IN THE MAGISTRATES COURT FOR THE DISTRICT OF KUILSRIVER

HELD AT KUILSRIVER

CASE NO: 1399/2022

In the matter between:

RUBEN THEODOR FITCHAT Plaintiff

and

TYRONE JOHNSON Defendant

PLAINTIFF'S HEADS OF ARGUMENT

Contents

1. Background

On 10 January 2022 an incident occurred during which the Defendant posted the following Whatsapp on the Kleinbron Estate Whatsapp group, “Guys just caught the guy from 91 Frangipani filming my child in a towel, not cool”.

The Plaintiff is the owner and resident of 91 Frangipani Street.

The Plaintiff denies recording the Defendant’s child in a towel.

The Plaintiff claims the Defendant’s Whatsapp was defamatory towards him.

An incident on 19 October 2021 and another incident on 30 December 2021 were discussed in court as incidents that led up to the incident on 10 January 2022.

The Defendant attempts to portray the Plaintiff’s actions as being unreasonable and irrational and as being dangerous to children. The Defendant claims that the Plaintiff’s previous actions justified the Defendant to post the message on Whatsapp.

The Plaintiff contends that his actions were reasonable, and that his actions were, in fact, reactions to incidents he believes were initiated by his neighbours in an attempt to provoke him.

The Plaintiff’s wife is in a lawsuit with a construction company, SealTek Cape, who initiated legal action against her in November 2019 (case number 863/2020 at the Kuilsriver Magistrates Court). The Plaintiff believes that the Defendant and Mrs Franken were hired by SealTek Cape’s owner, Mr Charl Johnsen, to move in next to the Plaintiff in order to harass him into relocating so that the Plaintiff would not feel the need to continue with a lawsuit regarding a house in which he does not live anymore.

The Plaintiff had also written negative reviews about SealTek Cape on the internet, for which the owner of SealTek Cape possibly wanted to get revenge by hiring someone to defame the Plaintiff.

The implied sexual motive in the Defendant alleging that his child was in a towel, was possibly an attempt by the Defendant to prevent the Plaintiff from recording him and Mrs Franken when they harass the Plaintiff.

The Plaintiff does not have enough evidence beyond a reasonable doubt for these allegations, but the irrational and extreme accusations and timeline of events with his neighbours match too closely important dates of his wife’s lawsuit. The Plaintiff intends

opening a criminal case against the relevant parties as soon as he has gathered enough evidence to justify a police investigation.

The evidence bundle for this case, including the videos, can be accessed in the following Dropbox folder:

https://www.dropbox.com/sh/2y6vna07ro4bhy8/AAAScCLxBfcc-GexMfdiLfp4a

2. The requirements for defamation

The requirements for defamation as stated by Brand AJ in *Le Roux v Dey*[1] are: (a) the wrongful; and (b) intentional; (c) publication of; (d) a defamatory statement; and (e) concerning the Plaintiff.

The Plaintiff contends that his case meets all the above requirements, and each point will be discussed in more detail below.

2.1 Wrongful

The Defendant has failed to prove that the Plaintiff recorded his child in a towel.

The Defendant has also failed to prove that any of the three individuals whom the Defendant alleges were direct witnesses of the Plaintiff recording the Defendant's child in a towel (the Defendant, Mrs Johnson and Mrs Franken) had, in fact, seen the Plaintiff recording the Defendant's child at all.

Mrs Johnson and Mrs Franken both provided testimonies that appeared to be tailored around the Defendant's testimony, and all three of them contradicted themselves and each other during cross-examination.

2.1.1 The balcony

The Plaintiff admits to recording the Defendant's balcony for 5 seconds, and the balcony can be seen in **Addendum P07** from 00:54 to 00:59 in the video.

The relevant balcony is in front of the Defendant's house, and it faces a public park, dam and an apartment block.

[1] https://www.saflii.org/za/cases/ZACC/2011/4.html

The balcony can also be seen on Kleinbron Estate's website's main page (**Addendum P14**, photo on the far right – the grey house. The Plaintiff's white gate where he stood when he made the recording, can be seen to the right of the Defendant's house).

2.1.2 The Defendant's presence on the balcony

The Defendant and Mrs Johnson alleged that they were both on the balcony with the alleged child in a towel at the time that the Plaintiff recorded the Defendant's balcony.

The Plaintiff remembers seeing the Defendant on the balcony, and hearing him say, "Hello."

The Defendant confirmed that he was on the balcony when the video was taken, and that his voice could be heard saying "hello" in the video (**Addendum P07** at 00:22 in the video).

When the Defendant was asked to pause the video that the Plaintiff took of his balcony where his child was visible, the Defendant indicated to the court that it was *not* possible to see his child in the video.

2.1.3 Mrs Johnson's presence on the balcony

Mrs Johnson alleged to the court that she had also been on the balcony when the Plaintiff recorded her balcony, but the Plaintiff disputes this.

Mrs Johnson alleged that she had been bathing their "little one" when she heard the Defendant talking to their son, Luke, telling him to go inside.

Mrs Johnson alleged that she went out onto the balcony and she saw the Defendant and Mrs Franken.

Mrs Johnson alleged that she saw the Plaintiff filming Mrs Franken.

Mrs Johnson alleged that she said, "Stop filming kids in the street."

Mrs Johnson alleged they tried to get Luke off the *stoep* to make sure he wasn't filmed. After that they went inside and put the kids in bed.

Mrs Johnson alleged she then went for a jog.

When Mrs Johnson was asked whether she could be seen in the video, she said, "Yes, you can see me."

