

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

**CASE NR: 1399/2022**

In the matter between:

**RUBEN THEODORE FITCHAT**

**PLAINTIFF**

And

**TYRONE JOHNSON**

**DEFENDANT**

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**DEFENDANT'S PLEA**

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The Defendant pleads to the Plaintiff's particulars of claim as follows:

**Ad paragraph 1 – 4**

1. The contents are admitted.

**Ad paragraph 5 – 6**

2. Mrs Franken is not a party to this action, and Defendant cannot plead on behalf of Mrs Franken. Defendant is therefore unable to plead to this paragraph and puts the Plaintiff to the prove thereof.
3. Defendant is however aware of an incident that took place on the 19<sup>th</sup> of October 2021 where the Plaintiff shouted at Mrs Franken's guests' children playing in the street in front of her house during the early evening. This was not the first occurrence of aggressive behaviour of the Plaintiff towards children playing in

Frangipani Street. Mrs Franken's guests confronted the Plaintiff upon which the Plaintiff accused the guests of harassment.

**Ad paragraph 7**

4. The date of 10 January 2022 is admitted. The remainder of the content is denied and Plaintiff is put to the proof thereof. The Defendant noticed the Plaintiff filming the neighbourhood kids in the playground opposite the Plaintiff's house from behind his gate.
5. Mrs Franken was standing in the street with her back to the Plaintiff's house, watching her own child play with the neighbourhood children in the park. The Defendant's wife, Marianne Johnson, also came out on the balcony and started calling out at the Plaintiff to stop when she noticed him filming the children playing in the park.

**Ad paragraph 8**

6. Defendant denies the content of this paragraph.
7. There were other parents in the park with their children. When the Defendant and his wife called out at the Plaintiff, who was filming the children in the playground, the Plaintiff turned to film the Defendant and his wife. At this point the Defendant's minor son walked out on the balcony wearing only a towel, and Defendant immediately attempted to push the minor child back into the house, all while the Plaintiff was filming them on his phone.
8. This drew the attention of the other parents, who were drawn by the commotion in front of the Plaintiff's and Defendant's houses. Defendant denies that the parents were aggressive.

9. At this time, a parent from number 19 Moepel Street, Kleinbron, called SJC Security, who oversees the security in the estate. The SJC Security logbook from 10 January 2022 shows they received a telephonic complaint from 19 Moepel Street at 20h16, that someone in Frangipani Street is filming the children playing in the playground, as this parent's child was also playing in the playground.
10. The Defendant also called SJC Security, but Charl Du Toit, who oversees estate security, was already on his way to 91 Frangipani Street at the time of his call.

**Ad par 9**

11. Defendant cannot plead as to whether Charl Du Toit showed the Plaintiff the Whatsapp message as Defendant was not present and holds no knowledge thereof. Defendant admits he posted a message to the Whatsapp group and admits Annexure S1 is a true reflection of the message.

**Ad par 10 – 11**

12. The content is admitted.

**Ad par 12**

13. The content is denied and Plaintiff is put to the proof thereof. Neither Plaintiff nor Defendant can state how third parties on the Whatsapp group understood the message without calling them as witnesses.
14. The Plaintiff has a history of threatening behaviour in the estate, and many of the residents in the estate is aware of his threatening behaviour. The Defendant submits the message was clearly understood by the group as Plaintiff having acted in a dangerous manner, as he has done in the past.

### **Ad par 13 – 14**

15. The content is admitted. Mr Thys Van Tonder is one of the people who were threatened by the Plaintiff during the incident at Mrs Franken's house during October–2021. It is therefore not surprising that Mr Van Tonder replied to the Whatsapp and pointed out that the Defendant should '*also give the history*', as he was aware of the Plaintiff's history of aggressive behaviour towards children.

### **Ad par 15.1**

16. The content is denied. Defendant did not act wrongfully, maliciously and with injurious intent. Plaintiff has a history of threatening in the estate.
17. On 30 December 2021 the Plaintiff threatened minor children in the estate with an air rifle. When the mother of the children confronted the Plaintiff, he pointed the rifle at them. There is currently a criminal case pending at the SAPS relating to this incident.
18. On the same day, the Plaintiff threatened different children with his dog, saying he will instruct his dog to attack and kill them. There is a separate criminal case pending at the SAPS relating to this incident as well. Plaintiff thereafter randomly started filming children in the estate, saying they acted "suspiciously".
19. Defendant submits his Whatsapp message was factually correct and accurate, and also justified given the history and circumstances.

