

Mr Fitchat's Final Reply to Kleinbron Estate

Kleinbron: After an CSOS adjudication earlier this year the trustees were advised by the adjudicator to revise the Kleinbron Estate rules, and to remove any ambiguities that may exist in the rules. The trustees took the opportunity to extensively revise the rules accordingly, where after the said rules were presented to CSOS for Quality control and approval. See addendum "HOA Response 01"

After approval of said rules by CSOS, these rules were distributed to all homeowners and residents.

Mr Fitchat: This statement by the Kleinbron Estate HOA is not relevant to the current dispute, since the rule indicating that my kind of cameras (PTZ with audio) are not allowed is contained in their new rules, which were implemented after I had installed my cameras. The rule is not retroactively applicable, and is therefore not applicable to me.

Kleinbron: Further, the HOA herewith do not seek to prohibit Mr. Fitchat the use of cameras for his own security, but merely require compliance and adherence with the rules of Kleinbron Estate as approved by CSOS in relation to the prohibition of certain types of cameras as specifically indicated at Clause 16 under the heading CCTV Installations.

Mr Fitchat: As I previously indicated, the rule indicating that my kind of cameras are not allowed was implemented after I had installed my cameras.

It seems that the Kleinbron Estate HOA is "merely" attempting to strong-arm me into complying with rules regarding the installation of CCTV cameras that they have purposefully implemented after I installed my cameras in order to bully me into removing them, despite them having no legal grounds to do so.

Kleinbron: It is further important to note that when all is taken into consideration one gets the impression that Mr. Fitchat wants to apply the Constitution and Rules selectively, neglect to reveal all the facts, and only report on points that suite his

narrative and in such a way attempts to justify his non-compliance with the Kleinbron Estate Constitution and Rules.

Mr Fitchat: The adjudicator's attention is drawn to the unprofessional and hostile manner in which the Kleinbron Estate HOA deals with their clients.

Surely a luxury security estate, as your website claims you are, does not need to resort to character assassination and childish insults in legal documents such as this, which only require you to state your legal standpoint.

Surely it is the Kleinbron Estate HOA's responsibility to argue and prove their case to the adjudicator, as it is my responsibility to argue and prove mine. And surely the point of the submission of arguments and documents from both the applicant and respondent is to ensure that the adjudicator has all the relevant information in order to make a judgement on the matter.

When all is taken into consideration one gets the impression that the Kleinbron Estate HOA lacks the relevant knowledge and education to understand their own rules and the limits of their authority.

Or alternatively, they know very well the limits of their authority, which I think is the more likely of the two, but they are abusing their position of self-appointed power in an attempt to coerce residents to comply with their demands.

One wonders if the Kleinbron Estate HOA regularly coerces residents to comply with their illegal demands, in the hope that the residents lack the relevant legal knowledge to resist such a dictatorship.

I recorded the meeting of when the Kleinbron Estate manager, Mr Alex van Niekerk, and the HOA chairman at the time, Mr Anton de Freitas, were at my house, and when Mr van Niekerk told me that I had to be PSIRA registered to be able to record the publicly visible areas in front of my house, and that the Kleinbron Estate HOA Rules are set up so that I would have to pay attorney to client legal fees to Kleinbron Estate in a legal dispute with them, regardless of whether the court finds in my favour or not.

I wonder why Mr van Niekerk makes no mention of these arguments in his current application, since surely Mr van Niekerk was not abusing his position

as estate manager at the time, and he would not have made those statements if they were not true, *of hoe, Alex?*

In any event, I recommend that Kleinbron Estate include a rule in their HOA Rules that HOA members must have a minimum level of education in order to even be considered for their positions.

I also recommend the Kleinbron Estate HOA to consult with an attorney when drafting their replies in the future to ensure they remain professional in their dealings with their clients, and that they do not waste clients' time and resources with nonsensical CSOS applications such as this one which have no basis in law.