However, when the video was shown to her in court, and she was asked to pause the video where she is visible, she watched the entire video and then indicated that she was not visible in the video.

Mrs Johnson alleged during cross-examination that she had seen the Plaintiff recording her child on the balcony, and that she had screamed at him to stop.

When Mrs Johnson was asked to stop the video where her voice could be heard, she indicated that she was unable to hear it.

The Defendant's voice can be heard saying "hello" at a normal conversational volume in the video (**Addendum P07** at 00:22 in the video).

Surely if Mrs Johnson had been screaming she would have been heard on the video.

When Mrs Johnson was asked to pause the video where her child was visible, she indicated that her child was *not* visible in the video.

2.1.4 Alleged video editing

When Mrs Johnson was asked why she was unable to hear her voice on the video, she indicated that the Plaintiff must have edited the video or something.

Mrs Johnson indicated to the court that they had not employed an expert witness to verify whether the video the Plaintiff included in his evidence was edited, because of the cost involved.

The Plaintiff finds that reasoning unlikely. If the Plaintiff's video was edited, and the court finds in the Plaintiff's favour, then the Defendant and Mrs Johnson face the risk of potentially having to pay up to R200 000 to the Plaintiff in damages.

This is in comparison with possibly only a few thousand Rand to have the video checked.

Furthermore, if the video *had* been edited by the Plaintiff, Mrs Johnson could easily and comparatively cheaply have proven this, and possibly laid criminal charges against the Plaintiff for tampering with evidence.

The Defendant seems very eager to find something which the Plaintiff can be found guilty of, so it is reasonable to assume the Defendant would have had the video checked if they suspected it had been edited.

The Plaintiff contends that Mrs Johnson knew the Plaintiff had not edited the video, which is why she did not have it examined by an expert witness, and which is why she did not bring an expert witness to testify about its authenticity.

When the court asked Mrs Johnson how she knew the Plaintiff was recording her child, Mrs Johnson raised both arms above her head as if she was holding a phone, and said she saw the Plaintiff standing in that position facing her balcony.

The court asked Mrs Johnson if she could see her child in the video, and Mrs Johnson said no.

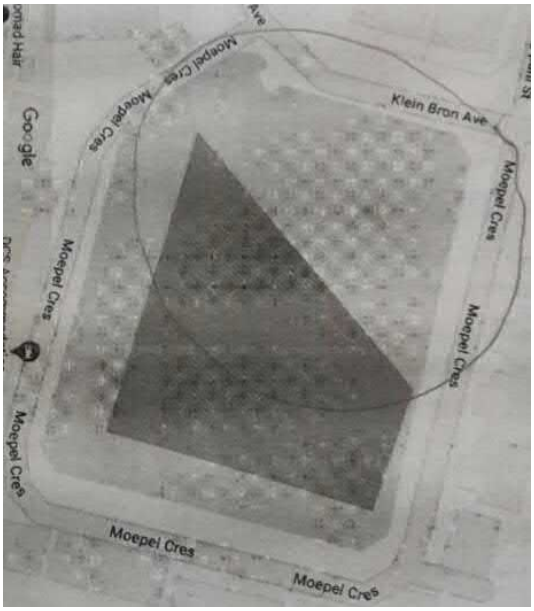
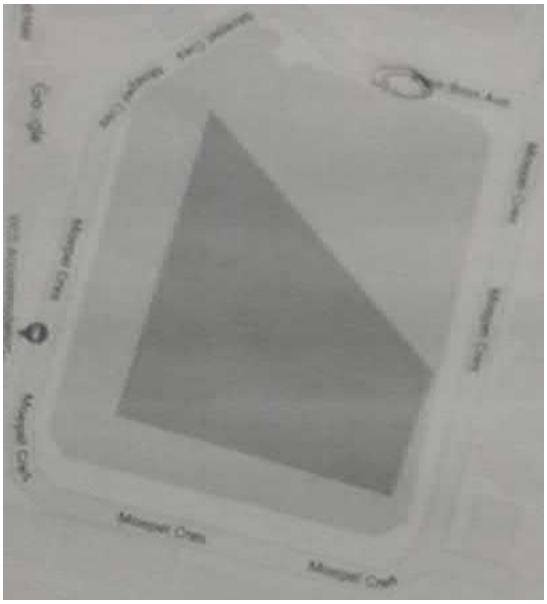
2.1.5 The map

The Defendant and Mrs Johnson both indicated that there was a large group of people outside their house at the time when the Plaintiff recorded their balcony.

Both the Defendant and Mrs Johnson were asked to draw a circle on a map to indicate where the people were standing when the Plaintiff recorded their child on their balcony.

The Defendant drew a large circle which covered most of the park.

Mrs Johnson drew a tiny circle in the street in front of her house.

	
Defendant's circle	Mrs Johnson's circle

The large discrepancy between where the Defendant remembered seeing people and where Mrs Johnson remembered seeing people is too large for them to have seen the

same thing, and hence for them both to have been on the balcony at the same time when the Plaintiff recorded their balcony.

The Plaintiff contends that Mrs Johnson wasn't on the balcony, and that she alleged that she *had* been on the balcony in an attempt to strengthen her husband's weak testimony.

2.1.6 The Defendant's "angry voice"

The Defendant can be heard saying "hello" in the video (**Addendum P07** at 00:22). In court, when the Plaintiff asked the Defendant why his voice did not sound angry in the video if he had really just caught the Plaintiff recording his child in a towel, the Defendant indicated that that *was* his angry voice.

