

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

Case Number: 10562/22

In the matter between:-

**RUBEN THEODOR FITCHAT**

Plaintiff

and

**MARINE FRANKEN**

Defendant

<b>DEFENDANT'S PLEA AND COUNTERCLAIM</b>
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**1. AD PARAGRAPHS 1 AND 2**

1.1. The contents of these paragraphs are noted.

**2. AD PARAGRAPH 4**

2.1. It is denied that the above Honourable Court has jurisdiction to hear the matter as it is above the monetary threshold of the above Honourable Court.

**3. AD PARAGRAPH 4**

3.1. The content of this paragraph is admitted.

**4. AD PARAGRAPH 5**

4.1. The Defendant approached CSOS based on the advice of the Home Owners Association as her right to dignity and privacy was infringed.

4.2. This approach for relief was within the Defendant's Constitutional rights.

## **5. AD PARAGRAPHS 6 TO 8**

- 5.1. The Defendant approached CSOS based on the advice of the Home Owners Association as her right to dignity and privacy was infringed.
- 5.2. At the time, all that the Defendant could see was cameras pointed toward her house.
- 5.3. The Defendant disputes the relevance of the rest of the statements made.

## **6. AD PARAGRAPH 9**

- 6.1. The Defendant denies the contents of this paragraph and puts the Plaintiff to the proof thereof.
- 6.2. The Defendant disputes the relevance of the contents of this paragraph to these proceedings.

## **7. AD PARAGRAPH 10**

- 7.1. The Defendant denies the contents of this paragraph and puts the Plaintiff to the proof thereof.
- 7.2. The Defendant approached CSOS based on the advice of the Home Owners Association as her right to dignity and privacy was infringed.

## **8. AD PARAGRAPH 11**

- 8.1. The Defendant denies the contents of this paragraph and puts the Plaintiff to the proof thereof.
- 8.2. The Defendant contends that the Plaintiff does not have a proper understanding of what constitutes perjury.
- 8.3. The Defendant disputes the relevance of the contents of this paragraph to these proceedings.

## **9. AD PARAGRAPH 12**

- 9.1. The contents of this paragraph are noted.

#### **10. AD PARAGRAPH 13**

- 10.1. The contents of this paragraph are noted, however, the Defendant cannot comment on matters of the HOA.
- 10.2. The HOA opened the case based on its own decision and legal advice.

#### **11. AD PARAGRAPH 14**

- 11.1. The contents of this paragraph are noted, however, the Defendant cannot comment on matters of the HOA.
- 11.2. The HOA opened the case based on its own decision and legal advice.

#### **12. AD PARAGRAPHS 15 AND 16**

- 12.1. The Defendant denies the contents of these paragraphs and puts the Plaintiff to the proof thereof.

#### **13. AD PARAGRAPH 17**

- 13.1. It is denied that Defendant's husband stood by smirking and the Plaintiff is put to the proof thereof.
- 13.2. The Defendant's guests (some of whom are also residents in Kleinbron Estate) were upset due to the Plaintiff shouting at their children.
- 13.3. Defendant's husband came out of Defendant's house once security arrived to establish what the problem is.
- 13.4. It is denied that there were any attempts to assault the Plaintiff and the Plaintiff is put to the proof thereof.
- 13.5. The Defendant disputes the relevance of the contents of this paragraph to these proceedings.

#### **14. AD PARAGRAPH 18**

- 14.1. The Defendant denies the contents of these paragraphs and puts the Plaintiff to the proof thereof.

**15. AD PARAGRAPH 19**

15.1. The Defendant denies the contents of these paragraphs and puts the Plaintiff to the proof thereof.

15.2. The Defendant came back from holiday and proceeded to greet the children, who was excited to see her.

**16. AD PARAGRAPHS 20 TO 22**

16.1. The Defendant denies her involvement and puts the Plaintiff to the proof thereof.

16.2. The Defendant disputes the relevance of the contents of these paragraphs to these proceedings.

**17. AD PARAGRAPHS 23 AND 24**

17.1. The contents of this paragraph are noted, however, the Defendant cannot plead on matters where she is not involved.

**18. AD PARAGRAPH 25**

18.1. It is denied that the Defendant defamed the Plaintiff among Kleinbron Estate Management and the Plaintiff's neighbours and the Plaintiff is put to the proof thereof.

**19. AD PARAGRAPH 26**

19.1. It is denied that the Defendant intended to slander and defame the Plaintiff and the Plaintiff is put to the proof thereof.

19.2. It is denied that the Defendant defamed the Plaintiff at all and the Plaintiff is put to the proof thereof.

**20. AD PARAGRAPH 27**

20.1. It is denied that the Defendant was involved in the Plaintiff's HOA and neighbors instituting legal action against him and the Plaintiff is put to the proof thereof.

20.2. The HOA and neighbours instituted legal action based on their own decisions and legal advice.

### **21.AD PARAGRAPH 28**

21.1. It is denied that the Defendant wrongfully and maliciously, with injurious intent, portrayed the Plaintiff as a pedophile to Kleinbron Estate Management and the Plaintiff is put to the proof thereof.

### **22.AD PARAGRAPH 29**

22.1. It is denied that the Defendant made comments with the intention to slander and defame the Plaintiff and the Plaintiff is put to the proof thereof.

22.2. It is denied that the Defendant insinuated that the Plaintiff is a pedophile and the Plaintiff is put to the proof thereof.

