

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

CASE NO:

In the matter between:

RUBEN THEODOR FITCHAT

Plaintiff

and

YVONNE ELOISE VILJOEN

Defendant

COMBINED SUMMONS

TO: The Sheriff or his/her deputy:

INFORM: **YVONNE ELOISE VILJOEN**, an adult **female** with identity number **7907260007082**, with her chosen ***domicilium citandi executandi*** situated at **58 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 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:

	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

Totals

R

R

DATED AT BRACKENFELL ON THIS 27th DAY OF JANUARY 2023

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

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 _____ 2023

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 _____ 2023

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 **YVONNE ELOISE VILJOEN**, an adult female residing at **58 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.

DEFAMATORY STATEMENTS, ABUSE OF PROCESS AND PERJURY

4. The Defendant has written a number of defamatory emails about the Plaintiff to the Kleinbron Estate Home Owners Association (HOA), which resulted in the Kleinbron Estate HOA taking legal action against the Plaintiff.
5. The Defendant has sent at least four emails over three days, 17 January 2022, 18 January 2022 and 14 February 2022, to the Kleinbron Estate management. Please see **Annexure S1** and **Annexure S2**.
6. In the Defendant's emails
 - 6.1. she alleged that the CCTV cameras that the Plaintiff had started installing around his house were pointed at her house, inclusive of her balcony and her daughter's bedroom.
 - 6.2. she alleged that the Plaintiff was illegally filming her minor children without her permission.
 - 6.3. she alleged that the Plaintiff was infringing on her and her family's basic human rights.
 - 6.4. she alleged that the number of CCTV cameras that the Plaintiff had installed on his property was excessive.
 - 6.5. she alleged that the Plaintiff's CCTV cameras were decreasing the safety of the estate.
 - 6.6. she alleged that the Plaintiff intended to "put massive security gates onto his property – the contractor was here 18h30 last night – I trust this is not going to affect the façade of his home and impact the values of the

homes in Frangipani.” The Defendant’s house is three houses up the road from the Plaintiff’s house, and another house hides most of her house from view, so the Plaintiff queries how the Defendant was able to hear the conversation between the Plaintiff and his contractors.

- 6.7. she repeatedly attempted to intimidate both Kleinbron Estate and the Plaintiff by mentioning negative public opinion, decreasing property values, SAPS, lawyers, legal action and interdicts in her correspondence.
 - 6.8. she alleged that she had been a “resident of 58 Frangipani Street for almost 8 years” and “a resident of the estate for well over 12 years”, apparently as justification that her demands must be met.
 - 6.9. she indicated that if Kleinbron Estate did not deal with the situation according to her demands, she would be “forced to seek legal action” herself.
7. On 19 February 2022 the Kleinbron Estate management replied to the Defendant in an email that after consulting with various municipal departments, law enforcement and legal advisors, they found that the Plaintiff was not breaking any of the rules of the estate, and they referred the Defendant to CSOS.
 8. On 30 March 2022 the Defendant made a CSOS application against the Plaintiff, in which she alleged that the Plaintiff’s CCTV cameras were recording her property and her daughter’s bedroom. Please see **Annexure S3**.
 9. In the Defendant’s application she included a photo of the Plaintiff’s house and his CCTV cameras that were visible from her property, as alleged evidence that the Plaintiff was recording her property. Please see **Annexure S4**.
 10. The Defendant’s photo showed that none of the Plaintiff’s CCTV cameras were pointed towards the Defendant’s property.
 11. Nevertheless, the Defendant insisted that the Plaintiff’s CCTV cameras be removed.
 12. The Defendant’s photo also shows the new alleged “massive security gates” that the Plaintiff had installed, and that they are completely unobtrusive.