The Plaintiff asking the Defendant why his voice did not sound angry in the video if he had really just caught the Plaintiff recording his child in a towel was, in fact, a trick question.

The Defendant said hello *before* the Plaintiff recorded the Defendant's balcony, so it does not make sense for the Plaintiff to ask why his voice did not sound angry in the video if he had really just caught the Plaintiff recording his child in a towel.

The Defendant did not pick up that it was a trick question, and he merely said that *was* his angry voice.

The Defendant also became angry at the Plaintiff for repeating a question to him in court, and he then had a "normal" angry voice, so his statement that the calm voice in the video was his angry voice, is difficult to believe.

The court is also referred to the video, to confirm whether the "hello" in question can reasonably be considered to have been spoken in an angry tone of voice and whether that could reasonably be the voice of someone who was so angry at the Plaintiff that he had to warn the people on the Kleinbron Als Whatsapp group about him.

2.1.7 Mrs Franken's testimony

Mrs Franken was standing in the park across from the Plaintiff's house at the time that the Plaintiff recorded the Defendant's balcony (**Addendum P07** at 00:50 in the video).

Mrs Franken indicated to the court that she saw the Plaintiff move his phone from focusing on her, to focusing on the Defendant's balcony.

However, the video indicates that Mrs Franken had turned her back on the Plaintiff and was speaking to her daughter (Alaina) *just before* the Plaintiff moved his camera to the balcony (**Addendum P07** at 00:48 in the video), so Mrs Franken could not have seen the Plaintiff turn his camera to the Defendant's balcony.

The Defendant's pleadings also indicate:

> 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.
>
> pg. 24 of the Plaintiff's bundle

The Plaintiff's camera was on the Defendant's balcony for 5 seconds (**Addendum P07** at 00:54-00:59 in the video).

Only when the Plaintiff moved his camera back to Mrs Franken, was she looking at him again.

Right after the Plaintiff recorded the Defendant's balcony, Mrs Franken can be heard saying (in **Addendum P07)**,

> 01:04 Mrs Franken: Wat maak jy?
>
> 01:07 Mrs Franken: What the heck?
>
> 01:12 Mrs Franken: Jy kan my nie afneem nie, asseblief.

Surely if Mrs Franken had just seen the Plaintiff recording the Defendant's child in a towel on his balcony, Mrs Franken would have said something along the lines of, "Jy kan nie *Tyrone se kind* afneem nie."

Instead she says, "Jy kan *my* nie afneem nie, asseblief."

Surely stopping the scandalous recording of a child in a towel would take precedence over stopping the Plaintiff from recording her.

Mrs Franken also only sounds mildly annoyed in the video. She does not sound like someone who thinks the police should be called, which is what many people on the Whatsapp group indicated the Defendant should do, after they read the Defendant's Whatsapp.

Both the Defendant's calm "hello" and Mrs Franken's mild annoyance on the video don't match the shocked outrage of people in the Whatsapp group.

The Plaintiff contends the enormous difference in reactions indicate that the Defendant's Whatsapp was not an accurate portrayal of what had really happened.

The Defendant is also attempting to construe that the Plaintiff intentionally "records children", with the implication that the Plaintiff does so illegally and with a sinister motive.

However, the only children in the Plaintiff's videos were children that had gathered around Mrs Franken *after* the Plaintiff had been recording her for some time, and random children that were walking past with their parents.

Clearly there were children in the Plaintiff's recording. The Plaintiff does not deny that.

When the Defendant's attorney asked the Plaintiff whether he did not think that parents would be angry that he was recording their children, the only children that were in the Plaintiff's video were children that had gathered around Mrs Franken after the Plaintiff had been recording her for some time.

The Plaintiff had not caused there to be children in his recording of Mrs Franken, *Mrs Franken* had caused there to be children in the Plaintiff's recording of Mrs Franken.

Surely if parents were unhappy about their children being in the Plaintiff's recording, they should go and ask Mrs Franken why she had caused their children to be in the Plaintiff's recording.

Mrs Franken did not shoo away the children, or make any move to ensure the children were not recorded by the Plaintiff.

By asking the hypothetical and rhetorical question, whether the Plaintiff did not think that parents would be angry that he was recording their children, the Defendant's attorney was attempting to get a construed confession out of the Plaintiff.

The Plaintiff had to defend against two accusations – that the Plaintiff had recorded children, and that he was making their parents unhappy.

By having to explain why the children's parents did not need to be unhappy that the Plaintiff had recorded their children, the Defendant's attorney construed that the Plaintiff had "confessed" to recording children, and that hence the Plaintiff is guilty of

habitually recording children, and that hence the Plaintiff was guilty of recording the Defendant's child in a towel.

The amount of mental acrobatics required to come to such a construed conclusion is mind-boggling.

Mrs Franken's credibility is further questioned by the Plaintiff.

In Addendum P07 at 00:37 in the video Mrs Franken is heard calling Alaina, her daughter.

Mrs Franken indicated in her verbal testimony that she was calling Alaina to go home.

But at 00:48 in the video, Mrs Franken can be heard saying to Alaina, "Hoe laat gaan julle na Lulu se huis toe?" so she was not calling Alaina to go home.

In court Mrs Franken also indicated that she had attempted to find out from the Plaintiff what had happened, but that the Plaintiff had blocked her and that her messages had not gone through.

The Plaintiff had not blocked her, though.

When it was checked in court, Mrs Franken conceded that it was the Plaintiff's wife who had blocked her, not the Plaintiff.

Mrs Franken's explanation for the mistake was "Hulle het twee fone."