I do wonder whether the Kleinbron Estate HOA *had* in fact consulted with an attorney before making this application, but that said attorney had indicated that the Kleinbron Estate HOA's application has no basis in law, and therefore the attorney was not willing to assist them with this application.

Kleinbron: As such and in order to simplify the response of the HOA on Mr. Fitchat's submission, we have elected to respond point for point on his submission in order not to overcomplicate matters and hopefully simultaneously make it easier for the adjudicator to determine the matter without further delay.

Mr Fitchat: Since the adjudicator is a highly qualified individual, unlike the members of the Kleinbron Estate HOA and the estate manager, I trust the adjudicator is able to comprehend the matter by themselves, without the Kleinbron Estate HOA's assistance.

It seems that, despite claiming the contrary, the Kleinbron Estate HOA has done an excellent job of overcomplicating a very simple matter with their illogical and irrelevant reply.

Kleinbron: It is furthermore evident that this is a clear, simple and uncomplicated case of an owner who merely refuses to adhere to the rules, and as a matter of fact challenge the Kleinbron Estate HOA, not once but repeatedly to institute legal action and thereby clearly indicate that he will not comply.

Mr Fitchat: It is furthermore evident that this is a clear, simple and uncomplicated case of a large estate's HOA who is trying to bully a resident to give in to their unreasonable and unjustified demands.

THE BOARD OF TRUSTEES RESPONSE TO MR. FITCHAT'S RESPONDING STATEMENT

A.

Mr Fitchat: Dear CSOS, I started installing CCTV cameras with PTZ or audio capabilities on my property on 15 January 2022. The installation took about a week to complete. 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 01 - 2015.09.07 Kleinbron Estate HOA Rules

Kleinbron: This statement is incorrect.

1. The rules always made allowance for the control of residents' activities.

See addendum "HOA Response 01 and HOA Response 02"

5. USE OF ERVEN / DWELLINGS, OPEN AREA

5.1 No business activity

5.2 No sign boards

5.3 No hobby or activity which, in the opinion of the Trustees, constitutes an aggravation or nuisance to other Residents may be conducted within any Erf.

5.4 An Owner or Resident may not contravene or permit the contravention of any law, bylaw, ordinance, proclamation or statutory regulation or the conditions of title of any Erf or terms of any licence relating to the occupation of a building.

5.5 An Owner

The above have always form part of the rules, new and old.

Mr Fitchat: I seriously query the Kleinbron Estate HOA's indication above that their rules makes allowance for them to *control* residents' activities.

The above extract from the old HOA Rules, which I had signed, does not say that PTZ cameras are not allowed, no matter how many times I read it.

Re: 5.1 My PTZ cameras are not a business activity.

Re: 5.2 My PTZ cameras are not a sign board.

Re: 5.3 My PTZ cameras are not a hobby or activity. In addition, the Kleinbron Estate HOA has indicated in section C, paragraph 7 of this document (which I extracted from KLEINBRON ESTATE REPLY-CSOS 4333WC22-22-Sept 2022.pdf) that the rest of the paragraph in the rules is also not applicable to me, since they have indicated that “Due to the absence or lack of evidence presented to the HOA to supplement the allegations made by the neighbours, the trustees felt that there is no breach of a rule which *“constitutes an aggravation or nuisance to other Residents”* and as such the HOA could not act on said allegations.” Therefore, even if my CCTV cameras could have fallen under a hobby or activity that could be considered “an aggravation or nuisance to other Residents”, the Kleinbron Estate HOA have indicated that it was found that my cameras are not, in fact, an aggravation or nuisance to other residents.

Re: 5.4 My PTZ cameras are not contravening or permitting the contravention of any law, bylaw, ordinance, proclamation or statutory regulation or the conditions of title of any Erf or terms of any licence relating to the occupation of a building.

Re: 5.5 I do not use the Open Area in a manner that causes a nuisance to other Residents, as per Kleinbron Estate HOA’s admission above and by two CSOS adjudication orders (CSOS 7648/WC/21 and CSOS 8440/WC/21).

