

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF KUILSRIVER
HELD AT KUILSRIVER**

CASE NO:

In the matter between:

RUBEN THEODOR FITCHAT

Plaintiff

and

TYRONE JOHNSON

Defendant

COMBINED SUMMONS

TO: The Sheriff or his/her deputy:

INFORM:

TYRONE JOHNSON, a male whose full and further particulars are unknown to the Plaintiff and who is currently residing at **19 KLEINBRON AVENUE, KLEINBRON ESTATE, BRACKENFELL** (hereinafter called "the Defendant")

THAT:

RUBEN THEODOR FITCHAT, an adult male software developer residing at **91 FRANGIPANI STREET, KLEINBRON ESTATE, BRACKENFELL** (hereinafter called the Plaintiff)

hereby institutes action against the Defendant in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if he/she disputes the claim and wishes to defend the action, it shall:

- (i) Within **TEN (10) DAYS** of service upon them of this Summons, file with the Clerk of the Kuilsriver Magistrate's Court, Notice of Intention to Defend, and serve a copy thereon on the Plaintiff, which notice shall give an address (not being a post office box of *post restante*) referred to in Rule 13(3) for the service upon the Defendant of all notices and documents in this action;
- (ii) Thereafter and within **TWENTY (20) DAYS** after filing and serving notice of intention to defend as aforesaid, file with the Clerk of the Court and serve upon the Plaintiff a Plea, Exception, Notice to strike out, with or without a Counterclaim.

INFORM the Defendant further that if he/she fails to file and serve notices as aforesaid, judgment as claimed may be given against him/her without further notice to him/her, or if, having filed and served such notice, the Defendant fails to plead, except, make application to strike out or counter-claim, Judgment may be given against him/her.

INFORM the Defendant further that the Plaintiff agrees to accept service of all subsequent documents and notices via electronic mail as provided for in Rule 5(3) **AND** immediately thereafter serve on the Defendant a copy of this Summons and return the same to the Clerk of the Court with whatsoever you have done thereupon.

Costs if the action is undefended will be as follows:

	Summons	Judgment
	R	c R c
Attorney charges		R TO BE TAXED
Letter of demand	R	R
Registered mail	R	
Court fees	R	
Sheriff's fees	R	

Sheriff's fees on re-issue

R

Totals

R

R

DATED AT BRACKENFELL ON THIS 9th DAY OF FEBRUARY 2022

**CLERK OF THE COURT
MAGISTRATES COURT
KUILSRIVER**



RUBEN THEODOR FITCHAT

91 FRANGIPANI STREET

KLEINBRON ESTATE

BRACKENFELL

7560

Cell: 083 925 1545

Email: theo@cluedapp.co.za

AND TAKE NOTICE THAT -

- (a) In default of your paying the amount in the claim and costs within the SAID period or of your delivering a notice of intention to defend you will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against your absence;
- (b) If you pay the said claim and costs within the said period judgment will not be given against you herein and you will save judgment charges. You will also save judgment charges if, within the said period, you lodge with the Clerk of the aforesaid Court a consent to Judgment;
- (c) If you admit the claim and wish to consent to judgment or wish to undertake to pay the claim in instalments or otherwise, you may approach the plaintiff or his attorney.

NOTICE:

