

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

CASE NO:

In the matter between:

**RUBEN THEODOR FITCHAT** Plaintiff

and

**KLEINBRON ESTATE HOME OWNERS ASSOCIATION** Defendant

**ALEX VAN NIEKERK** Third Party

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**COMBINED SUMMONS**

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

**INFORM: KLEINBRON ESTATE HOME OWNERS ASSOCIATION**, a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No. 15 of 1985, with **their chosen *domicilium citandi executandi*** situated at **69-71 KLEINBRON AVENUE, KLEINBRON ESTATE, BRACKENFELL, 7560** (hereinafter called “the Defendant”),

and

**ALEX VAN NIEKERK**, an adult **male** and the manager of Kleinbron Estate, and with **his chosen *domicilium citandi executandi*** situated at **69-71 KLEINBRON AVENUE, KLEINBRON ESTATE, BRACKENFELL, 7560** and whose full and further particulars are unknown to the Plaintiff (hereinafter called “the Third Party”),

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 and Third Party 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 and Third Party 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 and Third Party 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 and Third Party 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 and Third Party 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:

**Summons**  
**Judgment**  
**R**                      **c R**  
**c**

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
	<hr/>
Totals	R <u>          R          </u>

**DATED AT BRACKENFELL ON THIS 26<sup>h</sup> day of JANUARY 2022**

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**CLERK OF THE COURT  
MAGISTRATES COURT  
KUILSRIVER**




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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 of 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 **KLEINBRON ESTATE HOME OWNERS ASSOCIATION**, a body corporate with their offices situated at **69-71 KLEINBRON AVENUE, KLEINBRON ESTATE, BRACKENFELL**.
3. The Third Party is **ALEX VAN NIEKERK**, the manager of Kleinbron Estate.
4. The above Honourable Court has jurisdiction to hear the matter as the Plaintiff's residence and the Defendant and Third Party's offices are situated within the jurisdiction of the above Honourable Court.
5. **MISREPRESENTATION**
  - 5.1. The Plaintiff bought a house in Kleinbron Estate in April 2019.
  - 5.2. The Plaintiff contends that the Defendant has misrepresented itself on its website as being a "luxury security estate" and that the "feel of the entire property is that of safety, security and relaxation". Please see **Annexure A**.
  - 5.3. In order to buy his house in Kleinbron Estate, the Plaintiff had to sign the Kleinbron Estate HOA Constitution and the Kleinbron Estate HOA Rules.
  - 5.4. The Kleinbron Estate HOA Constitution indicates that "The main business of the Association is to carry on the promotion, advancement and protection of the Members of the Association as owners of Unit Erven" and that "The main object of the Association is "... the provision of security services." Please see **Annexure B**.
  - 5.5. It also indicates that with regards to levies, that the HOA "shall specifically further take into account expenses incurred with regard to the employment of security firms or security". Please see **Annexure B**.
  - 5.6. The Plaintiff has paid his levies every month since buying his house.
  - 5.7. Since about October 2019 the Plaintiff has experienced countless and continuous security incidents in Kleinbron Estate, including stalking, harassing, trespassing, vandalism, intimidation, attempted assault and death threats.

- 5.8. The Plaintiff informed the Defendant of all the security issues that he had been experiencing, and asked for assistance, but the Defendant refused.
- 5.9. The Defendant indicated that residents were responsible for the safety of their own properties at their own expense.
- 5.10. Since the Defendant had alleged that their main business was “the protection of homeowners”, it was reasonable for the Plaintiff to have assumed that after he had contracted with the Defendant that the Defendant would provide additional security services if a specific need arose.
- 5.11. No mention was made anywhere either verbally or in writing prior to the Plaintiff buying a house in Kleinbron Estate that he would have to be responsible for the safety of his own property at his own expense.
- 5.12. The Plaintiff contends that the Defendant has acted improperly and has engaged in fraudulent (intentional) misrepresentation when they gave the impression that they ensured the safety of residents and their properties, even though they do not, in order to get the Plaintiff to agree to the contract.
- 5.13. The Plaintiff would not have bought a house in Kleinbron Estate and contracted with the Defendant if he had known that he would not be safe and that he would have to be responsible for the security of his own property.
- 5.14. As a result of the Defendant's misrepresentation, the Plaintiff has incurred a number of expenses, including increasing the security of his home and replacing some of his property that had been vandalised, at his own cost.