Therefore, even though the Kleinbron Estate HOA’s statement that, “The rules always made allowance for the control of residents’ activities” is true to an extent, the extract from the HOA Rules which they have included to support their statement clearly indicates that their control does not extend to the installation of CCTV cameras in this case.

Kleinbron: The new rules, as approved by CSOS deals very specifically with CCTV cameras: See addendum “HOA Response 01”

Mr Fitchat: These rules were implemented after I had installed my cameras, and are therefore not relevant to this dispute.

Kleinbron: 2. The Kleinbron Estate Constitution states as follows: See addendum “HOA Response 03”

22. Each Member undertakes to the Association that he shall comply with:

22.1 the provisions of this Constitution;

22.2 any regulations made in terms of paragraph 21.1 and specifically the Architectural Manual referred to herein;

22.3 any agreements referred to in paragraph 21.2 insofar as those agreements may directly or indirectly impose obligations on him.

Mr Fitchat:

Re: 22.1 The Kleinbron Estate HOA fails to specify whether they are relying on a specific part of the Constitution to support their arguments. Therefore, I am unable to respond to this point.

Re: 22.2 This paragraph specifically refers the reader to regulations referenced in paragraph 21.1, which I include below, and the Architectural Manual.

In short, paragraph 21.1 deals mainly with residents having to ensure that any structural modifications to their houses are aesthetically appealing and have been correctly approved by an architect.

No mention is made of CCTV cameras, specifically or by implication.

CONTRACTS AND REGULATIONS

21. The Trustee Committee may from time to time:

21.1 make regulations governing *inter alia*:

21.1.1 the Members' rights to use, occupation and enjoyment of the Mutual Area;

21.1.2 the external appearance of and the maintenance of the Mutual Area and the buildings or other improvements erected thereon,

21.1.3 the external appearance and maintenance of buildings or other improvements erected on Unit Erven.

It is specifically recorded herein that in terms of the provisions of the Deed of Sale in terms of which each Unit Erf was sold to its first Purchaser by the Developer:

21.1.3.1 Any permanent dwelling as well as all other improvements to be executed on the Unit Erven shall strictly comply with the Architectural Guidelines as contained in the Architectural Manual,

21.1.3.2 This constitution, the Architectural Manual and the provisions, terms and conditions contained therein shall be binding on the Erf Purchaser of a Unit Erf and every successor in title, and it is further recorded that each Registered Owner and other possessor or occupier of a Unit Erf at any given time shall be subject to the above restrictions and conditions. Each Member undertakes to bring all of the provisions hereof and regulations and rules issued under the attention of all possessors and occupiers of his Erven, should he not reside on or occupy such Ewen. Each Member henceforth takes sole responsibility for any breach committed by an occupier of possessor of his Unit Erven.

Without limiting the above, it is specifically therefor recorded that a Member shall not be entitled to erect any buildings and/or structures of any nature nor to make any structural alterations, modifications or renovations to

existing buildings and/or structures ("the proposed work") on his Unit Ere without the written approval of the Trustees, which approval shall only be given:

21.1.3.3 after detailed plans of the proposed work have been submitted to the Trustees, or any person nominated by the Trustees (who shall be an Architect, registered with the South African Council of Architects or the Institute of South African Architects, currently being Hennie de Villiers Architects of Durbanville), and

21.1.3.4 the Trustees or their nominee are satisfied that the proposed work is in accordance with the character and style of the Development,

21.1.3.5 the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects , for work of a similar nature

Re: 22.3 This paragraph specifically refers the reader to Paragraph 21.2, which I include below. It does not appear to be relevant to this matter.

21. The Trustee Committee may from time to time:

21.2 enter into agreement(s) with the local authorities governing the matters set out in paragraph 21.1 and any other incidental matters.

Paragraph 22 and its sub-paragraphs deal with very specific issues that Members undertake to comply with, none of which are relevant to the installation of CCTV cameras.

I fail to understand why the Kleinbron Estate HOA has included this section of the rules in their application, since none of it is relevant to any of their arguments.