- (i) Any person against whom a court has, in a civil case, given judgment or made any order WHO has not, within 10 days, satisfied in full such judgment or order may be called upon by notice in terms of Section 65A(1) of the Act to appear on a specified date before the court in chambers to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.
- (ii) If the court is satisfied that-
 - (aa) the judgment debtor, or if the judgment debtor is a juristic person., a director or officer of the juristic person has knowledge of the abovementioned notice and that he or she has failed to appear before the court on the date and at the time specified in the notice: or
 - (bb) the judgment debtor, director or officer, where the proceedings were postponed in his or her presence to a date and time determined by the court, has failed to appear before the court on that date and at that time; or
 - (cc) the judgment debtor, director or officer has failed to remain in attendance at the proceedings or at the proceedings so postponed; the court may, at the request of the judgment creditor or his or her attorney, authorize the issue of a warrant directing the sheriff to arrest the said judgment debtor, director or officer and to bring him or her before a competent court to enable that court to conduct a financial enquiry. (Section 65A(6) of the Act)
- (iii) Any person. WHO-
 - (aa) is called upon to appear before a court under a notice in terms of Section 65A(1) or (8)(b) of the Act (where the sheriff, *in lieu* of arresting a person, hands to that person a notice to appear in court) and who wilfully fails to appear before the court on the date and the time specified in the notice; or
 - (bb) where the proceedings were postponed in his or her presence to a date and time determined by the court, wilfully fails to appear before the court on that date and that time; or
 - (cc) Wilfully fails to remain in attendance at the relevant proceedings or at the proceedings so postpone; shall be guilty of an offence and liable on conviction to a fine of to imprisonment for a period not exceeding three months. (Section 65(9) of the Act)
- (iv) On appearing before the court on the date determined in the notice in terms of Section 65A(1) or (8)(b) of the Act in pursuance of the arrest of the judgment debtor, director or officer under a warrant referred to in Section 65A(6) of the Act or on any date to which the proceedings have been postponed, such judgment debtor, director of officer shall be called upon to give evidence on his or her financial position or that of the juristic person on his or her or its liability to pay the judgment debt (Section 65D of the Act)
- (iv) Any person against whom a court has, in a civil case, given any judgment or made any order who has not satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith shall, if he or she has changed his or her place of residence, business or employment, within **14** days from the date of every such change notify the clerk of the court who gave such judgment or made such order and the judgment creditor or his or her attorney fully and correctly in writing of his or her new place of residence, business or employment, and by his or her failure to do so such judgment debtor shall be guilty of an offence and liable upon conviction, to a fine or to imprisonment for a period not exceeding three months. (Section 109 of the Act)

(2) **CONSENT TO JUDGMENT**

I admit that I am liable to the plaintiff as claimed in this summons (or in the amount of R _____ and costs to date) and I consent to judgment accordingly.

Dated at _____ this _____ day of _____ 2022

DEFENDANT

WITNESSES:

i. (full names) _____ (signature) _____ (address) _____

ii. (full names) _____ (signature) _____ (address) _____

OR

(3) **NOTICE OF INTENTION TO DEFEND**

To the Registrar / Clerk of the Court _____

Kindly take notice that the defendant/s hereby notifies their intention to defend this action.

Dated _____ this _____ day of _____ 2022

Defendant/Defendant's Attorney _____

Address: _____

Postal address: _____

Telephone number: _____ Facsimile Number: _____

E-mail address: _____

(Give full address for acceptance of service of process or documents within fifteen (15) kilometers from the Court-house and also the postal address.)

TAKE NOTICE FURTHER THAT the Defendant/s hereby consent to service of all subsequent documents and notices via e-mail as provided for in Rule 5(3)

TAKE NOTICE FURTHER THAT in terms of Rule 5(3), if the Defendant/s refuse or fail to deliver the consent in writing as provided for herein, the court may on application by the plaintiff, grant such consent, on such terms as to costs and other wise as may be just and appropriate in the circumstances.

Note: The original notice must be filed of record with the Clerk of the Court and a copy thereof served on the Plaintiff.

PARTICULARS OF CLAIM

1. The Plaintiff is **RUBEN THEODOR FITCHAT**, an adult male software developer residing at **91 FRANGIPANI STREET, KLEINBRON ESTATE, BRACKENFELL**.
2. The Defendant is **TYRONE JOHNSON**, an adult male residing at **19 KLEINBRON AVENUE, KLEINBRON ESTATE, BRACKENFELL**, whose full particulars are unknown to the Plaintiff.
3. The above Honourable Court has jurisdiction to hear the matter as both the Plaintiff and the Defendant reside within the jurisdiction of the above Honourable Court.

DEFAMATION

4. The Plaintiff and the Defendant are next-door neighbours. The Plaintiff's other next-door neighbour, Mrs Mariné Franken, is close friends with the Defendant.
5. The Plaintiff has been harassed by Mrs Franken over the course of the past few months, and he has told her not to come near his house again.
6. On the evening of 10 January 2022, the Plaintiff noticed Mrs Franken standing outside his house, acting suspiciously, so he started recording her in order to gather evidence to take legal action against her.
7. The Defendant's wife, Mrs Marianne Johnson, who is an anaesthetist at Tygerberg Hospital, started screaming and swearing at the Plaintiff that he was insane.
8. A group of adults gathered outside the Plaintiff's house and acted in an aggressive manner, so the Plaintiff's wife called the estate's security emergency number.
9. The owner of Kleinbron Estate's security, Mr Charl du Toit, arrived and showed the Plaintiff that the Defendant had posted a message referring to the Plaintiff on the KleinBron Als Whatsapp group. A copy of the message is attached hereto marked Annexure "**S1**".
10. There were 171 (one hundred and seventy one) members on the KleinBron Als Whatsapp group when the Defendant posted the message (Please see Annexure "**S2**").
11. Within an hour 8 (eight) members of the group had responded to the Defendant's message, most of them indicating that the Defendant should call the police.

