Dear CSOS,

Please see below my final submission regarding Mrs Johnson's application.

Just to clarify, I have not had any legal assistance in preparing my CSOS submissions. My wife and I are currently both enrolled as LLB students and are studying to become attorneys.

I still think that this is a multiplicity of actions, which the Johnsons seem to have sidestepped by letting Mrs Johnson do the application instead of her husband, Mr Tyrone Johnson, against whom I have instituted a civil lawsuit for him falsely claiming I recorded his child in a towel, and by shifting the focus to my CCTV cameras.

Nevertheless, Mrs Johnson is my next-door neighbour in Kleinbron Estate and she has lodged a complaint at CSOS alleging that my CCTV cameras are invading her privacy.

My cameras have a PTZ (pan, tilt, zoom) function, which means I am able to change their angle from inside my house.

My cameras are to ensure the safety of my property and they are turned towards my property, except for where they are able to see some of the publicly visible areas in front of my house.

My cameras are also able to record audio, but this function is switched off. Even if they were switched on, they would not be able to hear audio outside the boundaries of my property.

Mrs Johnson demands that I remove my cameras.

At the conciliation meeting Mrs Johnson attempted to rely on Kleinbron Estate's new HOA Rules which do not permit cameras with PTZ or audio capabilities.

Please see Addendum 01 - 2022.05.20 Kleinbron Estate HOA Rules

When I installed my cameras there were no HOA Rules regarding CCTV installations, and there were also no rules indicating that I had to obtain permission to install them.

Please see Addendum 02 - 2015.09.07 Kleinbron Estate HOA Rules

Despite me not having had to ask for permission, I did inform both the Kleinbron Estate manager and the owner of SJC Security, who manages the estate's security, that I

was going to install CCTV cameras, and I also asked them to be present during the installation.

Neither Kleinbron Estate nor SJC Security replied, and they also did not indicate that I needed permission to install the cameras. Neither were present when I installed the cameras.

Please see Addendum 03 - 2022.01.14 Email with Estate Manager

Please see Addendum 04 - 2022.01.20 Whatsapp with SJC Security's Owner

I started installing my cameras on 15 January 2022.

After apparently numerous complaints to the Kleinbron Estate manager from various residents regarding my cameras, Kleinbron Estate held a trustee meeting on 14 February 2022. After having consulted with various municipal departments, law enforcement and legal advisors, they found that I was not transgressing any of the estate's rules.

Please see Addendum 05 - 2022.03.23 CSOS M.Johnson Estate Manager Email

The new HOA Rules which do not permit PTZ cameras with audio were put into effect on 20 May 2022, which was four months after I installed my cameras.

The Kleinbron Estate Constitution indicates that new HOA Rules are not retroactively enforceable, so their new rule that my kind of cameras are not permitted is not applicable to me.

Please see Addendum 06 - Kleinbron Estate Constitution

36. "...no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made."

Kleinbron Estate Constitution, pg. 18

I have received no indication from Kleinbron Estate that I am in breach of their new rules. Surely if my cameras were causing me to be in breach, they would have contacted me and taken the relevant steps to ensure compliance.

Furthermore, if I were in breach, which I am not, it is Kleinbron Estate's responsibility to ensure that I am compliant, not Mrs Johnson's.

Therefore, Mrs Johnson cannot rely on the new HOA Rules regarding my cameras.

Mrs Johnson is secondly attempting to accuse me of invading her right to privacy.

<u>Regarding Mrs Johnson's complaint that some of my cameras are recording the</u> publicly visible area in front of my house

The most recent legal precedent and case law that I was able to find that is relevant to this complaint is *Fearn and Ors v Board of Trustees of the Tate Gallery* which was heard in the England and Wales High Court. The verdict was appealed in the Supreme Court, but the appeal was dismissed.

According to the Law of Evidence Amendment Act, 1988,

1. (1) Any court may take judicial notice of the law of a foreign state [...]