I contend the Kleinbron Estate HOA has not included paragraphs 21.1 and 21.2 in their application, because it shows that the rule they are attempting to rely on to support their argument does not include CCTV cameras specifically or by implication.

Kleinbron:

11. CCTV INSTALLATIONS

CCTV installations are discouraged but will be permitted under the following circumstances:

- 11.1. All installations must be registered with the HOA Office.
- 11.2. Cameras must be installed in a way that they do not cover/view any areas outside the boundaries of the property.
- 11.3. Cameras with PTZ facilities are not permitted.
- 11.4. Cameras with bi-directional communication are not permitted.

Mr Fitchat: I had already completed the installation of my PTZ CCTV cameras by the time this rule was implemented, so it is not applicable to me.

If Kleinbron Estate makes a rule that residents are not allowed to own white cars anymore, does that mean that everybody who owns a white car has to get rid of it? It is illogical and unreasonable, just like this application by the Kleinbron Estate HOA.

Why, if you can just rely on an old rule that was in effect when I signed with Kleinbron Estate, to support your argument, do you feel the need to include the new rule which is not applicable to me, in this application as well?

Are you hoping to bombard me with many rules, in the hope that at least one of them will be correct and mean that I have to remove my cameras?

What is the real reason that you are demanding that I remove my cameras? Your application indicates that it is clearly not because you believe I am transgressing a rule.

B.

Mr Fitchat: 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 02 - 2022.01.14 Email with Estate Manager

Please see Addendum 03 - 2022.01.20 Whatsapp with SJC Security's Owner

Kleinbron: This statement is blatantly false.

Mr. Fitchat is deliberately withholding important information from the adjudicator.

1. "Addendum 02 (Fitchat) - 2022.01.14 Email with Estate Manager" shows that Mr Fitchat arranged and requested permission from Charl du Toit from SJC to install cameras. SJC is merely a security service provider to the Kleinbron Estate HOA and have no legal standing in the affairs of the HOA. This email was clearly a cursory note to the HOA manager informing him what actions were taken by Mr Fitchat.

Mr Fitchat: Clearly it is illogical and blatantly false for the Kleinbron Estate HOA to indicate that my statement is "blatantly false" that I had not informed Mr van Niekerk (the estate manager) about my CCTV installation.

I did inform Mr van Niekerk and Mr du Toit before I installed my cameras, and I took the initiative to ask them to be present.

I was ignored.

The HOA alleges that I had asked only Mr du Toit to be present, and had provided only a “cursory note” to Mr van Niekerk regarding my CCTV installation.

However, if Mr du Toit has no legal standing with the HOA, as the Kleinbron Estate HOA claims, the onus would reasonably have fallen on Mr van Niekerk, as the estate manager, to take full notice of my email, and not just to take a cursory note of it.

The objective test to perform here is not how Mr van Niekerk personally understood the email, but rather how any reasonable and competent person in Mr van Niekerk’s position as estate manager would have understood my email.

As is proven over and over again, Mr van Niekerk is incompetent and should not be the estate manager of Kleinbron Estate.

Regardless of my choice of words, and whether the HOA considered it to be a “cursory note” or not, the HOA was informed and had full knowledge that I was installing CCTV cameras.

I query why the HOA has waited 9 months, until after they had referred three of my neighbours to make CSOS applications against me (two of which have been adjudicated already, and both of which found in my favour), and until after they had changed the HOA Rules to specifically ban my kind of cameras, to send me a letter of demand and to make a CSOS application to attempt to pressure me to remove my cameras.

Is it because the HOA knew they had no legal grounds to pressure me to remove my cameras, not before, during or after I had installed them? I think it is.

Kleinbron: 2. The Chairman of the HOA, the Estate Manager, and a CCTV specialist from SJC all visited Mr. Fitchat while he was doing the camera installation. Mr. Fitchat conveniently withheld this fact from CSOS too. See addendum “HOA Response 04” as proof of said meeting.