2.1.8 Alleged struggle on the balcony

The Defendant alleged to the court that while the Plaintiff was recording Mrs Franken, that Mrs Franken had called to the Defendant and that she was distressed.

The Defendant also indicated that that he was struggling to keep his child in the house while shouting at the Plaintiff to stop filming.

The Defendant also at another stage in cross-examination alleged that when he saw the Plaintiff filming Mrs Franken he was shocked and asked the Plaintiff what he was doing.

The Defendant indicated that the Plaintiff then turned his camera "to us".

The Defendant alleged that he pushed his child inside and that he told the Plaintiff to stop filming.

The only part of the above that is seen in the video is Mrs Franken calling to the Defendant, but she does not look desperately distressed as the Defendant alleged.

The Defendant alleged to the court that his children can be heard crying in the video **Addendum P07** at 1:29 in the video.

When Mrs Johnson was asked to pause the video where her child could be heard, she indicated that she could not hear it.

The Plaintiff contends there is the sound of a child making a short cry (**Addendum P07** at 1:29 in the video), but it is only one child and it sounds like a girl.

However, the Defendant had alleged that the Plaintiff had recorded his son, and that his son had been crying.

The Defendant alleged that his wife had been inside the house and that she heard him and she came out to grab the children.

However, the Defendant's wife testified that she had been inside the house with their daughter, and that she heard the Defendant's distressed voice, and came out in response to him.

The two testimonies do not match.

The Defendant initially alleged to the court that his son was on the balcony, but later he alleged that both his son and his daughter were on the balcony.

It is unclear when the Defendant alleges his daughter had also appeared on the balcony.

The Defendant indicated that Mrs Franken was so upset that the Plaintiff was recording her, that he was not able to give his full attention to his child.

However, when Mrs Franken testified, she indicated that when she saw the Plaintiff was recording her, she didn't mind that he was recording her, and that she even waved at him.

2.1.9 Alleged large group of people

The Defendant alleged to the court that there had been a large group of people in front of his house when the Plaintiff recorded his balcony.

The Defendant also indicated that he had to help Mrs Franken to get the Plaintiff to stop recording her while he was struggling to keep his child in the house.

If there really had been a large group of people in front of the Defendant's house at the time that the Plaintiff recorded his balcony, why did Mrs Franken not just call to them for assistance?

Why did she call to the Defendant for assistance when he was already allegedly in a difficult situation trying to keep his alleged child in a towel in the house?

Why did the Defendant indicate that he "had to" help Mrs Franken?

Why was stopping the Plaintiff from filming Mrs Franken just as important as preventing the Plaintiff from recording his alleged half-naked child? It doesn't make sense.

The Plaintiff's videos show that at the time that the Plaintiff recorded the Defendant's balcony (which would have been at 20:06pm) there did not appear to be a group of people in front of the Defendant or Plaintiff's houses (**Addendum P07**).

Surely if there had been a large group of people, they would have been heard talking in the video.

There is definitely a group of people outside the Defendant and Plaintiff's houses in the video the Plaintiff took after the Defendant posted his Whatsapp (**Addendum P10**), and they are clearly seen and heard talking in the video.

Why would there be a group of parents standing in complete silence in front of the Defendant and Plaintiff's houses while the Plaintiff is making a scandalous recording of a child in a towel? Were they standing in complete silence from shock? Mrs Franken herself does not seem to be shocked, and surely she had the best view of what the Plaintiff was doing from where she was standing.

Since the Plaintiff was unable to see the group of people outside the Defendant's house, as also evidenced by the video, then does it not make sense that the group of people were also unable to see the Plaintiff?

Why can the group of people see the Plaintiff but he cannot see them?

Were they just as invisible as the child in a towel on the Defendant's balcony and Mrs Johnson on the balcony?

The Plaintiff contends they were.

Because they were not there.

The Defendant posted his Whatsapp at 20:18pm.

The family that walked past the Plaintiff's house at 20:08pm, which was 2 minutes after the Plaintiff recorded the Defendant's balcony, and 10 minutes before the Defendant posted his Whatsapp, merely looked curiously at the Plaintiff (**Addendum P08**).

The Plaintiff's videos show that a group of angry people were in front of his house at 20:23pm, which was 5 minutes after the Defendant had posted his Whatsapp (**Addendum P09** and **Addendum P10**).

The Defendant, Mrs Johnson and Mrs Franken's false allegation that there was *already* a group of people outside the Plaintiff's house *before* the Defendant posted his Whatsapp, indicates that they do not want the court to know that the Defendant's Whatsapp caused a group of people to gather outside the Plaintiff and Defendant's houses in response to the Defendant's Whatsapp, since it would prove the Plaintiff had been defamed by the Defendant's Whatsapp, and that he was in danger.

2.1.10 Alleged criminal offense

After the Plaintiff sent a letter of demand to the Defendant for this lawsuit, the Defendant sent the following Whatsapp to the Plaintiff, "You have committed a criminal offense, we can take this further, my child was crying the whole night for what you did" (**Addendum P15**).

When the Plaintiff asked the Defendant why he had walked angrily to the Plaintiff's house on receipt of the Plaintiff's letter of demand, the Defendant indicated he had walked calmly to the Plaintiff's house to ask him what it was about.

It does not make sense for someone to write such an angry Whatsapp, and then to calmly walk to the Plaintiff's house to find out what the lawsuit was about.

When the Defendant was asked in court if he had opened a criminal case against the Plaintiff after the incident on 10 January, the Defendant indicated no, he had not, because he felt they could talk about it.

