

IN THE MAGISTRATES COURT FOR THE DISTRICT OF KUILSRIVER

HELD AT KUILSRIVER

CASE NO: 1399/2022

In the matter between:

RUBEN THEODOR FITCHAT

Plaintiff

and

TYRONE JOHNSON

Defendant

AFFIDAVIT

I, the undersigned, **RUBEN THEODOR FITCHAT, ID NUMBER 841228 5132 089**, hereby make oath and say:

That the facts herein deposed to are true, correct and within my personal knowledge and belief.

1. I am the owner and resident of 91 Frangipani Street, Klein Bron Estate, and I am the person the Defendant referred to in his post on the KleinBron Als Whatsapp group on 10 January 2022, as can be seen in Annexure “**S1**” of the Summons.
2. I have set out all the facts in the Summons surrounding the event alleged to by the Defendant in his Whatsapp post.
3. The Summons was served on the Defendant by the Sheriff on 12 February 2022.
4. No Notice of Intention to Defend has been served at the address for service of the Plaintiff or to the email address provided to the Defendant.
5. The reputational damages claimed in the summons have not been paid to me.
6. The defamatory posts have not been removed by the Defendant.
7. Appropriate apologies and retractions have not been posted on the relevant platforms by the Defendant.

8. I therefore seek an order for –

8.1. Payment of the amount of R200,000.00 (Two hundred thousand Rand);

8.2. Removal of the defamatory posts;

8.3. The posting of appropriate apologies and retractions on the KleinBron Als Whatsapp group and the KleinBron Facebook group.

8.4. Sheriff's service fee of R450.

together with interest calculated at 10% per annum *tempore morae* to date of final payment.

Arguments in support of my claim

RE PARAGRAPHS 4 AND 5 OF THE SUMMONS

9. In October 2021 I attempted to get a protection order against my neighbour, Mrs Mariné Franken and some of the people she uses to harass me, but my application was denied.

9.1. Please see Annexure **D01** - 2021.10.27 Protection order application #1

9.2. Please see Annexure **D02** - 2021.10.27 Protection order application #1 denied

10. My house has also been vandalised, I believe by Mrs Franken or her agent. I opened a criminal case for malicious damage to property, but the case was closed due to lack of evidence.

10.1. Please see Annexure **D03** - 2022.01 Criminal case for vandalism

11. On 30 December 2021, my wife posted a message on the KleinBron Als Whatsapp group asking if anyone has been harassed or vandalised in the estate, and that if they were, to contact her.

11.1. Please see Annexure **D04** - 2021.12.30 KleinBron Als – Harassed or vandalised

12. The Defendant regularly posts on the KleinBron Als Whatsapp group, so the Defendant would have seen my wife's post, and be aware of the fact that we have been experiencing harassment and vandalism.

RE PARAGRAPHS 6 AND 7

13. After one of Mrs Franken's guests, a fellow Klein Bron Estate resident, attempted to assault me in October 2021, I told Mrs Franken not to come to my house again.

13.1. Please see Annexure **D05** - 2021.10.19 Mrs Franken Whatsapp

14. The Defendant is good friends with Mrs Franken, and he would have known that we were not on speaking terms with her anymore.

15. On the evening of 10 January 2022 at about 20:00, I noticed Mrs Franken standing outside my house, acting suspiciously, so I started recording her in order to gather evidence to take legal action against her, since my previous attempts had been unsuccessful due to lack of evidence.

15.1. Please see Annexure **D06** - 2022.01.10 Video taken at 20.05

15.2. Please see Annexure **D07** - 2022.01.10 Video taken at 20.07

15.3. Please see Annexure **D08** - 2022.01.10 Video taken at 20.09

15.4. Please see Annexure **D09** - 2022.01.10 Video taken at 20.23

15.5. Please see Annexure **D10** - 2022.01.10 Video taken at 20.27

16. It is reasonable for a person who is being harassed, vandalised and almost assaulted and who notices the person he believes is responsible for it, standing around suspiciously outside his house, to record that person in case they were planning to do something again.

RE PARAGRAPH 8

17. A group of adults, apparently friends of either Mrs Franken or the Defendant gathered outside my house, told me to stop recording them, and acted in an aggressive manner.

18. I recognised one of the adults as being Mrs Franken's other neighbour, but I did not recognise any of the others, besides the Defendant's wife, Mrs Johnson.

19. My wife called the estate's security company, SJC Security's emergency number.

19.1. Please see Annexure **D11** - 2022.01.10 KleinBron Emergency Call

RE PARAGRAPH 9

20. The owner of SJC Security, Mr Charl du Toit, arrived and showed me that the Defendant had posted a message referring to me on the KleinBron Als Whatsapp group.