Mr Fitchat: Yes, they did come, but they came *at my request*, and they came after I had bought all the cameras, and after I had installed most of them.

I asked them to come because I wanted to set my neighbours at ease that I was not spying on them.

The Kleinbron Estate management had no authority to come on their own at the time since I was not transgressing any of their rules, which they admitted (Please see Addendum 04 - 2022.03.23 CSOS Mr. Johnson & Estate Manager Email), but are now trying to contradict.

I would also like to know why the Kleinbron Estate HOA wanted me to agree in writing to the things mentioned in the abovementioned email? Was it because they had no authority to demand those things, because CCTV installations were not covered in their rules, so they had to manipulate me into agreeing in writing to comply with those rules, so that they could enforce them?

I would also like to know why the Kleinbron Estate HOA sent that email (addendum "HOA Response 04") to my wife and not to me? Did you hope my wife would agree to your terms without checking with me before the time?

If the Kleinbron Estate HOA had the authority to cause me to remove/adjust my cameras at the time, why did they not just send me a letter of demand, indicating which rule I was transgressing, and state their demands?

Also, the Kleinbron Estate HOA previously indicated that "SJC is merely a security service provider to the Kleinbron Estate HOA and have no legal standing in the affairs of the HOA", then why did you send a CCTV specialist from SJC to examine my cameras as though he is someone I should take seriously?

Kleinbron: On 28 January 2022, after the initial 2 weeks period as agreed on, a second email was sent to Mr. Fitchat, again requesting him to acknowledge the first email with agreement as set out before.

Mr Fitchat: The Kleinbron Estate HOA is to please clarify exactly what “initial 2 weeks period as agreed on” they are referring to, and the Kleinbron Estate HOA is put to the proof thereof that I had agreed to it.

Also, you did not send me a second email. That was the first email you had sent to me. The first one you had sent to my wife. You only sent that email to me after you realised my wife did not fall for your trick to agree to your demands in writing.

Kleinbron: 3. On 30 January 2022 Mr. Fitchat acknowledged this meeting and the emails from the HOA.

See addendum “HOA Response 05”

Mr Fitchat: Please clarify where I have denied the existence of the meeting. I do not believe I had done so.

Kleinbron: The following is an extract from his reply to the HOA:

“the fact that our cameras have a PTZ function will form a part of our lawsuit against the relevant parties, so we will wait for the court’s ruling before we make any adjustments to our cameras. When we receive the verdict, we will act in accordance with the court’s decision.”

Mr Fitchat: The extract from my email to the HOA is referring to the legal action I have initiated against one of my neighbours at the Kuilsriver Magistrates Court, who defamed me on a public Whatsapp group by falsely saying I recorded his child in a towel with my phone’s camera.

The relevant neighbour’s wife also made a CSOS case against me, demanding that I remove my CCTV cameras, saying my CCTV cameras were recording her children’s bedrooms and bathrooms (case no. CSOS 7648/WC/21).

CSOS found in my favour, and indicated that my neighbour's demand for my CCTV cameras to be removed, was denied.

By keeping my CCTV cameras up, I am, therefore, acting in accordance with the ombud's decision, as I had said I would.

On the other hand, I am not sure how a private civil matter between me and a neighbour is relevant to the Kleinbron Estate HOA's current application.

Kleinbron: He also made the following statement in his reply:

"We also welcome legal action from Klein Bron Estate in order to resolve this matter, if you feel it is necessary."

Mr Fitchat: I stand by my statement.

Kleinbron: 4. During this visit and in the subsequent emails Mr. Fitchat was informed of the concerns that the HOA have with his camera installation and requested him to make certain amendments, i.e. removing the bi-directional communication function, ability of the camera to swirl, etc.

Mr Fitchat: This point is addressed in a previous paragraph.

C.

Mr Fitchat: 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 04 - 2022.03.23 CSOS Mr. Johnson & Estate Manager Email

Kleinbron: This statement is irrelevant, quoted out of context and/or intentionally misrepresented or misunderstood by Mr. Fitchat.

