

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

CASE NO: 608/2023

In the matter between:

**RUBEN THOEDOR FITCHAT**



Plaintiff

and

**YVONNE ELOISE VILJOEN**

Defendant

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE** that the Defendant intends making application to the above Honourable Court on 13 September 2023 at 09:00 or so soon thereafter as the matter may be heard for an order in the following terms:

1. Striking out paragraphs 13, 14, 15, 16, 17, 18, 35 and 36 of the Plaintiff's Particulars of Claim on the grounds that the aforesaid paragraphs are scandalous and/or vexatious and/or irrelevant in terms of Rule 19(2) of the Rules Regulating the Conduct of Proceedings of Magistrates' Courts ("***the Rules***");
2. Setting aside the Plaintiff's Particulars of Claim in terms of Rule 60A(1);
3. Directing that the Plaintiff pay the costs of the application on an attorney and client scale;
4. Granting the Defendant such further and/or alternative relief as the Court may deem appropriate.

**BE PLEASED TO TAKE NOTICE FURTHER** that the affidavit of Yvonne Eloise Viljoen, attached hereto, will be used in support of such application.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.**

**DATED at BELVILLE on this 20<sup>th</sup> day of MARCH 2023**



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**STBB**

**Per :**

**N GRUNDLINGH**

**Attorneys for Defendant**

**2<sup>nd</sup> Floor, 5 High Street**

**Rosenpark, Tygervalley**

**BELLVILLE**

**Tel : 021 9433800**

**(Ref : WB032448/NG/tds)**

**Email : [nielg@stbb.co.za](mailto:nielg@stbb.co.za) /**

**[teresads@stbb.co.za](mailto:teresads@stbb.co.za)**

**TO: THE CLERK OF THE COURT**  
**Magistrates' Court**  
**KUILSRIVER**

**AND TO: RUBEN THEODOR FITCHAT**  
**Plaintiff**  
**91 Frangipani Street**  
**Kleinbron Estate**  
**BRACKENFELL**  
**Cell: 083 925 1545**  
**Email : [theo@cluedapp.co.za](mailto:theo@cluedapp.co.za)**

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

CASE NO: 608/2023

In the matter between:

**RUBEN THOEDOR FITCHAT**

Plaintiff

and

**YVONNE ELOISE VILJOEN**

Defendant

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**AFFIDAVIT**

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I, the undersigned,

**YVONNE ELOISE VILJOEN**

do hereby make oath and state that:

1. I am an adult female presently residing at 58 Frangipani Street, Kleinbron Estate, Brackenfell. I am the Defendant in this matter.
2. The facts hereinafter deposed to are true and correct and fall within my personal knowledge.

The present application

3. The present application is a combined application in which I seek relief from the Honourable Court in terms of Rules 19(2) and 60A(1) of the Rules Regulating the Conduct of Proceedings of Magistrates' Courts of South Africa ("*the Rules*").
4. Prior to the launch of this application, my attorneys of record served notices on the Plaintiff in terms of Rules 19(2)(a) and 60A(2)(b) ("*the Notices*") in terms of which the Plaintiff was called upon to remove the causes of

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complaint set out in the Notices. The Notices form part of the record of proceedings.

5. The Plaintiff failed to remove the causes of complaint and I accordingly elected to proceed with the present application.

Application in terms of Rule 19(2)

6. For the reasons set out below, I respectfully submit that paragraphs 13, 14, 15, 16, 17, 18, 35 and 36 of the Plaintiff's Particulars of Claim are scandalous and/or vexatious and/or irrelevant and stand to be struck out with costs on a punitive scale.
7. I furthermore respectfully submit that I would be prejudiced if required to plead to the aforesaid paragraphs.
8. The Plaintiff has instituted proceedings against me based on statements which I made in certain e-mails, which the Plaintiff has alleged to be defamatory. The issues in question are accordingly, *inter alia*, whether the statements are defamatory, whether they were wrongful or intentional, whether there existed any justification for the statements *et cetera*.
9. Against the above background, I respectfully point out that:
  - 9.1. Paragraphs 13 to 18 of the Particulars of Claim are not relevant to the issues in this matter and furthermore do not raise any issue on the pleadings.
  - 9.2. It is clear from the paragraphs themselves, that they have nothing to do with the alleged defamatory statements.
  - 9.3. Paragraphs 13 to 18 of the Particulars of Claim are accordingly clearly irrelevant.