22.3. It is denied that the Defendant intended to damage the Plaintiff's reputation and the Plaintiff is put to the proof thereof.

### **23.AD PARAGRAPH 30**

23.1. It is denied that the Defendant's allegations were wrongful or that she was aware of any wrongfulness and the Plaintiff is put to the proof thereof.

### **24.AD PARAGRAPH 31**

24.1. It is denied that the Defendant's allegations were false, were injurious or harmed the reputation of the Plaintiff and the Plaintiff is put to the proof thereof.

### **25.AD PARAGRAPH 32**

25.1. It is denied that the Defendant defamed or caused injury to the Plaintiff and the Plaintiff is put to the proof thereof.

25.2. It is denied that the Plaintiff's dignity and reputation has been damaged and the Plaintiff is put to the proof thereof.

### **26.AD PARAGRAPH 33**

26.1. The Defendant cannot plead on legal actions of others, other than that the Defendant is not involved or a party to those actions and that those actions were instituted based on those parties own decisions and legal advice.

#### **27.AD PARAGRAPH 34**

27.1. It is denied that the Defendant is involved in real estate harassment against the Plaintiff and the Plaintiff is put to the proof thereof.

27.2. The Defendant cannot comprehend on what basis her actions or *locus standi* could result in the eviction of the Plaintiff.

#### **28.AD PARAGRAPH 35**

28.1. The Defendant cannot plead on a legal action of another, other than that the Defendant is not involved or a party to that action.

#### **29.AD PARAGRAPH 36**

29.1. It is denied that the Plaintiff suffered any damages at all and the Plaintiff is put to the proof thereof.

WHEREFORE the Defendant seeks for dismissal of the Plaintiff's claim with costs, for reasons as pleaded above and that it is vexatious and abuse of the above Honourable Court's processes.

<b>DEFENDANT'S COUNTERCLAIM</b>
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1. On 4 November 2022 the Plaintiff slandered and defamed the Defendant with malicious intent in an email which included the following parties (please refer to annexure "CC1"):

1.1. Employees of the Community Schemes Ombud Service;

1.2. The South African Police Service;

1.3. SJC Security Services;

- 1.4. Independent Police Investigative Directorate;
- 1.5. South African Treasury;
- 1.6. The Defendant's husband;
- 1.7. Vuvuzela Fraud and Ethics Hotline;
- 1.8. The Management of Kleinbron Estate;
- 1.9. The Public Service Corruption Hotline;
- 1.10. The Presidency of South Africa;
- 1.11. The Public Protector of South Africa;
- 1.12. Whistleblowing.co.za;
- 1.13. The Economic Freedom Fighters Political Party;
- 1.14. An employee of the Plaintiff's employer;
- 1.15. The Western Cape Government;
- 1.16. Other parties unknown to the Defendant.

2. The Plaintiff slandered and defamed the Defendant by calling her the leader of a real estate harassment group and disturbingly also provided her personal address where she, her husband and two minor children resides.
3. The Plaintiff was clearly upset about a final adjudication order, handed down by a reputable South African Ombud and made outrageous statements, which included the slandering and defamation of the Defendant, in a matter which the Defendant was not even involved or a party.
4. The Plaintiff's slandering and defamation was clearly made with malicious intent, knowing the email would result in damage to the Defendant's untainted reputation and the security of her and her family.
5. On 8 November 2022, the Defendant's attorney demanded that the Plaintiff retracts his defamatory remarks, failing which the Defendant shall proceed with the necessary legal recourse (please also refer to annexure "CC1"). To date, the Plaintiff has failed to do so and consequently the Defendant's untainted reputation is irreparably scorched and security for her and her family permanently threatened.

6. As a result of the published (emphasis added) defamatory remarks made by the Plaintiff, the Defendant has suffered damages for which she is entitled to claim compensation of R400 000-00 (**FOUR HUNDRED THOUSAND RAND**).
7. The Defendant concedes to waive the amount as determined by the above Honourable Court, in order to bring the Defendant's claim within the Above Honourable Court's jurisdiction.

**WHEREFORE** Defendant prays for judgment against the Plaintiff on the following terms:

1. Payment in the sum of R400 000-00 (**FOUR HUNDRED THOUSAND RAND**) as determined by the Above Honourable Court;
2. Interest a *temporae morae*;
3. Cost of suit;
4. Appropriate retraction and apologies to all institutions and persons where the Defendant was defamed;
5. That the Plaintiff cease making defamatory statements against the Defendant;
6. Further and / or alternative relief.

**SIGNED** at **BELLVILLE** on the 26<sup>TH</sup> **DAY** of **JANUARY 2023**.



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Defendant's Attorneys

**VAN ZYL LAW INC.**

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**SERVICE AGREED BY EMAIL**



**C/O HICKMAN VAN EEDEN PHILLIPS**

96 van Riebeeck Road

KUILSRIVIER

Tel: 021 903 3106

**TO: THE CLERK OF THE CIVIL COURT KUILS RIVER**

**AND TO:**

**RUBEN THEODOR FITCHAT**

Plaintiff

91 Frangipani Street

Kleinbron Estate

BRACKENFELL

Cell: 083 925 1545

Emai: [theo@cluedapp.co.za](mailto:theo@cluedapp.co.za)

**SERVICE AGREED BY EMAIL**