

The Ombudsman

Reply to respondent
CSOS 7648/WC/21

Thank you for the opportunity to reply to Theo Fitchat's ("TF") statements that pertains to the original complaint of nuisance, invasion of privacy and noise disturbance.

This application for dispute of resolution is between myself (Mrs Marianne Johnson) and TF and has no bearing on the civil action of TF against Mr Tyrone Johnson pertaining to the "alleged defamation".

No summons was received in the civil action from the sheriff. My husband (Mr. T Johnson) only became aware of the summons as it was attached to the reply to my application for dispute resolution at CSOS from TF. My husband has filed a Notice of Intention to Defend.

My application pertains nuisance and nuisance, invasion of privacy and noise nuisance. The cameras are an invasion of our privacy. The POPI act of 2013 and RICA act of 2003 also prohibits the unconsented filming of an individual in his or her private home or property. Attached hereto photos of the cameras from our son's bedroom window, our guest room as well as the garden in support hereof. The cameras also emits alarm sounds causing a noise nuisance. Please see attached video.

All avenues for resolving this dispute where exhausted before contacting CSOS. After TF blatantly refused and/or disregarded a final request from the Estate's Home Owners Association ("HOA") to ensure that the cameras will only film his own property, the HOA referred us to the Ombudsman.

Any attempt to have a civil conversation with TF is met with severe verbal aggression and threats. TF exploded again in a rage after my husband asked him to turn off the noisy alarm on one of the cameras on Saturday 26 March at approximately 18h00. The heated exchange occurred in front of a witness.

I submit that the civil action TF instituted against my husband is not relevant to the current proceedings and that TF's reference to same is misguided and his submissions in this regard should be disregarded altogether.

In response to FT's submissions I make the following submissions:

Ad paragraph 1-12

1. The civil action against my husband for alleged defamation is a separate issue, as it is different cause of actions.

Defamation is defined as:

"action of damaging the good reputation of someone."

"Defamation can be understood as the protection against "unlawful attacks" on a person's "honour and reputation" contained in human rights instruments."

and CSOS has no jurisdiction to adjudicate the alleged defamation. As is evident from the above mentioned to two issues have nothing to do with each other. I deny that the issues are turning on the same question of law as TF submits.

2. I strongly deny that I am attempting to initiate a multiplicity of actions by lodging a dispute at CSOS. My complaint pertains to nuisance which is clearly defined as

"As an occurrence where a person occupying land creates a state of affairs, or allows such state of affairs to exist, that unreasonably, unfairly and materially disturbs or annoys a person occupying another piece of land"

"noise nuisance' means any sound which disturbs or impairs or may disturb or impair the convenience or peace of any person"

3. I similarly deny that my application for dispute resolution in relation to the cameras is an abuse of process. TF's allegation that this application for dispute resolution amounts to a legal action is, respectfully, completely misguided.
 - 3.1 The relief sought by TF in his action for defamation is monetary in nature.
 - 3.2 The action is brought against another party.
 - 3.3 The relief I am seeking is as set out below.
4. TF is invading our privacy and his actions are unreasonably, unfairly and materially disturbs and annoys us.
5. I vehemently deny the allegation made by TF that my application is an attempt to discourage TF from proceeding with his action. As previously stated my husband only became aware of the action after TF's reply.

AD PARAGRAPH 13 -23

6. I furthermore deny that TF's cameras are not turned towards our yard and rooms, as is as set out above and supported by the attached photos taken between 26 and 30 March 2022.

AD PARAGRAPH 24 -31

7. I deny TF's allegation that I am the aggressor with the contempt that it deserves. There is no proof of this allegation.
8. I further deny that I am antagonising TF.
9. I submit that it is in our children's best interest not to be filmed as it is illegal.

10. I similarly submit that my profession has nothing to do with the current application for dispute resolution and I take offence at TF's submissions in this regard.

AD PARAGRAPH 32 - 53

11. Kleinbron Estate is a security estate in itself and TF's cameras are invading our privacy as per my initial complaint and is supported by the attached annexures.

12. I bear no knowledge of TF's submissions regarding the Franken's, but I equally submit that it has no bearing on the current application whatsoever. I also bear no knowledge of the alleged vandalism of TF's property for which TF provides no evidence.

13. I bear no knowledge of any stalker or of any incidence described by TF but fail to see what relevance TF's unfounded allegations are on the current application process.

14. I deny that we provoke TF's dogs. TF provides no evidence for this bald allegation and

15. I confirm TF's submission that his dogs bark continuously in the evenings and early mornings, creating immense noise nuisance.

Relief sought:

- A) That TF be ordered to remove excessive number of cameras looking into our yard and house, alternatively that they be permanently fixed in such a manner that they do not look into our yard and house and that TF provide proof that same has been done.
- B) That TF turn off the noise of the cameras
- C) That TF look into alternatives to address his dogs continuous barking
- D) As the above is all creating a nuisance and an invasion of our privacy.

We appreciate your assistance in this matter and look forward to a speedy resolution.

Kindest regards

Marianne Johnson



From Children's bedroom window



From
Guest Bedroom
window



From back garden