*J.S.D.*

- 9.4. Paragraph 35 of the Particulars of Claim is self-evidently vexatious. I respectfully point out that the Plaintiff has provided no evidence in substantiation of this paragraph and it is clear that this paragraph is intended to embarrass and annoy.
- 9.5. In paragraph 36 of the Particulars of Claim, the Plaintiff has (without a shred of evidence) accused me of being involved in organised crime. This serious, and utterly baseless claim, is highly abusive and defamatory. I would clearly be severely prejudiced if I was required to respond to a defamatory statement of this nature, in which the Plaintiff has attempted to implicate me in criminal proceedings.
10. I respectfully submit that for the reasons set out above, the paragraphs quoted above are scandalous and/or vexatious and/or irrelevant and stand to be struck out with costs on an attorney and client scale.
11. I respectfully submit that I am entitled to costs on an attorney and client scale in respect of the highly abusive and defamatory content of paragraph 36 of the Particulars of Claim.

Application in terms of Rule 60A(1)

12. In my Notice in terms of Rule 60A(2)(b), it was indicated that the Plaintiff had not complied with Rule 6(1) in that the Particulars of Claim was not signed by the Plaintiff.
13. In response to the Notice, the Plaintiff dispatched an e-mail to my attorneys of record on 17 February 2023, a copy of which is attached hereto as annexure "YV1".
14. I respectfully point out that in the first paragraph of annexure "YV1", the Plaintiff stated that:


*"I confirm that the Particulars of Claim attached to my summons that was served on the Defendant by the sheriff contains my signature."*

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15. On 16 March 2023, my attorneys wrote an e-mail to the Plaintiff and indicated that I had instructed them that the Particulars of Claim which was served on me were not signed, contrary to what the Plaintiff had claimed.
16. In response to the e-mail referred to in the preceding paragraph, the Plaintiff sent a letter to my attorneys via e-mail on 17 March 2023. A copy of this letter is attached as annexure "YV2".
17. As appears from annexure "YV2", the Plaintiff completely changed his version and conceded that the Particulars of Claim were not signed. Amongst other things, the Plaintiff stated that:  
  
*"Therefore, the Plaintiff's lack of an additional signature on the Particulars of Claim itself in addition to the Plaintiff's signature on the summons is irrelevant."*
18. Having regard to the above, I respectfully submit that it is clear that:
  - 18.1. The statement made by the Plaintiff in his e-mail of 17 February 2023 (quoted above) was clearly untruthful;
  - 18.2. The Plaintiff has conceded that the Particulars of Claim were not signed.
19. I have been advised that the Plaintiff's purported explanation for not signing the Particulars of Claim does not bear any scrutiny. In addition litigants are not entitled to decide disregard the Rules of Court because they consider such Rules to be irrelevant.

### Conclusion

20. The Plaintiff was afforded an opportunity to remove the causes of complaint but failed to do so.

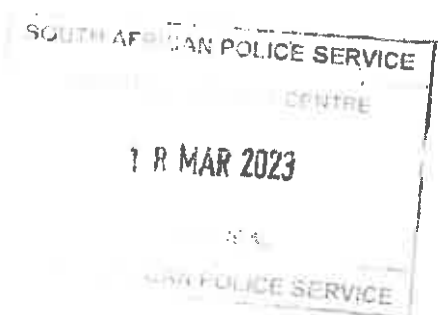
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- 21. I respectfully submit that the Court would be justified in making a punitive cost order against the Plaintiff and ordering that such costs be taxed before the Plaintiff may proceed with the present action due to *inter alia*:
  - 21.1. The highly abuse and defamatory nature of paragraph 36 of the Particulars of Claim; and
  - 21.2. The untruthful statements made by the Plaintiff in response to the Notice in terms of Rule 60A(2)(b) and his flagrant disregard for the Rules.
- 22. I respectfully pray for an order in terms of the Notice of Motion.

  
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YVONNE ELOISE VILJOEN

I hereby certify that the Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at Genadendal on this the 18 day of March 2023, the regulations contained in Government Notice R1258 of 21 July 1972 (as amended) and Government Notice Number R1648 of 19 August 1977 (as amended), having been complied with.

 2023/03/18  
S. Sindela  
\_\_\_\_\_  
COMMISSIONER OF OATHS



"YV1"

**Teresa da Silva**

**From:** Theo Fitchat <theo@ciuedapp.co.za>  
**Sent:** 17 February 2023 12:32  
**To:** Niel Grundlingh  
**Cc:** Teresa da Silva; Dipuo Titipana  
**Subject:** \*\*External Sender\*\* Re: R T Fitchat v Y E Viljoen - Case No: 808/2023 (Kullsrivier Magistrates' Court)

**\*\*This email is from an external sender. Be very careful when opening any attachments or clicking on any links\*\***

Dear Mr Grundlingh,

I confirm that the Particulars of Claim attached to my summons that was served on the Defendant by the sheriff contains my signature.