## **6. NOT ACTING IN GOOD FAITH**

- 6.1. The Third Party is the Defendant's manager, but the Plaintiff contends that the Third Party has not acted in good faith in his dealings with the Plaintiff.
- 6.2. The Plaintiff contends that the Third Party has been involved in harassing and victimising the Plaintiff.
- 6.3. The Plaintiff disputes the Third Party's claim that the Third Party is highly qualified for his job.
- 6.4. The Plaintiff contends that the Third Party continually acts outside the scope of his responsibilities as the estate manager.

### **Third Party's biased behaviour**

- 6.5. The Plaintiff contends that the Third Party does not apply the Kleinbron Estate HOA Rules consistently and impartially.
- 6.6. The Plaintiff contends that the Third Party panders to other residents' complaints about the Plaintiff, even after the Third Party had indicated that he would not be further involved in certain matters anymore.
- 6.7. The Plaintiff contends that the Third Party deliberately did not take reasonable steps to ensure the Plaintiff's safety and security when he became aware of the fact that Mr Thys van Tonder attempted to assault the Plaintiff at his house on 19 October 2021, and when the Plaintiff was falsely accused of illegally recording the child of his next-door neighbour, Mr Tyrone Johnson, with the implication that the Plaintiff is a pedophile, on the Kleinbron Als Whatsapp group on 10 January 2022.
- 6.8. Mr Johnson continuously harasses the Plaintiff and has given him death threats.
- 6.9. The Plaintiff applied for a protection order against Mr Johnson at the Kuilsriver Magistrates Court, and initiated a lawsuit against him for defamation.
- 6.10. When the Plaintiff requested information from the Third Party to submit to the court for his legal proceedings, the Third Party refused, alleging that providing it to the Plaintiff would be a breach of the POPI Act.
- 6.11. The Third Party also refused to testify in court regarding his knowledge of and his reaction to the incident.
- 6.12. However, the Third Party had apparently provided information in the form of a security report to Mr Johnson for Mr Johnson's opposing affidavit to the Plaintiff's protection order.
- 6.13. It seems as though the Third Party only applies his alleged POPI Act restrictions to the Plaintiff, and not to Mr Johnson.
- 6.14. Furthermore, even though the owner of the Defendant's security contractor, Mr Charl du Toit of SJC Security, had been present at the relevant defamation incident, he refused to testify in court regarding the incident.



- 6.15. Also, despite SJC security officers usually writing incident reports, Mr du Toit claimed that no report had been written on the incident, and that none of the people who were present's names were taken.
- 6.16. The Plaintiff contends a report *had* been written, but that the Third Party prevented the Plaintiff from obtaining it because it would have helped the Plaintiff in his lawsuit against the neighbour.
- 6.17. On a later date, when the Plaintiff was taking his dog for a walk in the estate, Mr du Toit drove by and stopped next to the Plaintiff and said, "Ek watch jou," and drove off before the Plaintiff could reply.
- 6.18. When the Plaintiff saw Mr du Toit again at court, Mr du Toit told him he was sure the Plaintiff and his wife were "baie nice mense".
- 6.19. The Plaintiff contends the Third Party has improperly and negatively influenced Mr du Toit against him, which further jeopardises the Plaintiff's safety, since Mr du Toit owns Kleinbron Estate's security company.
- 6.20. The Plaintiff contends that the Third Party holds himself up as a legal expert, and as the "POPI compliance officer" of the Defendant.
- 6.21. However, the Third Party has repeatedly lied to the Plaintiff, in particular with regards to legal matters.
- 6.22. The security report in question was allegedly written by Mr Phillip Du Plooy, who is employed as an operations manager by Kleinbron Estate's security provider, SJC Security, regarding an incident at the Plaintiff's house on 30 December 2021.
- 6.23. The Plaintiff contends the report is fabricated and that the Third Party was complicit in its fabrication.
- 6.24. The Plaintiff contends that the Third Party allowed Mr Johnson to submit the fabricated report as part of his opposing affidavit.
- 6.25. The Plaintiff contends that the Third Party coerces the Plaintiff to accept behaviour that is both illegal and in contravention of the Kleinbron Estate HOA Rules from other people in the estate.
- 6.26. After the Plaintiff started taking steps to increase the security of his property, the Third Party made a concerted effort to prevent the Plaintiff from

protecting himself and from determining who is responsible for the security incidents he had been experiencing.

