

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

**HELD AT KUILSRIVER**

CASE NO: 10562/2022

In the matter between:

**RUBEN THEODOR FITCHAT**

Plaintiff

and

**MARINÉ FRANKEN**

Defendant



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**COMBINED SUMMONS**

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**TO: The Sheriff or his/her deputy:**

**INFORM: MARINÉ FRANKEN**, an adult **female** with identity number **7903150053088**, with her chosen **domicilium citandi executandi** situated at **89 FRANGIPANI STREET, KLEINBRON ESTATE, BRACKENFELL, 7560** whose full and further particulars, including her occupation, are unknown to the Plaintiff, (hereinafter called "the Defendant"), that:

**RUBEN THEODOR FITCHAT**, an adult **male** software developer with identity number **8412285132089**, and with his chosen **domicilium citandi executandi** situated 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. (See **Annexure "Particulars of Claim"** hereto for such particulars).

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

- (i) Within **TEN (10) DAYS** of service upon him/her of this Summons, file with the clerk of this court at **122 VAN RIEBEECK AVENUE, KUILS RIVER, 7580**, [EAdriaan@justice.gov.za](mailto:EAdriaan@justice.gov.za) notice of his or her intention to defend, and serve a copy thereof on the Plaintiff, which notice shall give an address 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.

**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:

	<b>Summons</b>	<b>Judgment</b>
	<b>R</b>	<b>c R c</b>
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 14<sup>th</sup> DAY OF NOVEMBER 2022**

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**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](mailto: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 or 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 **MARINÉ FRANKEN**, an adult female residing at **89 FRANGIPANI STREET, 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.
5. On 28 March 2022 the Defendant made a CSOS (Community Schemes Ombud Service) application against the Plaintiff, in which the Defendant alleged that the Plaintiff was recording the Defendant's nine-year-old daughter's bedroom window, and the Defendant demanded that the Plaintiff's CCTV cameras be removed (please see Annexure "**S1**").
6. The Defendant included a video in her application of the Plaintiff's CCTV cameras in which some of the Plaintiff's CCTV cameras were turned towards the Defendant's house.
7. In the Defendant's video the Kleinbron Estate manager, Mr Alex van Niekerk, is seen sitting in the Defendant's house (please see Annexure "**S2**").
8. The Plaintiff provided evidence to CSOS that a technician was working on his CCTV cameras at the time that the Defendant recorded the video. The technician had left the cameras that he was working on facing in random directions, and the cameras were not switched on at the time (please see Annexure "**S3**").
9. The Plaintiff contends that the Defendant had most likely known that a technician was working at his house.
10. The Plaintiff contends that the Defendant purposefully made a CSOS case against him, knowing she was providing CSOS with false information, and the Defendant also provided a large amount of contradicting statements in her CSOS application.

11. The Plaintiff contends the Defendant committed perjury, which is a criminal offence.
12. CSOS denied the Defendant's demand that the Plaintiff's CCTV cameras be removed (please see Annexure "S4").
13. On 24 August 2022 the Kleinbron Estate HOA (Home Owners Association) opened a CSOS case against the Plaintiff.
14. In their application, the Kleinbron Estate HOA indicated that there was an allegation that the Plaintiff was recording a nine-year-old girl's bedroom window, and they demanded that the Plaintiff remove his CCTV cameras (please see Annexure "S5").
15. The Defendant's defamatory and untrue statements that the Plaintiff was recording the Defendant's nine-year-old daughter's bedroom has resulted in the Kleinbron Estate HOA taking legal action against the Plaintiff.
16. The Defendant has been involved in harassing the Plaintiff and his family ever since the Defendant moved into the house next to the Plaintiff.
17. On 19 October 2021 two of the Defendant's guests attempted to assault the Plaintiff, while the Defendant's husband stood there smirking.
18. On 25 December 2021 the Plaintiff's house was vandalised, and the Plaintiff contends the Defendant was involved.
19. On 10 January 2022 the Defendant accused the Plaintiff of recording children in the public area in front of the Plaintiff's house, but in the video the Defendant is clearly seen standing alone, and then calling the children to stand around her, where they would then be recorded by the Plaintiff.
20. Minutes after that video, the Plaintiff's other neighbour, and the Defendant's close friend, Mr Tyrone Johnson, also accused the Plaintiff of recording his child in a towel on his balcony, and he publicly defamed the Plaintiff on a public Whatsapp group.
21. Mr Johnson has not retracted his statement, despite having received evidence to the contrary.