Please see the following links for the full judgement and the appeal:

https://www.bailii.org/ew/cases/EWHC/Ch/2019/246.html

https://www.bailii.org/ew/cases/EWCA/Civ/2020/104.html

Fearn and Ors v Board of Trustees of the Tate Gallery involved the owners of some flats which neighbour the Tate Gallery on the South Bank in London.

The Tate Gallery built a 360-degree viewing platform whose panoramic view included the general living areas of the Claimants' flat interiors.

Many visitors took photographs and videos which included the insides of the Claimants' flats, and posted them on social media.

The Claimants felt that their privacy was being invaded, and they asked the Court to order the Tate Gallery to prevent members of the public and others from observing the publicly visible areas of their flats to ensure their privacy.

The Court found in favour of the Tate Gallery and indicated that the mere viewing of a neighbouring property was not enough for a nuisance claim to succeed.

The intended use of the viewing gallery was to view, and not to invade privacy, and the Claimants should have implemented measures to ensure their own privacy.

Similarly, the intended use of my CCTV cameras is also to view and not to invade privacy.

The Judge found that even though individuals have a reasonable expectation of privacy inside their homes, the Claimants had engaged in a self-induced exposure to the outside world where there was no legitimate expectation of privacy.

People in publicly visible areas, such as those in front of my house, do not have a legitimate expectation of privacy.

I copy relevant parts of the judgement below.

It can hardly be disputed that a person has a reasonable expectation of privacy in relation to much of what occurs in the home and in relation to the home itself.

Not all overlooking becomes a nuisance. Whether anything is an invasion of privacy depends on whether, and to what extent, there is a legitimate expectation of privacy.

[...] one does not expect so much privacy in a balcony [...]

Some remedial steps could be taken. There are several.

- (a) The owners could lower their solar blinds. [...]
- (b) The owners could install privacy film. [...]
- (c) They could install net curtains. [...]

(d) At least one occupant has put some medium height plants in the winter gardens. As a matter of screening they are not hugely effective, and taller plants could restore some privacy. However, the other three measures are the significant ones which fall for consideration.

The victim of excessive dust would not be expected to put up additional sealing of doors and windows; the victim of excessive noise would not be expected to buy earplugs. However, privacy is a bit different. Susceptibilities and tastes differ, and in

recognition of the fact that privacy might sometimes require to be enhanced it has become acceptable to expect those wishing to enhance it to protect their own interests. I refer, for example, to net curtains. In the present case, if the occupiers find matters too intrusive they can take at least one of the measures referred to above. It will, of course, detract from their living conditions, but not to an unacceptable degree. Looking at the overall balance which has to be achieved, the availability and reasonableness of such measures is another reason why I consider there to be no nuisance in this case.

Mr Fetherstonhaugh sought to meet the claimants' objections to having to take these steps by saying that what they were really seeking was a right to a view, which is a right unknown to the law. I do not consider that to be a relevant point. There are authorities which indicate that a right to a view, as an easement and absent agreement, is not a right known to the law, but that is not what the claimants are seeking. It is true that they want to be able to maintain an unrestricted view from their windows (without compromising their privacy) but they do not rely on a legal right to a view. They are saying they should not have to obstruct their view to protect themselves from an inwards intrusion by others.

I should mention one further factor relied on by at least two of the claimants, and that is the effect of there being children in the flats. As appears above, some of the occupants will not allow their children or grandchildren to be exposed in the flats. Mr Weekes sought to pray in aid the particular need to protect children. He relied on *Weller v Associated Newspapers* [2016] 1 WLR 1541. While I do not ignore that factor, I do not think that it has much weight in the calculation I have to make or the balance I have to strike. The children do not have their own privacy claim under nuisance because they are not the owners of the land. Their privacy interests are part of the greater privacy interests of the parent owners, but do not add anything substantial to the latter's significant interests. The viewing gallery has not been constructed, and is not used, deliberately so as to give a view of children, and children would not necessarily be on view in the flats all the time though it is, of

course, a perfectly "normal" activity to bring up children in a residential area. I am far from sure that every parent would feel quite the same level of sensitivity (though I respect the views of those who do), and if there is felt to be a danger then the remedial steps which are open to the parents and grandparents (identified above) are steps which they could reasonably be expected to take.