**18 January 2022**

- 6.27. On 18 January 2022, at the Plaintiff's initiative, the Plaintiff invited the Third Party to come to his house to inspect the CCTV cameras he was busy installing.
- 6.28. The Plaintiff invited the Third Party in good faith and as a gesture of cooperation, in order for the Third Party to reassure the Plaintiff's neighbours that he was not invading anyone's privacy.
- 6.29. The Third Party had initially given the impression that he would do an impartial inspection of the Plaintiff's CCTV installation, but when he arrived at the Plaintiff's house, it quickly became clear that he had only pretended that he was impartial in order to gain entry into the Plaintiff's house and use the opportunity to intimidate the Plaintiff and his wife into submitting to his illegal demands.
- 6.30. As can be seen in the Third Party's CSOS application, the Third Party has maliciously construed the Plaintiff's invitation for the Third Party to come to the Plaintiff's house as an opportunity to portray the Plaintiff as acting in an uncooperative and illegal manner.
- 6.31. The Third Party had also arrived at the Plaintiff's house with the HOA's chairman, Mr Anton de Freitas, and a technical sales representative from SJC Security, without having informed the Plaintiff beforehand that they would also be attending.
- 6.32. When the Third Party arrived at the Plaintiff's house, he told the Plaintiff that his CCTV cameras were "heeltemal onwettig" and summarily started ordering the Plaintiff to immediately stop the installation and to remove all of his perfectly legal cameras.
- 6.33. The Third Party told the Plaintiff that the Plaintiff was breaking the law by viewing the publicly visible areas around his house with his CCTV cameras.
- 6.34. The Third Party lied to the Plaintiff that the Plaintiff had to be "registered with PSIRA" (Private Security Industry Regulation Authority) to record the publicly visible areas around his house. When the Third Party was asked to send the relevant laws to the Plaintiff, the Third Party indicated that he would, but then

he did not, indicating that the Third Party knew that the Plaintiff was not breaking the law.

- 6.35. When the Plaintiff refused to remove his cameras, the Third Party attempted to sell the Plaintiff static cameras through the SJC sales representative.
- 6.36. When the Plaintiff refused again, the Third Party attempted to convince the Plaintiff to insert screws or other items into his cameras to make them static, which would most likely have damaged the cameras.
- 6.37. When the Plaintiff refused, the Third Party attempted to manipulate the Plaintiff's wife into agreeing in writing to insert things into the cameras to prevent them from being able to turn.
- 6.38. When the Plaintiff's wife did not respond to the Third Party's email, the Third Party then attempted to manipulate the Plaintiff to agree to the above in writing.
- 6.39. The Plaintiff contends that the Third Party attempted to manipulate the Plaintiff to agree to the above in writing because the Third Party knew he had no legal basis to make the Plaintiff comply if the Plaintiff himself did not agree to it.
- 6.40. The Third Party attempted to threaten the Plaintiff with legal action if he did not comply.
- 6.41. The Third Party attempted to threaten the Plaintiff with client to attorney fees if he did not comply.
- 6.42. The Third Party told the Plaintiff that the Defendant's contract with the Plaintiff was "so opgestel" (set up in such a manner) that the Defendant does not have to pay any legal fees in the event of a legal dispute between them, and that the Plaintiff would have to pay all the Defendant's legal fees, regardless of the outcome of the lawsuit.
- 6.43. The Third Party indicated that he was "receiving 20 emails a day" from people complaining about the Plaintiff's CCTV cameras, but in the Defendant's Community Schemes Ombud Service (CSOS) application, there were only six complaints from only three residents.

- 6.44. The Plaintiff asked the Third Party if he knew Badisa Trio had been to the Plaintiff's house to check if he was a pedophile.
- 6.45. The Third Party said no, and laughingly told the Plaintiff that if the Plaintiff saw the Third Party's daughter, the Plaintiff would *become* a pedophile.
- 6.46. Just before the Third Party left, he told the Plaintiff "oor 'n jaar lag ons hieroor".
- 6.47. The Third Party lied that he would install an additional CCTV camera at the Moepel Park across from the Plaintiff's house, and monitor the area at the bottom of the Plaintiff's property.
- 6.48. The Third Party prevented the Plaintiff from installing a pole at the bottom of his property on which the Plaintiff wanted to mount two additional CCTV cameras to monitor that area, as the Third Party alleged the pole was a contravention of the Kleinbron Estate HOA Rules.
- 6.49. The Defendant has now installed exactly the same kind of pole in various places on the estate on which they have mounted their own CCTV cameras.