Mr Fitchat: I am astounded that one sentence can be all the above, but I am eager to see your explanation of how this is logically possible.

Kleinbron: Please refer to the Minutes of the Trustee Meeting of 14 February 2022, point 11.1 and 11.2 for context. See addendum “HOA Response 06”

Mr Fitchat: The context appears to be a Kleinbron Estate HOA meeting that found that my CCTV cameras were not transgressing any of the estate’s rules.

I am disappointed that there is no explanation how my statement was irrelevant, quoted out of context and/or intentionally misrepresented or misunderstood by me.

Kleinbron: Also refer to the complete email send to Mr. Fitchat. See “Addendum 04 (Fitchat) - 2022.03.23 CSOS M. Johnson Estate Manager Email”

“11.1 Mr. Fitchat (owner 91 Frangipani) was referred to a neutral party being CSOS since he made various accusations against the HOA management being bias.”

These accusations are contained in email received from Mr. Fitchat. “See addendum “HOA Response 05”

Mr Fitchat: My opinion that the Kleinbron Estate HOA is biased against me has remained unchanged, and this CSOS application by you is further evidence that I am correct.

Kleinbron: “11.2 After a long in-depth discussion the Trustees decided that there was no concrete evidence of Mr Fitchat transgressing any rules of the Estate.”

This point relates to specific complaints that were received from various residents. “See addendum “HOA Response 07”

The complaints received from the neighbours specifically related to allegations that the cameras of Mr. Fitchat infringes on their privacy, has the ability to record conversation they have in their backyard, the possibility that one of the cameras facing the bedroom of their 9 year old daughter and theirs can do recordings, as well as the possibility that it can do recordings of children playing at the playpark opposite their house.

Due to the absence or lack of evidence presented to the HOA to supplement the allegations made by the neighbours, the trustees felt that there is no breach of a rule which “constitutes an aggravation or nuisance to other Residents” and as such the HOA could not act on said allegations.

This cannot be construed as to mean that the HOA or management approved the actions or transgression of Mr. Fitchat in relation to the rule, specifically dealing with PTZ Cameras, cameras with bi-directional communication functions or those that are able to view areas outside the boundaries of his property.

Mr Fitchat: So, the Kleinbron Estate HOA is saying, “that there was no concrete evidence of Mr Fitchat transgressing any rules of the Estate” must not be construed to mean “that there was no concrete evidence of Mr Fitchat transgressing any rules of the Estate”?

CSOS is also referred to CSOS cases 7648/WC/21 and 8440/WC/21 which found that my CCTV cameras were not invading the privacy of my neighbours or “the bedroom of their 9 year old daughter”, etc.

Kleinbron: In either event, those incidents in relation to complaints by neighbours pre-date this application by almost 8 months.

Mr Fitchat: I fail to see how the date of those complaints are relevant to anything. Please clarify.

Kleinbron: As a further cursory, Mr. Fitchat in his own words as contained in “HOA response 5” at paragraph 7 indicated “We are not going to allow Klein Bron Estate to be involved any further or to intervene in our private matters. We were initially open to making a concession to you, but we have now decided against it. As you have also indicated, this matter falls outside the scope of our contract with Klein Bron Estate.”

He thus concedes that the application by his neighbours is a private matter which falls outside the scope of their contract with Kleinbron Estate. Meaning that the HOA has no jurisdiction to intervene in private neighbourly matters.

Mr Fitchat: I fail to see how this is relevant to anything. This entire application is a cursory.

Kleinbron: The current application however differs substantially from the applications of his neighbours and is not relevant to the current facts and non-compliance by Mr. Fitchat of the Estate Rules.

Mr Fitchat: If my dispute with my neighbours is irrelevant to this dispute, why did you mention it?

Your sentence above literally means that your current application is not relevant to me not complying to the Estate rules.

Why on earth are you making an application to CSOS if you keep saying I am not transgressing your rules?

Perhaps you should rather apply for a job at McDonald's, where your intelligence could perhaps be better applied to work that does not require any.

D.