12. The Defendant's message was clearly understood by the members of the group as the Plaintiff having acted in a dangerous and sexually deviant manner towards a minor, as can be seen in their responses for the Defendant to call the police.
13. There are prominent members of the community who are members of the KleinBron Als Whatsapp group, including Mr Wimpie and Mrs Le-Lue Van Der Sandt, the owners of Bok Radio; Mr Charl du Toit, the owner of SJC Security; and Mr Thys van Tonder, a previous bodyguard of Nicholas Cage, Jean Claude van Damme and Nelson Mandela.
14. Mrs Le-Lue van der Sandt and Mr Thys van Tonder were two of the members who had responded to the Defendant's message.
15. In the aforesaid message wrongfully and maliciously, with injurious intent, the Defendant:
 - 15.1. claimed that he had just caught the Plaintiff filming his child in a towel; as though the Plaintiff had been hiding and filming his child with perverted intentions, and
 - 15.2. implied that Charl du Toit, the owner of SJC Security, arrived to assist the Defendant to sort it out, when the Plaintiff's wife had been the one who called security.
16. The Defendant's comments were made with the intention to slander and defame the Plaintiff. It is clear that by insinuating that the Plaintiff is a paedophile, the Defendant intended to do as much damage as possible to the Plaintiff's reputation.
17. The said allegations were made by the Defendant with full knowledge of their wrongfulness.
18. Notwithstanding their falsehood and injurious nature, the Defendant nevertheless published the allegations which harmed the reputation and good name of the Plaintiff.
19. As a result of the defamation thereof and the injurious nature of the allegations, the Plaintiff's dignity and reputation have been damaged.

20. The damage to the Plaintiff's reputation is evident in that many members on the KleinBron Als Whatsapp group have blocked the Plaintiff's wife, who is a member of the KleinBron Als Whatsapp group, and refuse to have anything to do with her.
21. Kleinbron Estate's manager, the trustees, and the owner of SJC Security have become involved in the matter and the Plaintiff has had to suffer the degradation of having to explain to them that he is not a paedophile.
22. Many residents in the estate give the Plaintiff and his family dirty looks when they are outside their house.
23. There is no chance of the Plaintiff's family being able to have a normal neighbourly relationship with their neighbours again.
24. The Plaintiff will not be able to escape from the stigma of having been labeled a paedophile whilst he lives in Kleinbron Estate. Nobody wants to associate with someone when there is even just the mere suggestion of paedophilia, even if it is untrue.
25. The Plaintiff lives in constant fear that another group of parents will come and attempt to attack him at his house.
26. The Plaintiff's children will not be able to play normally outside with the other neighbourhood children when they are older because of the stigma.
27. The Plaintiff has suffered damages in the sum of R200,000.00.

DEFENDANT'S FAILURE TO PROTECT ALLEGED CHILD IN TOWEL

28. The Plaintiff denies filming the Defendant's child.
29. During the incident, the Plaintiff was standing on his own property at ground level. Sometime after the Plaintiff started recording Mrs Franken, the Defendant appeared on his second story balcony in front of his house.
30. Since the Defendant claimed in an email to the Plaintiff that the Plaintiff had filmed his child on his property (Please see Annexure "S4"), and the Defendant's balcony is the only visible part of the Defendant's property to the Plaintiff from where he was standing, the Plaintiff assumes the Defendant is claiming that the alleged child was standing on the balcony with him.