**The Defendant's CSOS application, made by the Third Party**

- 6.50. The Third Party removed the Plaintiff's father-in-law's biometric information from the Kleinbron Estate access control system, causing him to not be able to enter or exit the estate, without informing the Plaintiff in writing and providing him with an opportunity to remedy the contravention, as the Defendant's procedure on breach stipulates.
- 6.51. The Plaintiff's wife took her father to the Kleinbron Estate office to check why he had been removed.
- 6.52. The Third Party indicated that the Plaintiff's father-in-law's entry and exit times did not match those of a resident, which was part of their new rules, so the Third Party removed his biometric information from the "residents' only" gate.
- 6.53. The Third Party indicated that the Plaintiff's father-in-law could still enter and leave by the main gate, but when he tried to do so, he could not.

- 6.54. It seems as though the Third Party had either completely removed the Plaintiff's father-in-law's biometric information from the entire system, or had his biometric information disabled.
- 6.55. The very next day, the Plaintiff received a letter of demand from the Third Party, demanding that the Plaintiff remove his CCTV cameras despite him having no legal basis for his demand.
- 6.56. The Plaintiff contends that the Third Party purposefully removed the Plaintiff's father-in-law from their system and waited for the Plaintiff to discover it in order to send him the letter of demand, because the Plaintiff's father-in-law was in contravention of the new Kleinbron Estate HOA Rules, and the Third Party could then manipulate the Plaintiff into thinking he was in contravention of the new rule banning the Plaintiff's kind of CCTV cameras as well.
- 6.57. When the Plaintiff refused to remove his cameras, the Defendant opened a CSOS case against him, which is discussed in more detail under the heading below "Abuse of Process".
- 6.58. When the Plaintiff raised the Consumer Protection Act in his defence in a part of the CSOS matter that the Defendant made against the Plaintiff, the Third Party indicated that the Consumer Protection Act was not applicable to their contractual agreement since the Plaintiff was an HOA member (and therefore allegedly not a consumer), and since the Plaintiff had not "purchased anything" from the Defendant.
- 6.59. The Third Party alleged that the Plaintiff was instead bound by the Kleinbron Estate HOA Rules, apparently as interpreted by the Third Party.
- 6.60. The Consumer Protection Act is most definitely relevant to the contractual agreement between the Plaintiff and the Defendant, since the Defendant, as a body corporate, is a company, and the Plaintiff pays his levies to that company in return for a service.
- 6.61. The Plaintiff contends the Third Party knows that the Consumer Protection Act is applicable to their contractual agreement, but that the Third Party purposefully attempted to withhold the Plaintiff's legal rights from him, and to replace them with his own illegal rights.

### **Black man blowing smoke in Plaintiff's face**

- 6.62. In 2020 a black man with aggressive body language who was smoking something walked past the Plaintiff when he was outside his house, and the man blew smoke into the Plaintiff's face as though he was trying to provoke him.
- 6.63. The Plaintiff's wife informed security of the man, and the Plaintiff posted a message on the Kleinbron Whatsapp group to warn other residents about the man.
- 6.64. The Third Party angrily phoned the Plaintiff's wife and told her that the man was "the son of a minister" and that the Plaintiff's message would lead to him and the estate being prosecuted for racism.
- 6.65. The Plaintiff deleted his message and formed a new Whatsapp group to show that he did not mean any harm with his message and to avoid any conflict and racial tension in the estate due to the Whatsapp message being wrongly understood as having a racist undertone.
- 6.66. The Third Party's bias against the Plaintiff is seen in the fact that Mrs Le-Lue van der Sandt, the co-owner of Bok Radio, had commented on the Plaintiff's message, also indicating that the man had aggressive body language, and she even posted a video of the man walking past her house, but the Third Party had apparently not contacted Mrs van der Sandt as well to complain about her comment and video.
- 6.67. Mr Johnson also mentioned this event in his opposing affidavit to the Plaintiff's protection order application against him.