During cross-examination the Defendant alleged that when he wrote the above Whatsapp “You have committed a criminal offense, we can take this further”, he wasn’t thinking straight.

However, the Defendant had also included it in his pleadings.

> 38. Filming children without consent is indeed a criminal offence.

If the Defendant had not been thinking straight when he wrote the Whatsapp, as he alleged to the court, why did he include the same accusation in his pleadings, when he was being advised by an attorney, and hopefully thinking more straight?

The Defendant provides yet another contradicting explanation in his opposing affidavit for the protection order, which was included in the Plaintiff’s evidence bundle.

> 40. My Whatsapp is clearly intended to state if the Applicant wants to be petty, we can be petty too by reporting the Applicant’s criminal act.

“If the Applicant wants to be petty” appears to refer to the Letter of Demand that the Plaintiff had sent to the Defendant to initiate this lawsuit.

The Defendant appears to be saying, if the Plaintiff wants to be petty by initiating a civil case against the Defendant, then the Defendant can be petty by initiating a criminal case against the Plaintiff.

The Defendant essentially admits that he is threatening the Plaintiff with criminal action in response to civil action, which is exactly what the Plaintiff indicated in his pleadings that the Defendant had done.

In any event, how can it be petty to report a criminal act, unless the person reporting the alleged criminal act knows it is not a criminal act, and is only reporting it to be petty towards someone they know had not committed a criminal act?

When the Plaintiff asked the Defendant in court:

> Plaintiff: Why do you continue to insist I am a pedophile after the police cleared me?
>
> Defendant: Who cleared you?

The Defendant had previously indicated he did not think the Plaintiff was a pedophile.

The Plaintiff contends the Defendant purposefully did not open a criminal case against the Defendant for “recording his child in a towel” so that the Defendant can continue holding the threat over the Plaintiff’s head that the Defendant could press charges at any time.

The Plaintiff contends that the Defendant does not want the Plaintiff to be officially cleared of charges against him, because then the Defendant cannot continue accusing him of imagined criminal activity.

The large amount of conflicting statements made by the Defendant appear to be an attempt by the Defendant to gaslight, confuse and exhaust the Plaintiff.

The Defendant indicated to the court that after he had posted the Whatsapp message he thought nothing of it afterwards.

The Defendant alleged in his verbal testimony that he had seen the Plaintiff filming them before and that the Plaintiff used a camera.

The Defendant indicated that the Plaintiff had filmed “us” from “100m away in the park, in my child’s bedroom, and over the wall.”

It is not reasonable of the Defendant to say that the Plaintiff regularly records him, but that he “thought nothing further” of his Whatsapp in which he told the members of the Kleinbron Als Whatsapp group that the Plaintiff recorded his child.

The Plaintiff contends that the Defendant is harassing the Plaintiff and his family, and that any recordings the Plaintiff has made of the Defendant are for the sole purpose of handing in as evidence in support of his protection order application.

The Plaintiff denies recording the Defendant’s child’s bedroom.

The Defendant had also indicated in his Whatsapp sent to the Plaintiff after the Defendant received the letter of demand, “...my child was crying the whole night for what you did.”

However, Mrs Johnson indicated to the court that after the incident she went out for a jog. It is not reasonable for a mother to leave her child who was “crying all night” to go for a jog.

Also, when the Defendant was asked why his daughter went to play in front of the Plaintiff's house with her au pair the day after the Defendant claimed the Plaintiff had recorded his child in a towel, the Defendant merely replied, "Children go to the park."

The Plaintiff contends it is not reasonable for the Defendant to have allowed his daughter to play in front of the Plaintiff's house on the day after he alleged the Plaintiff had recorded his child in a towel with the implication that the Plaintiff was dangerous.

A reasonable and truly concerned parent would have ensured all their children stayed away from the Plaintiff.

The Defendant indicated to the court that he does not want the Plaintiff to move to a different house.

Surely it is not reasonable for someone who alleges that their neighbour records their children illegally to not want that person to move.

The arguments above serve to reveal the extent to which the Defendant is being untruthful to the court.

The Plaintiff contends the Defendant has failed to prove that that the Plaintiff recorded his child in a towel, and that he has failed to prove that he and his two witnesses had seen the Plaintiff recording his child in a towel.

Therefore, the Defendant's Whatsapp post was false and wrongful.

2.2 Intentional

The Defendant alleged to the court that he just said in his Whatsapp what he had seen, and that there was no intention to damage the Plaintiff's reputation.

Despite the Defendant having received evidence that the Plaintiff had not recorded his child in a towel when the Plaintiff discovered his recordings to the Defendant on 24 May 2022, the Plaintiff refused to apologise and to retract his Whatsapp.

The Defendant has shown no remorse for his Whatsapp, so his allegation that he hoped he could "talk about it" with the Plaintiff, and that he wanted to "rekindle" their "relationship" is ridiculous.

The Defendant indicated verbally that he wanted to resolve the matter, but the fact that he posted his message on a public Whatsapp group instead of contacting the

Plaintiff privately, also shows that he wanted other people on the Whatsapp group to think negatively of the Plaintiff.

Since (a) the Defendant failed to prove that the Plaintiff had recorded the Defendant's child in a towel; (b) the videos and conflicting stories of the Defendant and his witnesses indicate that the Defendant **knew** that the Plaintiff had not recorded his child in a towel; and (c) the Defendant chose to still post the Whatsapp, and not retract it after receiving evidence that the Plaintiff had not recorded his child in a towel; the Plaintiff contends that the Defendant intentionally posted the Whatsapp in order to damage the reputation of the Plaintiff.