20.1. Please see Annexure **D12** - 2022.01.10 KleinBron Als Mr Johnson Post

20.2. Please see Annexure **D13** - Phone numbers

RE PARAGRAPHS 10 TO 14

21. There were 171 (one hundred and seventy one) members on the KleinBron Als Whatsapp group when the Defendant posted the defamatory message.

21.1. Please see Annexure **D14** - 2022.01.10 KleinBron Als Members

RE PARAGRAPHS 15 - 20

22. The video clearly shows that no child in a towel was recorded.

23. Since no child in a towel is visible in the video, if there was a child on the Defendant's balcony, the child would have been standing on the other side of the Defendant, and the Defendant would have known that I would not have been able to see or record the child.

24. Furthermore, if the Defendant's child was indeed on the balcony, since his balcony is visible to the entire public area in front of his house and the apartments across from the public area, the Defendant did not have a reasonable expectation of privacy there.

25. In fact, the Defendant's balcony is so publicly visible that it is on the first page of Klein Bron Estate's website as an advertisement for the estate.

25.1. Please see Annexure **D15** - KleinBron Estate Website

26. The Bill of Rights affords everyone the right to privacy, but the people I recorded were all in a publicly visible area where they did not have a reasonable expectation of privacy.

27. I was also in the immediate presence and within visible and audible distance of Mrs Franken and the Defendant when Mrs Franken spoke to the Defendant. I was therefore a party to the communication, and within my rights to record them.

28. In the video it can be seen that Mrs Franken calls children to stand around her. In the video she tells me that I am not allowed to record children, but then she calls the children to stand with her where she is being recorded.
29. A reasonable person who does not want their children to be recorded would tell the children to go to where they cannot be recorded, they would not call them to where they definitely will be recorded.
30. Similarly, the Defendant chose to remain on his balcony with his alleged child in a towel, while I was recording Mrs Franken. A reasonable person who did not want his child to be recorded, would simply have taken the child inside or told them to go inside.
31. Also, if the child in a towel was the Defendant's daughter (he also has a son who is about 4 or 5 years old), it is unreasonable for a father to make a public post insinuating that his daughter had just been the victim of a paedophile. It is a shameful thing, and people usually would not want other people to know about it.
32. The Defendant also wrote in a Whatsapp message to me, "my child was crying the whole night for what you did" (Annexure "**S3**" in the Summons).
33. If the alleged child in a towel was the Defendant's daughter, a child who is 2½ cannot comprehend the complexities of the situation alleged by the Defendant, and she would therefore not have been crying the whole night because of it.
34. The Defendant also has a son who is 4-5 years old. A 4-5 year old is better able to independently comprehend danger, but an adult would still have to explain the situation to him.
35. If the alleged child in a towel was the Defendant's son, and the Defendant saw me recording him, the Defendant would have urged his son to leave the balcony to avoid being recorded, which he did not do, as can be seen in the video.
36. If the Defendant saw me recording Mrs Franken and thought I might record him as well, he would have urged his son to leave the balcony before I recorded him, so his son would have already been inside the house by the time I recorded the Defendant, and hence I would not have been able to record his son.
37. The Defendant did not ask to see the video I took, and he also did not ask me to delete it.

38. It is not reasonable to post such a message on a public group when it could have easily been resolved privately and without causing extensive damage to my reputation.
39. Many people who replied to the Defendant's Whatsapp post indicated that he should call the police.
40. Later the Defendant posted that Mr Charl du Toit, the owner of SJC Security, had arrived and was sorting it out.
41. Even though it had been my wife who had called security because we felt threatened, the Defendant made it sound as if he himself had called security because he had felt threatened.
42. The Defendant did not clarify on the group that it was not necessary for the police to come. He seemed to want people to think that the police should come and investigate me.
43. It seems as though the Defendant did lodge a complaint with the police, since two days later two social workers from Badisa Trio came to our house because of a police complaint.
44. They indicated that the complaint was that we kept our curtains closed and that we had taken our 2-year-old son out of school.
45. We have been keeping our curtains closed because we are being harassed, and we only put our son in school for a few months while my wife recovered from a Caesarean after the birth of our second child.
46. The social workers spoke to us and assessed our children, and they seemed to be satisfied that our children were not being abused.
47. The very next day after I had been accused of recording the Defendant's child in a towel, the Defendant's daughter was playing outside my house by the dam with her au pair. She has regularly been playing there since then.
48. It is not reasonable for someone who posted a public message that a man was recording his child in a towel, for that person to allow his little daughter to play in front of that man's house the next day and regularly thereafter.
49. The Defendant appears to be mocking me.