### **Organised Crime**

- 6.68. The Plaintiff contends that the Defendant and Third Party are involved in the organized crime of real estate harassment against the Plaintiff, which is the illegal eviction of a homeowner from their house for the financial gain of the harasser.
- 6.69. The Plaintiff contends that the Defendant and Third Party are complicit with 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.

- 6.70. The Plaintiff contends the Third Party has a personal vendetta against the Plaintiff, because the Plaintiff told the Third Party in November 2019 that he was incompetent because the estate's access rules kept being inconsistently applied.
- 6.71. The Plaintiff contends that the Defendant and Third Party deliberately evaded their responsibility to provide the Plaintiff with security, in order to cause the Plaintiff to unreasonably have to increase his own security at his own cost, beyond what was reasonably expected of him, to coerce the Plaintiff to move out of the estate.
- 6.72. When the above tactic did not work, the Defendant started taking active measures against the Plaintiff, such as with his application to CSOS, to coerce the Plaintiff to move out of the estate.
- 6.73. The Plaintiff contends that the Third Party victimises the Plaintiff so that the Plaintiff will relocate, but because the Plaintiff does not relocate, the Third Party has to engage in worse and worse victimisation in order to get the Plaintiff to relocate, because if the Plaintiff relocates, the Plaintiff will move on with his life and the Third Party will then not have to answer for his crimes.

### **Third Party's involvement**

- 6.74. The Plaintiff contends that the Third Party is using the Defendant as a separate juristic personality in order to oppress and unfairly prejudice the Plaintiff.
- 6.75. The Plaintiff contends that the Third Party is causing the Defendant to breach its contract with the Plaintiff.
- 6.76. Although the contract is only between the Plaintiff and the Defendant, it does not mean that third parties can ignore the contract.
- 6.77. If a third party deliberately induces a party to breach a contract, a plaintiff can claim damages in delict from the third party (***Jansen v Pienaar (1881) 1 SC 276***).
- 6.78. In *Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd* it was found that it was a delict for a person to induce another to breach a contract. Van Dikhorst J indicated: "A delictual remedy is available to a party to a

*contract who complains that a third party has intentionally and without lawful justification induced another party to the contract to commit a breach thereof.”*

- 6.79. Since the Third Party has deliberately induced the Defendant to breach their contract with the Plaintiff by not acting in good faith, the Plaintiff seeks to hold the Third Party jointly and severally liable for the Plaintiff's damages.

## **7. BREACH OF CONTRACT**

- 7.1. The Defendant refuses to provide the security that is necessary for the Plaintiff and his property to be secure.
- 7.2. The Defendant alleges that the Plaintiff is responsible for his own security, but when the Plaintiff attempts to increase his security, the Defendant attempts to prevent him from doing so.
- 7.3. The house that the Plaintiff bought in Kleinbron Estate had been severely neglected by the previous owners for many years.
- 7.4. After moving in, and before the security issues started occurring, the Plaintiff did a large renovation project of his house, of over R 300 000, in order to improve the appearance of his property.
- 7.5. One of the contractors failed to perform the work to a satisfactory standard, and the Plaintiff's wife is involved in a lawsuit with him.
- 7.6. The contractor's pleadings indicated that he may require an inspection in loco during the trial, so the Plaintiff is unable to rectify certain issues that the contractor had worked on at his house.
- 7.7. After the Plaintiff started experiencing security issues, and since the Defendant refuses to ensure the security of the Plaintiff and his property, the Plaintiff is now unable to perform general maintenance and upkeep on the outside of his house on issues unrelated to the contractor's work.
- 7.8. The Defendant is contracted to provide garden services to the residents, which involves them cutting residents' grass.
- 7.9. Suddenly one day one of the Defendant's garden service attendants refused to cut the grass in the Plaintiff's back yard.