### **Ad par 15.2**

20. The content is denied. As mentioned above, the SJC Security logbook shows the first complaint was called in at 20h16 from the resident at 19 Moepel Street, that someone was filming children in the park. The Defendant also called Charl Du Toit, who was by then already on his way.

**Ad par 16**

21. The content is denied and Plaintiff is put to the proof thereof. The Defendant's intention is to insinuate the Plaintiff is a dangerous person, based on the history of events. The Plaintiff's reputation has been damaged much earlier due to his own erratic and threatening behaviour.

**Ad paragraphs 17 – 19**

22. The content is denied and Plaintiff is put to the proof thereof. The damage to Plaintiff's dignity and reputation was self-inflicted through his previous behaviour.

**Ad paragraph 20**

23. The Defendant bears no knowledge of these events and cannot plead thereto.

**Ad paragraph 21**

24. As stated before, according to the SJC Security logbook the first complaint to SJC Security was made at 20h16 by a parent from 19 Moepel Street, that someone was filming the children in the park, and not due to Defendant's Whatsapp message, which was sent only at 20h18, *after* the first complaint has already been called in. Plaintiff therefore suffered degradation due to his own behaviour and complaints called in from other parents, and not from Defendant's Whatsapp message.

**Ad paragraph 22**

25. The Defendant bears no knowledge of these events and cannot plead thereto.

**Ad paragraph 23**

26. As stated before, Plaintiff has been involved in several incidents of conflict with other members of the estate. Plaintiff caused the breakdown of the neighbourly relationship himself long before 10 January 2022.

**Ad paragraph 24**

27. The Defendant bears no knowledge of these events and cannot plead thereto.

**Ad paragraph 25**

28. The content is denied. Plaintiff was never attacked at his house. The parents in the park were drawn by the commotion which erupted between the Plaintiff, Defendant, Defendant's wife and Mrs Franken.

**Ad paragraph 26**

29. The Plaintiff's children are still very young, and have not been seen in the estate in a long time. They are kept inside the house. The Plaintiff and his wife used to walk with them around the park, but this stopped long before the incident on 10 January 2022 took place. If the Plaintiff's children are unable to play outside when they are older, it is due to Plaintiff's own erratic behaviour and not due to Defendant's Whatsapp message.

**Ad paragraph 27**

30. The content is denied and Plaintiff is put to the proof thereof. The Plaintiff fails to indicate how he suffered damages in the amount of R 200,000-00.

**Ad paragraph 28**

31. The content is denied. Plaintiff's own recording will show the contrary.

**Ad paragraph 29 – 30**

32. Other than to point out the child very much exists and is not an "alleged child", the contents of these paragraphs are admitted.

**Ad paragraph 31**

33. The content is admitted.

**Ad paragraph 32**

34. Defendant admits being able to clearly see the Plaintiff from his balcony, but submits he clearly witnessed the Plaintiff filming the children playing in the park, which Mrs Franken standing with her back towards the Plaintiff's house, watching the children playing in the park. This will be confirmed by Plaintiff's recording.

**Ad paragraph 33 - 35**

35. The contents of these paragraphs are denied. The Plaintiff started filming the Defendant on his balcony before the minor child ran out onto the balcony. The Defendant stood with his back to the door, and did not immediately see the child coming outside. By this time, the Plaintiff was already recording the Defendant. Once he became aware of the child on the balcony, the Defendant immediately pushed the child inside.
36. Defendant submits it is not the parent's obligation to prevent his child from being recorded, but the person making the recording's obligation to stop recording. The Defendant was standing on his own property, on his own balcony, being filmed by

the Plaintiff. It should not be necessary for the Defendant to take steps to protect his child from being filmed on his own property and on his own balcony. In any event, the Defendant immediately pushed the child inside once he became aware of the child's presence on the balcony.

**Ad paragraph 36**

37. The Plaintiff's recording will show there was a child on the balcony.

**Ad paragraph 37**

38. Filming children without consent is indeed a criminal offence. Plaintiff did not attach the letter of demand to his summons. In this letter of demand Plaintiff admits to filming Defendant's minor child on the balcony.

**Ad prayer "a"**

39. Plaintiff did not show how Defendant's Whatsapp message led to damages in the amount of R 200,000-00.

**Ad prayer "b"**

40. The content is denied. Moratory interest is 7.5% and not 10%.

**Ad prayed "d"**

41. There are no apologies to be made. Plaintiff must stop threatening and filming children and other residents in the estate.

Defendant therefore prays for the Plaintiff's claim to be dismissed with costs.



**Dated at Cape Town on this 2nd day of MAY 2022**



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**RIANNA WILLEMSE SOLMS INC**

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MAGISTRATES COURT  
KUISRIVER

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