31. The Plaintiff's balcony faces a public area, which includes a park and a dam, and the balcony is also visible to all the double story apartments across the public area.
32. Being on the second story, the Defendant would have been able to clearly see the Plaintiff from his balcony, and that the Plaintiff was in the process of recording Mrs Franken.
33. When the Defendant saw that the Plaintiff was in the process of recording Mrs Franken, the Defendant had the choice to either keep the alleged child in a towel on the balcony and risk them becoming a part of the recording, or to simply take the alleged child into the house, to prevent him or her from being recorded.
34. The Plaintiff was not even aware that the Defendant was standing on his balcony until Mrs Franken drew attention to the Defendant (and assumedly to the alleged child in a towel) by calling out his name and looking up at his balcony.
35. The Plaintiff contends that if there was indeed a child in a towel on the Defendant's balcony, that the Defendant failed to take reasonable steps to protect the child from full public view.
36. The Plaintiff contends that if there was indeed a child in a towel on the Defendant's balcony, the Defendant deliberately chose to keep the child there in order to be able to claim that he had caught the Plaintiff recording his child.

DEFENDANT THREATENING CRIMINAL PROSECUTION

37. On receipt of the Plaintiff's Letter of Demand on 28 January 2022, the Defendant responded by threatening the Plaintiff with criminal prosecution (please see Annexure "**S3**" and "**S4**").

WHEREFORE the Plaintiff claims from the Defendant:

- a) Payment of the amount of R200,000.00 (Two hundred thousand Rand);
- b) Interest on the amount of R200,000.00 (Two hundred thousand Rand) calculated at 10% per annum *a tempore morae* to date of final payment;
- c) Removal of the defamatory posts;
- d) The posting of appropriate apologies and retractions on the KleinBron Als Whatsapp group and the Kleinbron Facebook group.

e) Further and/or alternative relief.

DATED at BRACKENFELL on this 9th day of FEBRUARY 2022.