Mr Fitchat: 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.

Please see Addendum 05 - 2022.05.20 Kleinbron Estate HOA Rules

Kleinbron: This statement is irrelevant, but at least Mr. Fitchat concedes that a rule not permitting PTZ cameras is currently in place.

When Mr. Fitchat bought into the estate he undertook to abide by the Constitution and rules.

The Kleinbron Estate Constitution states as follows: See addendum "HOA Response 01"

<p>22. Each Member undertakes to the Association that he shall comply with:</p> <p>22.1 the provisions of this Constitution;</p> <p>22.2 any regulations made in terms of paragraph 21.1 and specifically the Architectural Manual referred to herein;</p>
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22.3 any agreements referred to in paragraph 21.2 insofar as those agreements may directly or indirectly impose obligations on him.

Mr Fitchat: I have already proven that the above does not apply to CCTV cameras.

E.

Mr Fitchat: 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.

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

Please see Addendum 06 - Kleinbron Estate Constitution

Kleinbron: This statement is blatantly false and/or selectively applied and/or completely misunderstood and/or interpreted.

Mr Fitchat: Who wrote this? Please tell me, so I can go and Google them and see if they look as stupid as they write.

Kleinbron: Mr. Fitchat either elected to quote one line out of context or is misinterpreting the Constitution at.

36. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE, which reads as follows:

See addendum "HOA Response 03"

36. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may

exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and which are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such **regulations** as may be prescribed by the Association **in general meeting** from time to time, provided that 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. The Trustee Committee shall specifically be empowered to enforce the provisions hereof (in litigation or otherwise) and generally to sue in a Court of Justice to enforce the provisions hereof or rules and/or regulations issued in terms hereof.

This part of the Constitution quoted by Mr. Fitchat deals with rules and decisions made at an AGM and not amendments to a rule.

This has no bearing whatsoever on this case, since the rules may be amended by the Trustee committee, as stipulated in the Constitution point 40, It reads as follows:

See addendum "HOA Response 03". Said rules being approved by CSOS.

40 The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association **in general meeting**;

40.1 as to disputes generally;

40.2 for the furtherance and promotion of any of the objects of the Association;

40.3 for the better management of the affairs of the Association;

40.4 for the advancement of the interests of Members;

40.5 for the conduct of Trustee Committee meetings and general meetings;

and

40.6 to assist it in administering and governing its activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time.

Mr Fitchat: I am confused.

The Kleinbron Estate HOA states that the part I quoted (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.”) “deals with rules and decisions made at an AGM” (annual **general meeting**), and therefore, “has no bearing whatsoever on this case”.

But then in their next sentence, the Kleinbron Estate HOA indicates that they have the authority to make **regulations in general meeting**, which they seem to claim *is* relevant to this case.

I am unsure whether the Kleinbron Estate’s position is that them making rules in general meeting are relevant to this dispute or not, since they are contradicting themselves with their own statements.

I query why such a long and rambling paragraph in the Constitution was not also revised in your recent revision of the HOA rules. Was this paragraph purposefully written to be difficult to understand so that the Kleinbron Estate HOA could confuse residents with its interpretation?

According to the Consumer Protection Act, if a clause in a contract is ambiguous, the court must find in the favour of the consumer, which would be the resident.

4. (4) To the extent consistent with advancing the purposes and policies of this Act, the Tribunal or court must interpret any standard form, contract or other document prepared or published by or on behalf of a supplier, or required by this Act to be produced by a supplier, to the benefit of the consumer—

(a) so that any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the consumer

To be honest, this point is not even relevant to this case, since I am not disputing the authority of the Kleinbron Estate HOA to implement or amend the rules in the Kleinbron Estate HOA Rules.

I am disputing whether their new rules are retroactively applicable.