2.3 Publication

The Defendant admitted in his pleadings and in court to publishing the following Whatsapp: "Guys just caught the guy from 91 Frangipani filming my child in a towel, not cool" on 10 January 2022.

2.4 Defamatory statement

The Defendant's Whatsapp implied the Plaintiff had been secretly recording a half-naked little girl and that her enraged father had discovered him doing it.

The Defendant's Whatsapp implied that the Plaintiff was a sexual predator who preys on vulnerable little girls.

The Defendant's Whatsapp implies that the Plaintiff is a pedophile and a danger to children.

All the people who commented on the Defendant's Whatsapp were shocked and some urged the Defendant to call the police.

2.5 Concerning the Plaintiff

The Plaintiff was clearly identified as being the person to whom the Defendant was referring in his Whatsapp, since the Defendant provided the Plaintiff's address.

The Kleinbron Als Whatsapp group is only for residents of Kleinbron Estate, and people are more easily identified by their addresses than by their names.

91 Frangipani Street is right across from the children's play area and park, and many residents and children spend time there.

The bottom gate of 91 Frangipani, which is where the incident occurred on 10 January 2022, is visible in the photo on the main page of the Kleinbron Estate website, to the right of the jungle gym and slide (**Addendum P14**).

This shows that 91 Frangipani Street is a very publicly visible and easily identifiable house to the residents of Kleinbron Estate.

The Plaintiff's house is also near Sheba Gate, one of only two entrances to the estate, and many people drive past the Plaintiff's house to use the gate.

Due to the Defendant's Whatsapp, it is reasonable to assume that people, if they think there is a man who secretly records little girls in their towels from 91 Frangipani, will keep a sharp eye out for any man who is seen around 91 Frangipani.

The Plaintiff works from home and his wife is a housewife. They are almost always at home.

Before the incidents with his neighbours, the Plaintiff used to spend a lot of time working in the garden outside his house.

If people see the Plaintiff entering and exiting his house, or working in his garden, they will know he is the person referred to in the Whatsapp.

Many people can clearly identify him as the "guy from 91 Frangipani".

If the Defendant had written, "Guys just caught Theo Fitchat filming my child in a towel" people would have done an internet search to find out who the Plaintiff was, and they would not have known in which house the Plaintiff lived in the estate and which house they had to be wary of.

It would have been much more difficult for them to identify the Plaintiff.

The Plaintiff further contends that the Defendant purposefully provided the Plaintiff's address and not his name in the Whatsapp post in order to be able to claim that it was not possible for people to identify the Plaintiff as the person to whom he was referring.

However, due to the scandalous and serious nature of the allegation in the Defendant's Whatsapp, it is reasonable to assume that as soon as members of the group read the Defendant's Whatsapp post, especially those who have children, they would have wanted to find out exactly who "the guy from 91 Frangipani" was.

It is reasonable to assume that many people would have contacted the Defendant privately and that the Defendant would have given them the Plaintiff's name.

It is also reasonable to assume that those people would then have done an internet search on the Plaintiff's name to find out as much information about him as possible.

People would have wanted to know what the Plaintiff looks like and they would have checked his Facebook profile photo, so that they can know who their children should stay away from.

It is further reasonable to assume that people on the Whatsapp group would have contacted their neighbours and friends who were not on the group, to inform them of the post and to warn them against the Plaintiff.

The Defendant has also indicated in his documentation to the Plaintiff, "It is correct that I have many friends and family living in Kleinbron Estate" (pg. 180 of the Plaintiff's evidence bundle).

It is reasonable to assume that the Defendant's friends and family would also most likely have contacted their other friends in the estate and surrounding area and informed them of the Whatsapp.

During cross-examination, the Plaintiff asked the Defendant the following questions:

Plaintiff: Why did you post that message on the Kleinbron Als Whatsapp group?
Defendant: I feel you're a danger
Plaintiff: What did you want people to think of me?
Defendant: That you're filming children
Plaintiff: What did you want people to think when they read your message?
Defendant: That you're filming children at the park as you have been doing.

It is clear that the Defendant wanted the Plaintiff to be identified, and that he wanted the residents to know where the Plaintiff lived – across from the park where residents' children play.

The Plaintiff contends that the Defendant purposefully used the best way to ensure that the Plaintiff would be identified, but with a decreased risk to the Defendant in a possible lawsuit, by including the Plaintiff's address and not his name.

The Plaintiff also contends that by calling the Plaintiff a "guy" in his Whatsapp, the Defendant also deliberately depersonalised and degraded the Plaintiff, in order to maximise the damage to the Plaintiff's reputation.

The fact that a group of angry people arrived outside the Defendant's house within 5 minutes after the Defendant posted his Whatsapp, and that they were asking him why he was filming children indicates that they were easily and almost immediately able to identify the Plaintiff after the Defendant's Whatsapp.

The Plaintiff contends that it is reasonable to assume that at least most people who live in the estate who have children would by now be aware of the Whatsapp post and that they would link it with the Plaintiff.

3. Quantum

In determining quantum in respect of defamation, the Court must have regard to:

(i) "the seriousness of the defamation."

(ii) "the nature and extent of publication."

(iii) the "reputation, character and conduct of the plaintiff."

(iv) "the motives and conduct of the defendant."; vide Muller v SA Associated Newspapers Ltd.[2]

Each factor for determining quantum is discussed below in more detail.