13. The Defendant was not able to attend the first day of their CSOS conciliation meeting, and she indicated that the reason she was not able to attend was because she had to be “in court” “with a client”. Please see **Annexure S5**.
14. The Defendant also kept condescendingly referring to the Plaintiff as a “layman” and “the layman” in her correspondence with him. Please see **Annexure S6**.
15. The Defendant condescendingly called the Plaintiff an “alleged student of law” in another email. Please see **Annexure S7**.
16. The Defendant also indicated to the Plaintiff verbally on another occasion that she had completed a 4-year LLB degree.
17. The unprofessional manner in which the Defendant had written her CSOS application and the lack of legal basis for any of her arguments causes the Plaintiff to query her legal qualifications and her claim that she attends court with clients.
18. The Defendant was also represented by a candidate attorney in court in another matter. Please see **Annexure S8**.
19. The Plaintiff contends the Defendant has attempted to portray herself as an attorney in an attempt to intimidate him.
20. The Defendant attempted to merge her CSOS application with the CSOS applications of two other neighbours with whom she is acquainted, and who were also making the same false allegations that the Plaintiff’s CCTV cameras were recording their children’s bedrooms.
21. On 24 August 2022 Kleinbron Estate also opened a CSOS case against the Plaintiff, in which they demanded that the Plaintiff remove his CCTV cameras. Please see **Annexure S9**.
22. In their application, Kleinbron Estate included emails of complaint about the Plaintiff’s CCTV cameras from the Defendant and from the other two neighbours who had also made CSOS applications against the Plaintiff’s CCTV cameras. Please see **Annexure S1**.
23. The emails showed that the Defendant was the first one to send an email of complaint, that she sent the most emails of complaint, and that her emails were the most scathing about the Plaintiff, even though she had never even met him before.

24. The Defendant's defamatory and untrue statements that the Plaintiff was recording her property and her daughter's bedroom resulted in the Kleinbron Estate HOA taking legal action against the Plaintiff.
25. Four CSOS cases were made against the Plaintiff's CCTV cameras, and all four final adjudication orders found in the Plaintiff's favour.
26. Despite both final adjudication orders of the Defendant and Kleinbron Estate having found in the Plaintiff's favour, the Plaintiff queries their legitimacy, since their contents appear to be forged. Please see **Annexure S10** and **Annexure S11**.
27. Both have been forwarded to law enforcement.
28. The Plaintiff's reason for installing CCTV cameras was because he was being harassed and his house had been vandalised.
29. The Plaintiff started installing his CCTV cameras on 17 January 2022.
30. The installation took more than a week to complete.
31. The Defendant's first email to Kleinbron Estate complaining about the Plaintiff's CCTV cameras was also on 17 January 2022, when only a few cameras had been installed, and none of them were even functional yet.
32. It is reasonable to believe that the Defendant knew that the Plaintiff's few installed CCTV cameras were not functional yet when she emailed Kleinbron Estate.
33. The Plaintiff contends that the Defendant purposefully sent emails to the Kleinbron Estate management saying that the Plaintiff was recording her property when she knew he wasn't.
34. The Defendant made a conscious attempt to decrease the security of the Plaintiff's property and that of his wife and two small children.
35. The Plaintiff contends the Defendant is also involved in harassing him.
36. The Plaintiff contends that the Defendant is 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.
37. The Defendant is taking away the Plaintiff's right to enjoy his property.

38. 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.
39. The Defendant has wrongfully and intentionally sent defamatory statements about the Plaintiff to the Kleinbron Estate management.
40. 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 by stating that he is recording her "minor children" and her "daughter's bedroom", the Defendant intended to do as much damage as possible to the Plaintiff's reputation.
41. The damage to the Plaintiff's reputation is evident in that Kleinbron Estate has instituted legal action against the Plaintiff for the same issue, despite them providing no evidence other than emails of complaint from the Defendant and two of her acquaintances.
42. The Plaintiff contends that the Defendant has attempted to abuse the legal system by providing false information in her CSOS application in order to illegally coerce the Plaintiff into removing his CCTV cameras in order for him not to be able to record when he is being harassed.
43. Due to the Defendant's comments, the Plaintiff has suffered reputational damages in the amount of R200,000.00.

WHEREFORE the Plaintiff claims from the Defendant:

- a) Payment of the amount of R200,000.00 (Two hundred thousand Rand);
- b) Interest on the amount of R200,000.00 (Two hundred thousand Rand) calculated at 10.5% 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 27th DAY OF JANUARY 2023

RUBEN THEODOR FITCHAT
91 FRANGIPANI STREET
KLEINBRON ESTATE
BRACKENFELL
7560
Cell: 083 925 1545
Email: theo@cluedapp.co.za

TO: THE CLERK OF THE COURT
Magistrates Court
KUILSRIVER

AND TO: YVONNE ELOISE VILJOEN
58 FRANGIPANI STREET
KLEINBRON ESTATE
BRACKENFELL
Cell: 082 499 7418

SERVICE BY SHERIFF