To further support my argument that the new HOA rules are not retroactively applicable, the Constitutional Court of South Africa in *Affordable Medicines Trust*^[1], held:

“The doctrine of vagueness is founded on the rule of law, which, as pointed out earlier, is a foundational value of our constitutional democracy. It requires that laws must be written in a clear and accessible manner. What is required is reasonable certainty and not perfect lucidity. The doctrine of vagueness does not require absolute certainty of laws. The law must indicate with reasonable certainty to those who are bound by it what is required of them so that they may regulate their conduct accordingly.”

The Constitutional Court expounded that the *“ultimate question is whether, so construed, the regulation indicates with reasonable certainty to those who are bound by it what is required of them”*.

In *Hyundai*^[2] it was explained that *“the Legislature is under a duty to pass legislation that is reasonably clear and precise, enabling citizens and officials to understand what is expected of them”*. And in *Opperman*^[3], this Court observed that *“Laws must of course be written in a clear and accessible manner. Impermissibly vague provisions violate the rule of law, a founding value of our Constitution. For the ‘law’ to ‘rule’, it must be reasonably clear and certain.”*

The Constitutional Court continued:

¹ *Affordable Medicines Trust v Minister of Health* [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) at para 108

² *Hyundai* above n 54 at para 24, citing *Dawood* above n 70 at paras 47-8.

³ *National Credit Regulator v Opperman* [2012] ZACC 29; 2013 (2) SA 1 (CC); 2013 (2) BCLR 170 (CC) (*Opperman*) at para 46, citing *Affordable Medicines Trust* above n 175 at para 108; *Bertie Van Zyl* above n 174 at para 100; and *South African Liquor Traders' Association v Chairperson, Gauteng Liquor Board* [2006] ZACC 7; 2009 (1) SA 565 (CC); 2006 (8) BCLR 901 (CC) at para 27.

“Before constitutional compliance can be evaluated, a court must attribute a meaning to a provision. If more than one meaning is reasonably plausible, the one resulting in constitutional compliance must be chosen. But if the interpretation that emerges from the wording and context results in constitutional invalidity a court has to make a finding of unconstitutionality. The fact that a constitutionally compliant interpretation cannot reasonably be given to it, does not necessarily lead to vagueness. A finding of vagueness based on a perceived inability to interpret the provision would in any event also result in constitutional invalidity. And an interpretation that renders the provision meaningless would lead nowhere. It would be futile”

I contend that the Kleinbron Estate HOA Rules are not retroactively applicable according to the rule of law, and that the Kleinbron Estate HOA has failed to prove that they are.

Therefore I contend that I am not legally obliged to remove my CCTV cameras.

I query why the Kleinbron Estate has written such a long and rambling application and included a number of irrelevant HOA rules if the only thing that they had to prove was that their new rule was retroactively applicable.

If it was retroactively applicable, the Kleinbron Estate HOA’s application would only have needed to be one paragraph.

The installation of my PTZ CCTV cameras was legal when I installed them, and the Kleinbron Estate HOA has failed to prove that it was not legal for me to install them at the time, and they have also failed to prove that it was possible for it to have become illegal in the meantime for me to have installed them.

Both the Kleinbron Estate HOA and CSOS in two adjudication orders, have found that my CCTV cameras are not transgressing any of the Kleinbron Estate HOA rules and that they are not a legitimate nuisance to my neighbours.

I query why the Kleinbron Estate HOA continues to claim I am transgressing their rules when I am not.

As my neighbours' CSOS privacy violation applications failed to have the desired result to have me remove my cameras, the Kleinbron Estate HOA is now attempting to coerce me to remove my cameras based on an argument that I am breaking their rules, which I am not.

In my opinion, when all is taken into consideration, the actions of the Kleinbron Estate HOA in changing the HOA Rules to ban my kind of cameras after I had installed them is a form of entrapment, in which they are attempting to make me guilty of breaking a rule by implementing it after the fact, and then accusing me of having broken it.

That is not how the law, or the Kleinbron Estate HOA Rules work.

However, if the Kleinbron Estate HOA is not satisfied with the adjudication order of this application, they are welcome to take further legal action against me.

They don't have to worry about having to pay my client-to-attorney fees since I will be representing myself.