3.1 The seriousness of the defamation

3.1.1 Group of people gathered outside the Plaintiff's house

Within 5 minutes of the Defendant's Whatsapp that he had caught the Plaintiff recording his child in a towel, a group of angry people gathered outside the Plaintiff's house, and they wanted to know why he was recording children (**Addendum P10**).

[2] Manyi v Dhlamini (36077/13) [2018] ZAGPPHC 563 (18 July 2018) (saflii.org)

Since that incident the Plaintiff fears going outside his house again and being confronted again.

3.1.2 Children and pornography link

The group of people who gathered outside the Plaintiff's house after the Defendant's Whatsapp includes someone who is apparently called Ben.

In the video Ben tries to speak to the Plaintiff.

00:56 Ben: No I just want to know like why is he filming our kids?
01:05 Unknown female: Dis baie vreemd, hoor hier...
01:08 Ben: Ek voel of ek in 'n porno is.

The Plaintiff has no idea who Ben is, but even if he did, Ben is clearly not going to agree to testify that he came in response to the Defendant's Whatsapp, and hence assist the case of the Plaintiff, who he clearly links with pornography and children, as a reasonable person would have done who read the Defendant's Whatsapp.

The Defendant's witnesses all indicated that they did not think the Defendant's Whatsapp implied that the Plaintiff was a pedophile, but that they thought that the Plaintiff was aggressive.

All of the Defendant's witnesses indicated that they would not think less of the person of whom the Whatsapp was written.

It is absurd.

The Defendant's witnesses all indicated they were either friends or family of the Defendant, and their claims that they would not think less of the person of whom the Whatsapp was written merely indicates that the Defendant's witnesses were coached to testify in a certain way in order to assist the Defendant's case.

Furthermore, surely if Ben, who appeared to have arrived at the Plaintiff's house a few minutes after the Defendant's Whatsapp, had thought the Plaintiff was an aggressive person rather than a pedophile, he would have said, "Ek voel of ek in 'n *action movie* is" instead of "Ek voel of ek in 'n *porno* is".

The Plaintiff contends that the people on the Whatsapp group who replied to the Defendant's post and who indicated that the Defendant had to call the police, did so

because they considered the Plaintiff to be dangerous, and that they considered the Plaintiff to be dangerous because they thought he was a pedophile.

The Defendant was asked in court if he thought the Plaintiff was a pedophile, and he said, “Not at all.”

When the Defendant was asked why he was then so concerned that the Plaintiff had allegedly recorded his child in a towel, the Defendant did not give a very satisfying reply.

The Defendant replied, “Those are the facts and the facts don’t lie.”

During cross-examination, the Plaintiff asked the Defendant the following questions:

> Plaintiff: If someone else had posted that message and you had known nothing of the situation, what would you have thought had happened?
>
> Defendant: If I knew the history, it would be different.

The Defendant only indirectly answered the question.

Most of the people on the Whatsapp group would not have known “the history” between the Plaintiff and the Defendant, and the Defendant’s reply that if they had known the history, they would have interpreted the Whatsapp differently, indicates that even the Defendant knew that most people on the Whatsapp group did not know the history.

It also indicates that the Defendant himself knew how people would interpret his Whatsapp post, which was that the Plaintiff was a pedophile.

The Plaintiff also contends the Defendant was unwilling to answer the question directly, because his direct and truthful answer would count against him.

Some members of the Whatsapp group, and even the Plaintiff himself, had thought the Plaintiff was being accused of recording the Defendant’s daughter.

The Defendant only clarified that he was accusing the Plaintiff of recording his son in his pleadings, which the Plaintiff only received four months after the incident.

3.1.3 Mr Charl du Toit’s testimony

Mr Charl du Toit, the owner of SJC Security and resident in Kleinbron Estate, personally responded to the incident on 10 January 2022.

Mr du Toit is a member of the Kleinbron Als Whatsapp group, and he regularly posts information on the Whatsapp group or comments on other people's posts.

At 20:18pm the Defendant posted his Whatsapp on the Kleinbron Als group (**Addendum P12**).

At 20:26pm an SJC car can be seen arriving at the Plaintiff's house and Mr du Toit is seen getting out of the car and walking to the group of people (at 02:48 in the video **Addendum P10**).

Therefore, Mr du Toit arrived at the Plaintiff's house 8 minutes after the Defendant posted his Whatsapp.

At 03:27 in the video, Mr du Toit introduces himself to the group of people and says "Hi, ek is Charl du Toit."

After Mr du Toit introduces himself, the group of people start explaining to Mr du Toit what had happened.

03:30 Mrs Franken: Ons bly langs hierdie ou... etc...

Mr du Toit initially indicated that he was unwilling to testify, but he answered a few questions before he was excused from court.

Mr du Toit answered the following questions from the Defendant's attorney:

Defendant's attorney: Who made the first call to security for the incident on 10 January? Mr du Toit: I don't have those records. I can't say who made the first call to security. Defendant's attorney: Would you say you attended based on a call made to SJC, and not to a Whatsapp message? Mr du Toit: I live in the estate. When something happens, if I'm in the estate, I'll go and try to resolve the issue.

The Plaintiff was then given an opportunity to ask questions to Mr du Toit.

Plaintiff: You personally came to my and Mr Johnson's houses that evening. Did you come in response to the security office calling you, or in response to Mr Johnson's Whatsapp on the Kleinbron Als Whatsapp group?

Mr du Toit: To the security officer.

Plaintiff: Why did you personally come, and not send a security guard?

Mr du Toit: There was a security officer on site. There was a certain amount of residents in the street, and yourself in the house. I live in the estate so if I am at home and there is an incident, I go and see if I can help.