- 7.10. The garden attendant told the Plaintiff that the Plaintiff had to pick up his dog's mess before the garden attendant would cut the grass, and that if the Plaintiff wouldn't pick it up, the words had to "come from the Plaintiff's mouth" that the garden attendant didn't have to cut the grass.
- 7.11. The Plaintiff wonders how the garden attendant knew the subtle legal implications of him having to get the Plaintiff to tell the attendant not to cut the grass, and also why the garden attendant of a luxury estate would order a homeowner to pick up his dog's mess while the garden attendant stands there looking at him.
- 7.12. The Plaintiff contends the Third Party influenced the garden attendant to not cut the Plaintiff's grass, and to say it was the Plaintiff's choice that they do not cut the grass, in order for the Third Party to complain about the state of the Plaintiff's back yard, and blame the Plaintiff for it.
- 7.13. The Defendant wants to maintain the "high standards of the HOA" in keeping the appearance of his house in a pleasant and well-maintained condition, but the Defendant, through the Third Party's actions, makes it impossible for the Plaintiff to do so.
- 7.14. The Third Party is attempting to entrap the Plaintiff in creating problems for the Plaintiff, but then preventing him from applying a solution, and then victimising him when he does not solve the problem.
- 7.15. The Defendant and Third Party actively work against the Plaintiff, in order to decrease his safety and that of his property.

## **8. ABUSE OF PROCESS**

- 8.1. The Plaintiff contends the Third Party and Defendant have used legal processes to achieve the improper end of intimidating the Plaintiff.
- 8.2. The Third Party uses the Defendant's contract with the Plaintiff as an excuse to make frivolous and vexatious demands of the Plaintiff, including, but not limited to, the appearance of his property.
- 8.3. After three of the Plaintiff's neighbours complained about the Plaintiff's CCTV cameras, the Defendant indicated that the Plaintiff was not breaking any of the rules of the estate.

- 8.4. The Defendant referred the three neighbours to CSOS.
- 8.5. Despite the Plaintiff not having done anything wrong, the Defendant forced the Plaintiff to defend himself in three CSOS cases against his neighbours for absolutely no reason other than to harass and victimise the Plaintiff.
- 8.6. The Third Party was seen sitting at a neighbour's house in a video that neighbour took for her CSOS application against the Plaintiff, after the Third Party had indicated he and the Defendant would not be involved in the matter any further, which proves the Third Party's bias against the Plaintiff.
- 8.7. The Defendant then applied to CSOS to "update" their rules.
- 8.8. One of their new rules was that the Plaintiff's kind of CCTV cameras (PTZ cameras) would not be allowed.
- 8.9. The Defendant attempted to indirectly defame and pressure the Plaintiff into removing his cameras by publishing their new rule that PTZ CCTV cameras were in breach of the Kleinbron Estate HOA Rules in the Kleinbron Estate HOA Newsletter.
- 8.10. The Plaintiff's house and his CCTV cameras are very publicly visible since the Plaintiff's house is across from the Moepel Dam, which is a large public play area and dam, and the Plaintiff had been publicly defamed by a neighbour who falsely claimed the person living at the Plaintiff's address illegally recorded children and implied he was a pedophile, so many residents are sensitive to and aware of the Plaintiff's house and CCTV cameras.
- 8.11. The Plaintiff contends the Defendant purposefully published their new rule in the newsletter so that the Plaintiff's neighbours would think the Plaintiff was in breach of the Kleinbron Estate HOA Rules, and to use peer pressure to get the Plaintiff to remove his cameras.
- 8.12. The Plaintiff received two CSOS verdicts for the first two neighbours' cases, which indicated that he was not invading the privacy of his neighbours with his CCTV cameras, and the neighbours' demand that his CCTV cameras be removed, was denied.

- 8.13. The Defendant then also sent a letter of demand to the Plaintiff, indicating that he was breaking the rules of the estate with his CCTV cameras, despite previously saying he wasn't.
- 8.14. The Defendant attempted to rely on their new rule.
- 8.15. The Plaintiff indicated that his CCTV cameras had been installed four months prior to the new rule being implemented, and that since the rules were not retroactively applicable, the new rule did not apply to his cameras.
- 8.16. Despite this, the Defendant proceeded to make an application at CSOS in an attempt to force the Plaintiff to remove his cameras.
- 8.17. The Third Party attempted to improperly influence the conciliator and the adjudicator by providing them with false information.
- 8.18. CSOS again found in the Plaintiff's favour, for both the Defendant's and the third neighbour's CSOS cases against the Plaintiff, and again denied their demands that his cameras be removed.
- 8.19. Despite them finding in the Plaintiff's favour, the Plaintiff queries the legitimacy of the Defendant's and the third neighbour's CSOS verdicts, since they appear forged, and the Plaintiff has forwarded the verdicts to law enforcement.
- 8.20. The Defendant also indicated in their CSOS application that the HOA be "entitled to recover from Mr Fitchat all legal costs incurred by the Trustee Committee (HOA), including attorney and own client charges in pursuit of rectifying this breach, as per the Kleinbron Estate Constitution paragraph 23.2".
- 8.21. However, due to the unprofessional manner in which the Defendant's CSOS application had been written, it is clear that the Defendant had not employed the services of an attorney in drafting it.
- 8.22. The Plaintiff contends the Third Party attempted to intimidate the Plaintiff by threatening him with client to attorney charges.
- 8.23. The Plaintiff contends that the Defendant's CSOS application was not made with the honest intention of resolving a dispute.

