitioner in the present matter.

2. The Petitioner was born to a Christian family in Romania, and converted to Judaism in Israel before Respondent 1 (hereinafter: the Special Court). Two years later, the Special Court revoked the conversion. This was primarily due to doubts that arose concerning the sincerity of the Petitioner's intention at the time of her conversion. This is the basis for the present petition that argues that the Special Court lacks authority to revoke a conversion, and that its decision infringes the rules of natural justice. As opposed to this, the State is of the opinion that the revocation was within the Special Court's authority, and was also justified on the merits.

3. In the civil law, a court has inherent power to set aside its own final judgment, in exceptional cases. The case law clearly states that setting aside a judgment – the practical meaning of which is the conducting of a quasi-appeal before that same instance – constitutes a conspicuous deviation from the principle of finality. It must, therefore, be done sparingly and with discretion. The causes for setting aside a judgment are very limited. Foremost among them is fraud, i.e., where the court is convinced that its original decision was based upon an act of deceit – for example, the presenting of incorrect information by one of the litigants (see: CA 4682/92 *Estate of Shaya, Deceased v. Beit Taltash Ltd.* [1], 371; CA 254/58 *Ingster v. Langfus* [2], 453-456; CA 9369/12 *Ivi v. Z.A.M.A. Gas Transport Ltd*. [4]). It should be noted, for the sake of comparison, that the legislature arranged for the possibility of a retrial in criminal cases, *inter alia*, if it be found "that any of the evidence produced in the matter was based on a falsehood or forgery and that there is reason to believe that the absence of such evidence might have altered the outcome of the case in favour of the sentenced person" (sec. 31(a)(1) of the Courts Law (Consolidated Version), 5744-1984).[1]

Our starting point in the present case is that the Special Court was competent, in the first place, to determine the question of the Petitioner's conversion. The question is whether it was competent to revoke the conversion thereafter. At the relevant time, neither the law nor the regulations established rules governing this authority. However, we are of the opinion that we may be assisted in this regard by the aforesaid rule in civil proceedings. In other words: just as a civil court holds inherent power to set aside a final judgment– in rare, exceptional cases – so does the Special Conversion Court. Were we to say otherwise, we would find ourselves permitting a fundamentally flawed judgment to stand for eternity. As Prof. Zaltzman states in regard to civil

[1] 38 L.S.I. 271.

proceedings: "There is no doubt that the legal system will not willingly accept the continued existence of a judgment that is so severely tainted, while permitting a litigant to benefit from his wrongdoing" (NINA ZALTZMAN, RES JUDICATA, 598-600 (1991) (Hebrew). Indeed, it would appear that the even the Petitioner agrees that an exceptional case of fraud can justify returning to the Special Court (sec. 101 of the petition).

We do not think it appropriate, in the present procedural framework, to establish a list of concrete causes for which the Special Court might revoke a conversion. It should suffice to say that in the present case, the Special Court found – as a matter of fact – that the Petitioner dramatically changed her lifestyle very soon after her conversion, such that in practice "nothing remained of the religious observance that she [the Petitioner] had assumed". The Special Court concluded from this that the Petitioner had originally made a false declaration before the court in the course of the conversion proceedings, and that she actually had never intended to undertake religious observance. The Special Court reached its factual findings after examining the pleadings and conducting a hearing in the presence of both parties. It should also be noted that the Petitioner was represented by a rabbinical pleader in the Special Court proceedings. Under these circumstances, in which the Special Court acted in fundamental good faith in reaching its factual conclusion that the original judgment – the Petitioner's conversion – was granted on the basis of misrepresentation, the Special Court's authority to revoke its judgment should not be denied.

To complete the picture, it should be noted that the Chief Rabbi at the time, Rabbi Shlomo Amar, established the procedural rules for conversion requests. Those rules regulate the work of the special conversion courts. The rules provide, *inter alia*, that "in exceptional cases in which the court is of the opinion that there is reason to consider annulling of the conversion of a convert", the court may summon the convert's appearance in order to examine the question of annulment. The rules further set out the manner for conducting the hearing on the matter of annulling a conversion, as well as the appeal process. It should be emphasized that these rules post-dated the decisions of the Special Court that are the subject of this petition, and are mentioned only to complete the picture.

4. Before concluding, we would note that the chain of events in these proceedings is somewhat problematic. In the same judgment in which the Special Court ordered the annulment of the Petitioner's conversion, it added that "we establish her [the Petitioner] status as a dubitable

convert". An appeal was filed in the Great Rabbinical Court, which noted that "the judgment of the said court should be deemed as not final, and whose substance is in doubt". The Great Rabbinical Court ordered the Special Court to conduct a further hearing, before a panel of five judges, in the hope that "in the expanded hearing, the question of the fitness of the conversion will be clarified, and that the judgment that will be rendered will be absolute and not in doubt". Pursuant to that, in January 2004, there was also a hearing of oral arguments in the Great Rabbinical Court in the matter of the Petitioner. Since that time, no expanded panel has been convened, the Special Court has not issued a judgment, and the Great Rabbinical Court has not handed down a final judgment on the appeal.

This chain of events raises a question. One would have expected that the issue of the Petitioner's status – after her conversion was declared void – would have been decided one way or the other. Nevertheless, we have chosen not to address the issue, inasmuch as the Petitioner emphasized that she "does not request a hearing before an expanded panel of five judges, and does not even seek the remedy of a judgment in her matter after a decade" (sec. 55 of the petition). In other words, the Petitioner chose to focus her arguments specifically on the authority of the Special Court to revoke the conversion, and refrained from requesting operative remedies for the purpose of conducting a hearing before an expanded panel or obtaining a final judgment in her matter. That is, of course, her right.

5. In light of the above, the petition is denied. We make no order for costs in the circumstances of the present proceedings.

Deputy President M. Naor:

I concur.

I wish to emphasize that this decision relates only to a conversion *obtained by fraud*. It should not be concluded from this judgment that the authority of the Special Conversion Court to revoke conversions extends to other cases.

Justice E. Hayut:

I concur, and join the comment of Deputy President M. Naor.

Decided in accordance with the opinion of Justice N. Hendel.

Given this day, 25 Kislev 5775 (Dec. 17, 2014).