An electronic copy of the unsigned summons and a return of service for the signed summons delivered to the Defendant, was forwarded in a previous email, for the Defendant's records.

Please provide evidence that the Plaintiff's Particulars of Claim is not signed as per Rule 6(1).

Please provide evidence that the Plaintiff's Particulars of Claim contains statements that are scandalous, vexatious or irrelevant, in terms of Rule 19.

Please provide evidence that the relevant statements made by the Defendant were not defamatory.

Regards,

Theo Fitchat

On 2023/02/13 12:15, Niel Grundlingh wrote:

Dear Mr Fitchat

Kindly find attached the following:

1. Notice of intention to Defend;
2. Notice in terms of Rule 60A(2)(b)
3. Notice in terms of Rule 19(1)(b)
4. Notice in terms of Rule 19(2)(a)

Kindly acknowledge receipt hereof and kindly confirm that you accept service via e-mail.

Yours sincerely  
**Niel Grundlingh**  
Director

**STBB** The Big Small Firm

T: +27 (0) 21 843 3816  
F: +27 (0) 21 914 1080  
E: NielG@stbb.co.za  
F2M: +27 (0) 86 540 8210

5 High Street, Roserpark, Tyger Valley  
PO Box 3758, Tyger Valley, 7538

VAT No: 4670139877  
Reg. No: 1992/003316/21

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*[Handwritten signature]*



"YVZ"

Dear Mr Grundlingh,

I confirm receipt of your email.

The Plaintiff denies the Defendant's averment that the Notice of Bar sent to the Defendant on 14 March 2023 is an irregular step.

The Plaintiff denies that the Defendant is prejudiced by any alleged lack of signature or objectionable averments in his Particulars of Claim, and as such, the Plaintiff asking the Defendant for evidence of her averments was to provide the Defendant with an opportunity to resolve the matter, since it is the Defendant who implies that she is prejudiced, and therefore the Defendant who must prove that she is.

The Defendant's averments regarding the matter merely amount to an irrelevant and bare denial of the Plaintiff's claims, and appear to be a delay tactic to prevent to Plaintiff from applying for a default judgement.

The summons, which was served on the Defendant by the sheriff on 30 January 2023, was signed by the Plaintiff on page 3.

According to the Magistrates Courts Act, the Particulars of Claim is merely an annexure to the summons.

**5. Summons**

(2) (a) In every case where the claim is not for a debt or liquidated demand the summons shall be a combined summons similar to Form 2B of Annexure 1, to which summons shall be annexed a statement of the material facts relied upon by the plaintiff in support of plaintiff's claim, and which statement shall, amongst others, comply with rule 6, but in divorce matters a combined summons substantially compliant with Form 2C shall be used.

Since the Plaintiff's summons was signed by the Plaintiff, the Plaintiff's Particulars of Claim, which is merely an annexure to the summons, is also covered by the Plaintiff's signature on his summons.

The Plaintiff's summons, Particulars of Claim and return of service were also emailed by the Plaintiff to the Defendant on 31 January 2023, which allowed the Defendant to verify that all the documents, including the Particulars of Claim, that she had received from the sheriff, were indeed authored by the Plaintiff, and were therefore authentic.

In itself a signature is simply an indication of a document's authenticity, but a signature itself cannot definitively ensure the authenticity of a document since a signature (or a document) can be forged.

A signature simply affirms the author of a document, but the Plaintiff has confirmed that he is the author of the summons and Particulars of Claim.

A person verifying a document serves the same purpose as a signature verifying a document, and a person verifying authorship of their own document reasonably establishes the authenticity of their document.

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Therefore, the Plaintiff's lack of an additional signature on the Particulars of Claim itself in addition to the Plaintiff's signature on the summons is irrelevant.

The second signature on the Particulars of Claim is redundant and inconsequential, given the first signature on the summons and the Plaintiff confirming that he is the author of the Particulars of Claim.

In light of the above, the Plaintiff would like to remind the Defendant that, as per paragraphs (i) and (ii) on page 2 of the summons, the due date for the Defendant to submit a plea, exception, notice to strike out, with or without counterclaim, has elapsed.

The Defendant is allowed an extension and may submit a plea, exception, notice to strike out, with or without counterclaim by 22 March 2023, failing which, she will be ipso facto barred from doing so, and the Plaintiff will proceed with Default Judgement without further notice to the Defendant.

Regards,

Theo Fitchat

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