- 8.24. The Plaintiff contends that the Defendant made a CSOS application against him in an attempt to intimidate and victimise him.
- 8.25. The Plaintiff contends that the Defendant knew very well that the Plaintiff was not in breach of any of their rules, but that they still made a CSOS application against him.
- 8.26. The Defendant contends the Defendant changed their rules in order to coerce the Plaintiff into complying with their unreasonable demands.
- 8.27. The Plaintiff also queries why the Kleinbron Estate HOA Rules have changed from

3.2 Interest is payable on all arrear accounts at a rate equal to the prime rate of interest applied by the Association's bankers, calculated from the due date until date of payment.

**Kleinbron Estate Home Owners Association Rules (07 September 2015)**

to

3.2 Interest is payable on all arrear accounts at a rate determined by the Board of Trustees, calculated from the due date until date of payment.

**Kleinbron Estate Home Owners Association Rules (11 April 2022)**

- 8.28. The Plaintiff queries why the rule has changed from a set and publicly known rate to an unknown rate.
- 8.29. The Plaintiff contends that the Defendant is purposefully not being transparent about their new interest rate in order to scare homeowners into paying their levies, because residents may be fearful that they may have to pay a high interest rate if they don't.
9. The Plaintiff demands the following:
- 9.1. That the Third Party, Mr Alex van Niekerk, be fired with immediate effect.
- 9.2. That the Defendant and Third Party provide adequate security and services, including garden services, to the Plaintiff.

- 9.3. That if the Defendant does not provide adequate security services to residents, that it not be advertised as a “luxury security estate” anymore, but that it be advertised as a “gated community”.
- 9.4. That the Defendant and Third Party cease making vexatious demands and taking vexatious legal action against the Plaintiff.
- 9.5. That the Defendant and Third Party cease making any defamatory statements about the Plaintiff, either directly or indirectly.
- 9.6. That the Defendant and Third Party cease harassing the Plaintiff and his family, and using other people to harass them.
- 9.7. That the Defendant and Third Party make appropriate written apologies and retraction of their statements and actions towards the Plaintiff within 48 hours of receipt hereof.
- 9.8. That payment of R 400,000.00 be made to the Plaintiff, the details of which follow below.
  - 9.8.1. Due to the Defendant and Third Party’s actions, the Plaintiff has suffered damages in the amount of R 403,385.60, but the Plaintiff will abandon the amount that is over R 400,000.00.
  - 9.8.2. Please see **Annexure C** for more detail on all claimed amounts and for invoices and proofs of payment.

**Claim A:**

- 9.9. The Defendant and Third Party, due to their misrepresentation of Kleinbron Estate as being a “luxury security estate”, but then by breaching the contract and not acting in good faith by not providing adequate security and services to the Plaintiff, caused the Plaintiff to incur additional expenses to upgrade the security of his house, and to cut the grass in his backyard.
  - 9.9.1. CCTV equipment **R 48 464.96**
  - 9.9.2. Firearms **R 14 364.00**
  - 9.9.3. Garden **R 1 748.00**
  - 9.9.4. Gates **R 11 500.00**
  - 9.9.5. Dogs **R 39 449.75**

9.10. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim A is the sum of **R 115 526.71**.

**Claim B:**

9.11. The Defendant and Third Party, due to their misrepresentation of Kleinbron Estate as being a “luxury security estate”, but then by breaching the contract and not acting in good faith by not providing adequate security and services to the Plaintiff, caused the Plaintiff to incur additional expenses due to items being vandalised in his backyard.

9.11.1. Jojo tank **R 2 275.00**

9.11.2. Pool pump house **R 2 479.00**

9.12. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim B is the sum of **R 4 754.00**.