50. I contend that the Defendant does not truly believe I intentionally recorded his alleged child in a towel.

51. The Defendant knew it was wrongful to post that I had recorded his child in a towel, but he intentionally did it.

52. The right to a good name is provided for in the Bill of Rights, where all people are afforded the right to human dignity. Although people also have a right to free speech, they should not exercise the right recklessly and use it to intentionally and maliciously damage the good name of others.

53. The Bill of Rights also affords people equality and that people not be discriminated against on the basis of sex. The Defendant discriminated against me because I am a man, and because people would be concerned if they heard a man was recording children.

RE PARAGRAPH 21

54. Klein Bron Estate's manager, the trustees, and the owner of SJC Security have become involved in the matter and I have had to suffer the degradation of having to explain to them that I am not a paedophile.

54.1. Please see Annexure **D16** - 2022.01.10 Whatsapps Charl Du Toit

54.2. Please see Annexure **D17** - 2022.01.19 Estate Manager SMS

RE PARAGRAPH 22-24

55. About two weeks after the Defendant posted that I had recorded his child in a towel, there was another Whatsapp post by someone else that their daughter had seen a naked man in my street who took a photo of himself, and another member of the group asked if it was the same person as the one who had filmed the child in a towel, i.e. me.

55.1. Please see Annexure **D18** - 2022.01.23 KleinBron Als Post Naked Guy

56. My neighbours are suspecting me of other negative behaviour as a direct result of the Defendant's post.

RE PARAGRAPH 25-26

57. I again attempted to get a protection order against Mrs Franken, but was again unsuccessful.

57.1. Please see Annexure **D19** - 2022.01.21 Protection order application #2

57.2. Please see Annexure **D20** - 2022.01.21 Protection order application #2
denied

RE PARAGRAPH 27

58. My family and I used to regularly go to the jungle gym and dam in the public area across from our house, and we used to be on friendly terms with the other families who also spent time there.

59. As a direct result of the Defendant's post, we will not be able to have a normal relationship with our neighbours again.

60. Also, since the group of adults acted aggressively outside our house on the evening of 10 January 2022 when I allegedly recorded the child in a towel, my wife and I fear going out, especially with our toddler and baby, and being confronted by them or by someone else who consider me to be a criminal.

61. The Defendant's actions have deprived me and my family of our freedom and security, as we cannot freely walk around the estate anymore.

62. The only way I can walk around the estate is when I take my rottweiler, which I bought after I was vandalised, for a walk in the evenings.

RE PARAGRAPHS 28 TO 36

63. The Defendant also defamed me by telling our estate manager, Alex van Niekerk, in an email that I committed a criminal offence.

63.1. Please see Annexure "**S4**" in the Summons

RE PARAGRAPH 37

64. On receipt of the Letter of Demand on 28 January 2022, the Defendant responded by threatening me with criminal prosecution.

65. It seems as though the Defendant had opened a criminal case against me after he alleged that I had recorded his child in a towel, since two social workers came to my house.

66. I have not been contacted by a detective in connection with this case.

67. The Defendant wrote to me in a Whatsapp, "You have committed a criminal offense, we can take this further" (please see Annexures "S3" and "S4" in the Summons).

68. He appears to be implying that if I take legal action against him, he will take the criminal case against me further.

69. Threatening criminal prosecution in order to avoid a civil lawsuit is not legally acceptable.

70. As a direct result of the Defendant's Whatsapp post, it has become impossible for me and my family to continue living in Klein Bron Estate, and we will have to relocate.

71. The fees that I incurred to buy my current house were R241,304.13 paid to MHI Attorneys and R37,510.96 paid to Bellingan Muller Attorneys, which totals R278,815.09

71.1. Please see Annexure **D21** - 2019.08.08 MHI Attorneys Invoice

72. I am not currently in possession of the Bellingan Muller Attorneys invoice, but the MHI Attorneys invoice is already over the R200,000.00 claimed, so the Bellingan Muller invoice is unnecessary.

73. In order to move to a new house and attain the same lifestyle as I currently have, I will have to spend approximately R278,815.09.

74. However, I am willing to accept the lesser amount of R200,000.00 in damages in addition to retractions and apologies on the relevant platforms.

RUBEN THEODOR FITCHAT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, and
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considers it to be binding on his conscience, which was signed and sworn before me at **BRACKENFELL** on the **3rd DAY OF MARCH 2022**.

COMMISSIONER OF OATHS