RUBEN THEODOR FITCHAT

91 FRANGIPANI STREET

KLEINBRON ESTATE

BRACKENFELL

7560

Cell: 083 925 1545

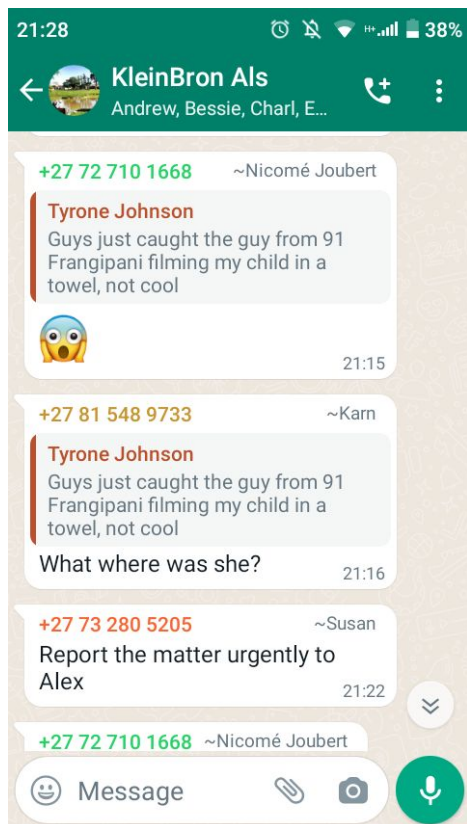
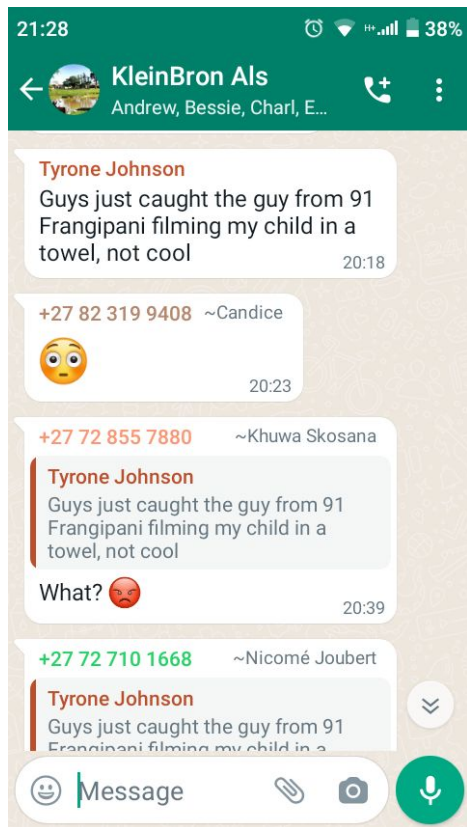
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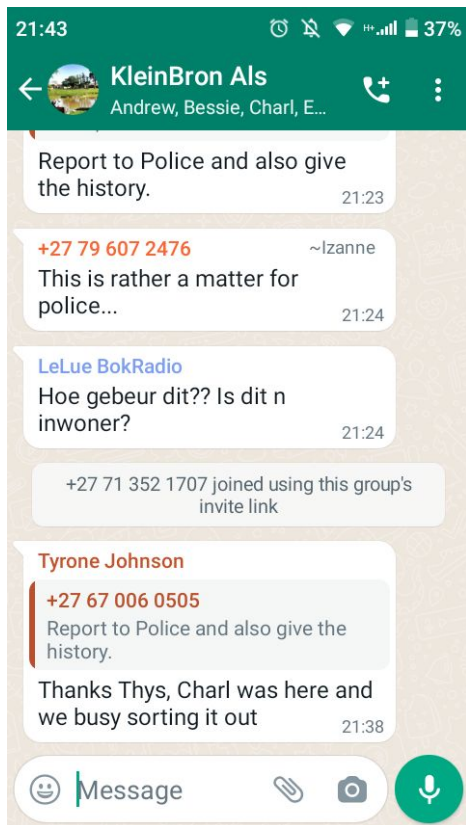
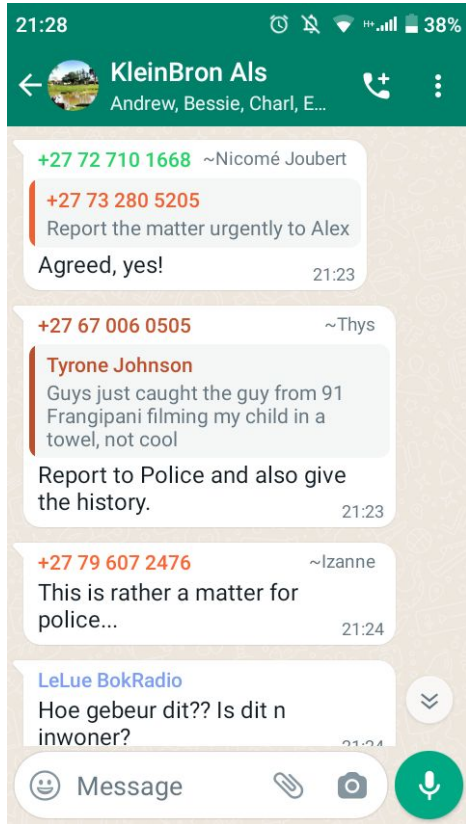
TO: THE CLERK OF THE COURT
Magistrates Court
KUILSRIVER

AND TO: TYRONE JOHNSON
19 KLEINBRON AVENUE
KLEINBRON ESTATE
BRACKENFELL
7560

SERVICE BY SHERIFF


Annexure "S1":







Annexure "S2":

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←  ⋮

KleinBron Als



Group · 171 participants

 
Group call Add

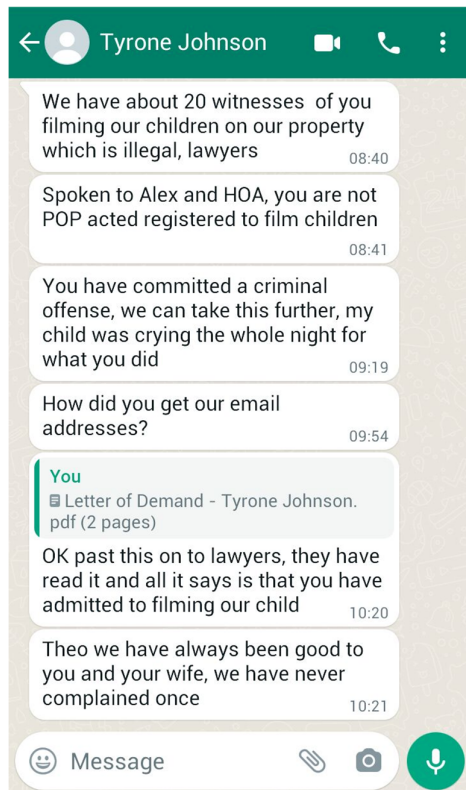
[Add group description](#)

Created by Barry Cleaning, 2020/02/14

Media, links, and docs 140 >

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Annexure "S3"



Annexure "S4"