The assessment that I have carried out is the usual one applicable to nuisance, even if privacy protection now arises via the application of Article 8. That Article generally requires an assessment (among other things) of whether the claimant has a reasonable expectation of privacy. As stated elsewhere in this judgment, in my view an assessment of that nature would be almost identical to the balancing exercise between the defendant's use of the land in the locale in question and the sort of give and take that would be reasonable for the claimant. It would arrive at the same result. The sort of factors which mean that the claimants cannot claim that the use of the viewing gallery is a nuisance mean that they do not have a reasonable expectation of privacy, if that is relevant. I need say no more about it than that.

Subsequent UK cases where individuals complained about a neighbour's CCTV viewing the publicly visible areas in front of their houses were bound by the above precedent, and the CCTVs were allowed.

Furthermore, even though Mrs Johnson's husband had indicated to me that I am not "POP Act registered" (sic) to "record children", the POPI Act makes express provision for the recording of children if the recording is "necessary for the establishment, exercise or defence of a right or obligation in law", such as the safety of my property.

Processing of personal information of children	25
Prohibition on processing personal information of children	
34. A responsible party may, subject to section 35, not process personal informatio	n
General authorisation concerning personal information of children	
35. (1) The prohibition on processing personal information of children, as referred to n section 34, does not apply if the processing is—	0_30
(a) carried out with the prior consent of a competent person;	n

I am unable to find the part which states that I need to be "POP Act registered" (sic).

The function of my CCTV cameras is not to "record children". It is to protect my property.

Regarding Mrs Johnson's claim that I am recording her son's bedroom, her guestroom and her garden

According to the Civil Proceedings Evidence Act 25 of 1965,

2. No evidence as to any fact, matter or thing which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact in issue shall be admissible.

I contend that the photographs and videos that Mrs Johnson submitted in her application of my cameras are irrelevant and immaterial to her claim that my cameras are invading her privacy, since those photographs and videos are not able to prove that my cameras are invading her privacy.

Therefore, Mrs Johnson's photographs and videos are inadmissible as evidence.

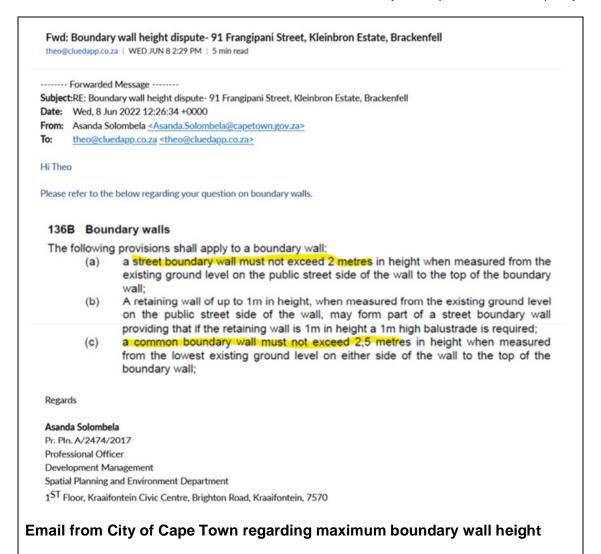
I would like to reassure Mrs Johnson that my cameras are not invading her privacy and that they are not recording her son's bedroom, her guestroom or her garden.

The camera on the last page of Mrs Johnson's previous submission is tilted down towards our pool area.

Our boundary wall is 1.3m high on our side at that spot, so if Mrs Johnson is still uncomfortable with the camera, she is welcome to increase the height of the boundary wall between us to 2.5m, or to increase the height of the boundary wall in other ways such as with wooden fencing or bamboo.

I realised afterwards that when I had replied to Mr Franken's complaint (CSOS 8440/WC/21) that I had incorrectly indicated that if the ground level on both sides of the boundary wall is not equal, then the boundary wall height is measured from the *highest* ground level. That statement was based on a previous City of Cape Town by-law (2009). The City of Cape Town's email indicates that they have revised the rule and that it must now be measured from the *lowest* ground level.