**Claim C:**

9.13. The Defendant and Third Party, due to their misrepresentation of Kleinbron Estate as being a “luxury security estate”, but then by breaching the contract and not acting in good faith by not providing adequate security and services to the Plaintiff, caused the Plaintiff to have to buy two large dogs to secure his property. The Plaintiff will have to feed and take care of them for the remainder of their lifespans.

9.13.1. Dogfood for the remaining lifespan of 2 Rottweilers  
**R 115 208.28**

9.14. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim C is the sum of **R 115 208.28**.

**Claim D:**

9.15. The Defendant and Third Party, due to their misrepresentation of Kleinbron Estate as being a “luxury security estate”, but then by breaching the contract and not acting in good faith by not providing adequate security and services to the Plaintiff, caused the Plaintiff to have to buy two large dogs to secure his property. The Plaintiff had planted new grass in his back yard prior to having to get the 2 Rottweilers, and the Rottweilers have destroyed most of the Plaintiff’s garden. If the Defendant had acted reasonably, the Plaintiff

would not have had to get the dogs, and his garden would not have been destroyed.

9.15.1. Amount to replace newly planted grass that was destroyed by the dogs **R 9 300.00**

9.15.2. Wasted water that was used to plant the new grass **R 3 409.35**

9.16. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim D is the sum of **R 12 709.35**.

**Claim E:**

9.17. The Defendant and Third Party, due to their misrepresentation of Kleinbron Estate as being a “luxury security estate”, caused the Plaintiff to buy a house in Kleinbron Estate. The Plaintiff would not have bought a house in Kleinbron Estate if he had known he would not receive security and “luxury” service. Therefore, the Defendant is responsible for reimbursing the Plaintiff for a portion of his house transfer fees. **R 37 510.96**

9.18. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim E is the sum of **R 37 510.96**.

**Claim F:**

9.19. Due to the expenses incurred by the Plaintiff as a result of the Defendant's misrepresentation, breach of contract and not acting in good faith, the Plaintiff has also lost future interest on the money he had to use on the above expenses, for which the Defendant is liable to reimburse him.

9.19.1. Amount of interest lost for next 2 years due to items in "expenses" column (**Annexure C**) **R 25 461.04**

9.19.2. Amount of interest lost for next 2 years due to items in "vandalism" column (**Annexure C**) **R 1 047.74**

9.19.3. Amount of interest lost in 10 years due to "estimated future expenses" column (**Annexure C**) **R 71 061.91**

9.19.4. Amount of interest lost for next 2 years due to "wasted amounts" column (**Annexure C**) **R 11 068.10**

9.20. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim F is the sum of **R 108 638.80**.

**Claim G:**

9.21. Since the Plaintiff pays a levy in exchange for certain services from the Defendant, which the Defendant does not provide, the Plaintiff seeks to be reimbursed for half the levy amount from when garden services stopped cutting the grass in his backyard until approximately the trial date for this lawsuit. The refund the Plaintiff seeks includes an approximate amount for the poor service that the Plaintiff has received from the Defendant, which is not in line with the Defendant's promised "luxury" lifestyle. **R 9 037.50**

9.22. The amount therefore claimed by the Plaintiff against the Defendant and Third Party in respect of Claim G is the sum of **R 9 037.50**.

Wherefore the Plaintiff claims for:

- a) Payment of the sum of **R 115 526.71** in respect of Claim A;
- b) Payment of the sum of **R 4 754.00** in respect of Claim B;
- c) Payment of the sum of **R 115 208.28** in respect of Claim C;
- d) Payment of the sum of **R 12 709.35** in respect of Claim D;
- e) Payment of the sum of **R 37 510.96** in respect of Claim E;
- f) Payment of the sum of **R 108 638.80** in respect of Claim F;
- g) Payment of the sum of **R 9 037.50** in respect of Claim G;
- h) Interest thereon at the rate of 10.5% per annum a *temporae morae*;
- i) Cost of suit
- j) Further and/or alternative relief.

**DATED at BRACKENFELL on this 26<sup>h</sup> day of JANUARY 2022.**



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Magistrates Court

KUILSRIVER

**AND TO: KLEINBRON ESTATE HOME OWNERS ASSOCIATION**

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**AND TO: ALEX VAN NIEKERK**

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**SERVICE BY SHERIFF**