22. Mrs Marianne Johnson (Mr Tyrone Johnson's wife) and Mrs Yvonne Viljoen, both friends of the Defendant, have also made CSOS applications against the Plaintiff, claiming the Plaintiff was recording their children's bedrooms, despite them providing no evidence.
23. CSOS denied both their demands for the Plaintiff's cameras to be removed.
24. I query the legitimacy of Mrs Viljoen's verdict, since its content appears to be forged. It has been forwarded to law enforcement.
25. The Defendant has defamed the Plaintiff among the Kleinbron Estate management and among the Plaintiff's neighbours.
26. 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 pedophile, the Defendant intended to do as much damage as possible to the Plaintiff's reputation.
27. The damage to the Plaintiff's reputation is evident in that Kleinbron Estate and other neighbours have instituted legal action against the Plaintiff for the same issue, despite them providing no evidence.
28. Due to the Kleinbron Estate HOA CSOS application specifically referencing the Defendant's allegation in the Defendant's own CSOS application that the Plaintiff was recording her nine-year-old daughter's bedroom window, it is clear that the Defendant wrongfully and maliciously, with injurious intent, portrayed the Plaintiff as a pedophile to the Kleinbron Estate management.
29. 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 pedophile, the Defendant intended to do as much damage as possible to the Plaintiff's reputation.
30. The said allegations were made by the Defendant with full knowledge of their wrongfulness.
31. Notwithstanding their falsehood and injurious nature, the Defendant nevertheless made the allegations which harmed the reputation and good name of the Plaintiff.
32. As a result of the defamation thereof and the injurious nature of the allegations, the Plaintiff's dignity and reputation have been damaged.



33. The damage to the Plaintiff's reputation is evident in the large amount of legal action that was taken against him by the Kleinbron Estate HOA and his neighbours.
34. The Plaintiff contends that the Defendant is involved in real estate harassment against the Plaintiff, which is the illegal eviction of a homeowner from their house for the financial gain of the harasser.
35. The Plaintiff contends that the Defendant is employed by an individual with whom the Plaintiff's wife is in a civil lawsuit, and the individual is attempting to coerce the Plaintiff's wife to settle.
36. The Plaintiff has suffered damages in the sum of R400,000.00.

WHEREFORE the Plaintiff claims from the Defendant:

- a) Payment of the amount of R400,000.00 (Four hundred thousand Rand);
- b) Interest on the amount of R400,000.00 (Four hundred thousand Rand) calculated at 10% per annum a tempore morae to date of final payment;
- c) Appropriate apologies and retraction of the Defendant's statements to the Kleinbron Estate management
- d) That the Defendant cease making any defamatory statements about the Plaintiff.
- e) That the Defendant cease harassing the Plaintiff and his family, and using other people to harass the Plaintiff and his family.
- f) Further and/or alternative relief.

**DATED at BRACKENFELL on this 14<sup>h</sup> day of NOVEMBER 2022.**



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RUBEN THEODOR FITCHAT  
91 FRANGIPANI STREET  
KLEINBRON ESTATE

BRACKENFELL

7560

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**TO: THE CLERK OF THE COURT**

Magistrates Court

KUILSRIVER

**AND TO: MARINÉ FRANKEN**

89 FRANGIPANI STREET

KLEINBRON ESTATE

BRACKENFELL

Cell: 082 731 6664

**SERVICE BY SHERIFF**