Please see below for the confirmation email from the City of Cape Town Municipality.



Regarding Mrs Johnson's complaint regarding camera "alarm sounds"

The "alarm sounds" Mrs Johnson complains about were addressed on the same day that Mrs Johnson's husband complained about them to me, and which was before she complained about it in her second submission to CSOS.

Mrs Johnson neglects to mention the verbal aggression and threats by her husband to me.

Regarding Mrs Johnson's allegation that I am recording their conversations

My cameras' audio is switched off, and even if they were on, they would not be able to hear anything outside the boundaries of my property.

Mrs Johnson's only "evidence" that my cameras are recording her conversations is her allegation that they are, which is not admissible as evidence.

He who alleges must prove.

We have no interest in recording any audio unless it is of unacceptable and illegal volumes or regularities.

We confirm that we will only use the audio recording for law enforcement purposes.

Mrs Johnson has accused me of allegedly illegally recording children, and particularly allegedly in their bedrooms and bathrooms.

The insinuation is logically that I am a pedophile.

If I were a pedophile who was indeed recording children, which I am not, this is a criminal matter, not a civil one.

After Mr Johnson posted his defamatory Whatsapp, he apparently reported me to the police for recording his child in a towel.

Two days later two social workers from Badisa Trio, an organisation which investigates claims of child abuse, came to my house.

They interviewed me and my wife and examined our two children.

They found no evidence of child abuse or of any other indications that I have sexually deviant inclinations towards children.

The adjudicator can independently verify this information with Badisa Trio. They were here on 12 January 2022, and my address is 91 Frangipani Street, Kleinbron Estate, Brackenfell.

Sometime later a detective called me to say that the dockets of the criminal charges against me had been closed because there was no evidence of any of the claims.

Why is Mrs Johnson continuing to pursue the matter if both Kleinbron Estate and the police have found that there is no evidence that I am doing anything wrong?

Why go on a personal vigilante mission for "justice" and not just let police do their job?

I have no previous criminal records and I am not on any sex offenders list.

Mrs Johnson's allegations against me are completely unfounded.

Regarding Mrs Johnson's claims regarding my dogs barking continuously

Since the Johnsons and their family/friends have stopped provoking our dogs, the dogs have stopped barking.

4. RELEVANT LAWS

4.1 Right to Equality

South African Bill of Rights

9. Equality

3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic for social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

I contend I am being unfairly discriminated against by Mrs Johnson based on the fact that I am a male, and because of the shock factor she can create by merely saying "that man is recording children" with the implication that I am a pedophile.

4.2 Right to Human Dignity

South African Bill of Rights

10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

Mrs Johnson's baseless sexually related allegations that I am "recording children" are also depriving me of my right to dignity and the right to have my dignity respected and protected.

4.3 Right to Security of Person

South African Bill of Rights

12. Freedom and security of the person

1. Everyone has the right to freedom and security of the person,

The purposes of my CCTV cameras are to:

- detect, deter and prevent crime;
- enhance the safety of my property and my family;
- assist in the apprehension and prosecution of offenders or to institute a civil case against them; and
- assist law enforcement agencies, including private armed response and security companies, with regard to the investigation of any apparent or actual crime.

4.4 Right to Privacy

South African Bill of Rights

14. Privacy

Everyone has the right to privacy

Mrs Johnson has the right to privacy, and I am not invading her privacy.

4.5 Children's Rights

South African Bill of Rights

28. Children

1. Every child has the right [...]

d. to be protected from maltreatment, neglect, abuse or degradation;

2. A child's best interests are of paramount importance in every matter concerning the child.

I am not infringing on the rights of any children.

4.6 City of Cape Town Policy

There is nothing inherently illegal about installing privately owned CCTV cameras with a PTZ function.

As can be seen in the policy below of the City of Cape Town, the application form to install CCTV cameras on City Property asks applicants to indicate whether their CCTV cameras are PTZ or static.

	CCTV C	AMERA REGISTRATION FOR	N			
INFORMATION REQUIRED FOR CCTV DATABASE						
No	Location	At intersection or between which roads	Purpose	PTZ o Stati		
1						
1						

Regulation of External and Privately Owned CCTV Cameras on City Property - Policy number 21207 approved on 25 June 2014

4.7 Limitation of Rights

South African Bill of Rights

36. Limitation of rights

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

a. the nature of the right;

b. the importance of the purpose of the limitation;

c. the nature and extent of the limitation;

d. the relation between the limitation and its purpose; and

e. less restrictive means to achieve the purpose.

2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

Protection of Personal Information Act, 2013

PREAMBLE

RECOGNISING THAT-

- section 14 of the Constitution of the Republic of South Africa, 1996, provides that everyone has the right to privacy,
- the right to privacy includes a right to protection against the unlawful collection, retention, dissemination and use of personal information,
- the State must respect, protect, promote and fulfil the rights in the Bill of Rights,

AND BEARING IN MIND THAT-

 consonant with the constitutional values of democracy and openness, the need for economic and social progress, within the framework of the information society, requires the removal of unnecessary impediments to the free flow of information, including personal information,

AND IN ORDER TO-

 regulate, in harmony with international standards, the processing of personal information by public and private bodies in a manner that gives effect to the right to privacy subject to justifiable limitations that are aimed at protecting other rights and important interests. Mrs Johnson does not have a greater right to privacy than I have to safety.

The major benefit of a greatly increased chance of criminal prosecution with my PTZ cameras far outweighs the imagined constant privacy invasion of Mrs Johnson's child's bedroom.

It is my responsibility to ensure my cameras are not turned towards my neighbours, and they are not, but if they still feel uncomfortable, it is their responsibility to increase their privacy to the degree to which they feel comfortable.

4.8 Right to Property

South African Bill of Rights

25. Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

I will deal with this point below. I believe that Mrs Johnson is attempting to deprive me of my right to my property.

5. REAL ESTATE HARASSMENT

Even though this following part is more relevant to my lawsuit with Mr Johnson, I include it here for the sake of completeness.

I am not obliged to provide evidence for this matter here, since this is not the matter to be decided in this application.

I believe Mrs Johnson is purposefully being an obnoxious neighbour in order to coerce me and my family into relocating, and her CSOS application is a part of the coercion that I have been experiencing from her and her friends and family who live nearby, for the past year.

The elements of Mrs Johnson's attack on me and my family have most of the components of real estate harassment, which is the crime of attempting to illegally evict a legal home owner from their property for their own financial gain.

They convince other neighbours that the home owner has committed some crime, of which they unfortunately happen not to have any evidence.

They convince the other neighbours that they are in danger, and then they ask the other neighbours to report the home owner of imagined crimes in order to ensure those neighbours' safety.

False accusations often include accusations of child molestation and irrational aggression.

Real estate harassers persistently and ceaselessly annoy, bother, agitate, exasperate and provoke the home owner until he is so desperate to get away from his nightmare neighbours that he decides to sell his house.

The real estate harassers ensure the property does not get sold at market value, by creating a nuisance whenever a potential buyer comes to view the house.

The real estate harassers then send in someone who is unknown to the home owner, but who is part of the real estate harassment, to view the house, and that person puts in a much lower offer than the property is worth.

Since the home owner is so desperate to get away from his neighbours, and he is unable to get a fair offer, he accepts the much lower offer and unknowingly sells his house to the very people who had strong-armed him out of his house.

The real estate harassers then resell the house at a much higher price, making an enormous and undeserved profit.

This is not going to happen, Mrs Johnson.

It is very difficult to obtain evidence of real estate harassment because of the nature of the crime, which is to disguise the harassment as innocent-looking actions designed to gaslight the victim, and because it happens at any hour of the day.

Our house is on a corner, and we have two direct neighbours, the Frankens and the Johnsons. The Frankens and the Johnsons moved into their houses shortly after I moved into mine.

The Johnsons are close friends of the Frankens, and both of them seem to be a part of the real estate harassment.

They use their properties, the two streets in front of our house, and the public area in front of our house, to harass us.

Their harassment includes trespassing, loitering, stalking, excessive noise, vandalism, defamation, opening false criminal cases at the police, child abuse allegations, pedophilia allegations, threatening me physically, threatening me with legal action, provoking my dogs to bark excessively, gossiping and turning other neighbours and the Kleinbron Estate Home Owner's Association against me, and opening numerous CSOS cases against me.

I have twice applied for a protection order against Mrs Franken but was unsuccessful because of a lack of evidence at the time.

The reason I installed cameras was to obtain evidence of the vandalism and harassment, and I have been working with a detective on how to gather evidence in order to open a criminal case against Mrs Franken and Mr Johnson.

All relevant evidence is immediately forwarded to the detective as soon as an incident occurs.

I would not put it past the Frankens and Johnsons to escalate their harassment to death threats or murder, even though they will not be able to profit from either of these.

I have put measures in place to ensure my house will not be sold if either me or my family is harmed or killed.

I have also put measures in place to ensure the remaining members of my family are taken care of, and the perpetrators will face both criminal prosecution and a damages lawsuit to recover the lost income that my family would have had.

The documents have already been prepared, and I have authorised someone to initiate the lawsuit if anything happens to both me and my wife.

Copies of evidence, relevant documents and a list of names and addresses of individuals who appear to be involved have been sent to a number of individuals, including a detective, who will investigate the matter further.

I have also ensured that the matter will be sent to the media, including Carte Blanche, if anything happens to us.

If they find anything worth investigating, I am sure Mrs Johnson can understand that the police investigation and media coverage will rival the Oscar Pistorius, Henry van Breda, Spier and Dewani murders because it happened in a luxury estate. The only end result of the Frankens' and Johnsons' real estate harassment is that they will end up in prison.

Even though the Frankens and Johnsons are doing all these things, my cameras are still not invading their privacy. My cameras are recording my own property.

Instead of simply increasing the privacy of her property, Mrs Johnson is choosing to sell herself as a victim to her neighbours, the Kleinbron Estate HOA and CSOS, by construing that I am infringing on her rights, when she knows full well that I am not.

Mrs Johnson is intent on victimising me by raising baseless allegations against me.

Mrs Johnson is attempting to bully me my getting her friends to complain to Kleinbron Estate and CSOS about my cameras, all of them alleging that I am recording their children's bedrooms and bathrooms.

None of these neighbours provide any actual evidence for their allegations, so they are attempting to substitute evidence with ganging up tactics.

The three neighbours' nuisance complaints that are lodged with CSOS are designed to mock me and to waste my time, while I have to respond to each one of them as though they are serious complaints.

Each additional person who lodges a complaint, attempts to use my replies to the previous person, against me.

I also believe Mrs Johnson is attempting to use my CSOS replies to obtain "evidence" against me that I am "illegally recording children" for my lawsuit against Mr Johnson.

She will fail.

Mrs Johnson's application is frivolous, vexatious, misconceived and without substance.

Why does Mrs Johnson only scream hysterically at me, "Hy neem kinders af!"?

Does Mrs Johnson, when she attends her son's sporting events and parents take photographs and videos of the children, scream, "Hy neem kinders af!" at every man who is recording children?

Does Mrs Johnson yell at Mr Johnson when he records children?

Does anyone yell at anyone else when they record children?

17

Why does Mrs Johnson only yell at me when I allegedly "record children"?

I believe it is premeditated.

I believe Mr Johnson publicly and specifically alleged that I had recorded his child "in a towel" in order to convince people that I am a pedophile, even though I did not record his child in a towel and even though I am not a pedophile.

I believe that Mr Johnson's defamatory Whatsapp post was in fact premeditated criminal defamation, and I have been working with a detective on how to gather evidence in order to open a criminal case against him.

All relevant evidence, including video and voice recordings are immediately forwarded to the detective as soon as an incident occurs.

6. REQUEST FOR ADJUDICATOR TO DO A SITE VISIT

I request a site visit by the adjudicator because there are additional specifications regarding my cameras that are crucial to this case and that I am unable to discuss in my pleadings or to reveal to Mrs Johnson because I suspect she and her husband was involved in the vandalism of my property.