Plaintiff: Can you please tell us what happened when you arrived at our houses on the evening of 10 January 2022?

Mr du Toit: I got to the scene. There was 10-15 residents outside. I don't know who the residents were. I didn't hear what they were discussing. They were parents.

Plaintiff: When did you see the Whatsapp?

Mr du Toit: On arrival of myself to the scene. The officer showed me.

Plaintiff: What was his name?

Mr du Toit: (hesitated quite a while) I think it was De Klerk.

Plaintiff: Did you take statements from the group of people who were outside my house?

Mr du Toit: Not at all

Plaintiff: Why not?

Mr du Toit: Because I'm not a police officer.

Plaintiff: Why are reports written on some incidents and not on others?

Mr du Toit: I didn't attend the other incidents, did I?

Even though Mr du Toit was not the Defendant's witness, the Defendant's attorney was given the opportunity to speak to Mr du Toit first, so the Defendant's attorney's questions could be considered to be examination-in-chief.

The Defendant's attorney asked Mr du Toit in court, "Would you say you attended based on a call made to SJC, and not to a Whatsapp message?" which is a leading question and not permissible during examination-in-chief.

The Plaintiff did not object, so the question was allowed.

Mr du Toit answered, "I live in the estate. When something happens, if I'm in the estate, I'll go and try to resolve the issue."

Mr du Toit did not directly answer the question.

When the Plaintiff was given an opportunity to question Mr du Toit, he also asked the same question, "Did you come in response to the security office calling you, or in response to Mr Johnson's Whatsapp on the Kleinbron Als Whatsapp group?"

Mr du Toit answered, "To the security officer."

When Mr du Toit was asked why he personally came and why he did not send a security guard, Mr du Toit indicated that there was already a security officer on site.

When Mr du Toit was asked in court where he had seen the Whatsapp for the first time, he said the security guard had shown it to him "on arrival of myself to the scene."

When asked who the security guard was, he seemed to struggle to produce a name. He eventually said he thought it was "De Klerk."

The beginning of **Addendum P10** shows a group of people standing outside the Defendant and Plaintiff's houses, talking to each other.

No SJC car or SJC guard is seen in the video, and surely if an SJC guard had been present, the group of people would have been standing around him explaining to him what had happened.

At 02:48 in the video an SJC car arrives and parks in front of the Plaintiff's house. Mr du Toit gets out of the car and walks to the group of people.

After Mr du Toit introduces himself to the group of people, they start explaining to him what had happened.

No SJC guard is seen approaching Mr du Toit on Mr du Toit's arrival.

No SJC guard is seen showing a phone to Mr du Toit on Mr du Toit's arrival.

Furthermore, the Kleinbron Als Whatsapp group is also only for residents. The estate's security guards are not on the group.

How could De Klerk then have had access to the Defendant's Whatsapp?

The Plaintiff disputes Mr du Toit's allegation that he had arrived at the Plaintiff's house in response to a call from an SJC guard.

The Plaintiff also disputes Mr du Toit's allegation that the first time he had seen the Defendant's Whatsapp was when an SJC guard, who he alleged was already present at the Plaintiff's house, had shown it to him on his arrival to the Plaintiff's house.

Since there is reason to believe Mr du Toit was not telling the truth regarding the presence of the SJC security guard and the security guard showing him the Whatsapp on his arrival, it is reasonable to assume Mr du Toit had indeed arrived in response to the Defendant's Whatsapp, and that he does not want the court to know that.

The Plaintiff contends Mr du Toit saw the Defendant's Whatsapp and immediately came over to the Plaintiff's house.

When Mr du Toit was asked if he took statements from the group of people, he said no, and when he was asked why not, he indicated because he was not a police officer.

Mr du Toit was asked why reports were written about some incidents and not about others, and he replied, "I was not present at the others, was I?"

The Defendant sent an SJC report to the Plaintiff as part of his opposing affidavit for his protection order application (**Addendum P54**, pg. 209-212 in the evidence bundle).

The Defendant's attorney indicated that issues relating to the protection order were not relevant to this defamation case, but in her cross-examination of the Plaintiff in this case, the only document she referenced was the SJC report.

The Plaintiff disputes the authenticity of the report.

When the Plaintiff asked the Defendant where he had gotten the SJC report, the Defendant hesitated and said it was not Alex (the estate manager).

The Defendant finally alleged that he had gotten it from SJC, and that they had to fill in forms to get it.

When the Plaintiff asked the Defendant if he had gotten it from Mr du Toit, the owner of SJC Security, the Defendant indicated yes.

However, the Defendant's attorney had asked Mr du Toit, "Who made the first call to security for the incident on 10 January?" and Mr du Toit replied, "I don't have those records. I can't say who made the first call to security."

If Mr du Toit does not have access to the security records of Kleinbron Estate, then how could the Defendant have gotten an SJC report from him?

Furthermore, Mr du Toit had indicated to the court that he did not take statements from people because he was not a police officer.

Why then does the Defendant have in his possession an SJC report written by an SJC employee, Mr du Plooy, which was based on a statement taken from a resident, if according to Mr du Toit, the owner of SJC Security, only police officers can take statements from people?

Mr du Toit also apparently gives two different reasons for there not being reports written of incidents.

Mr du Toit was asked why reports were written about some incidents and not about others, and he replied, "I was not present at the others, was I?"

When Mr du Toit was asked why he did not take statements from the group of people present on 10 January 2022, he indicated that he was not a police officer.

The only reason for someone to take statements from people at an incident would be to write a report of the incident.

So initially Mr du Toit indicated that he had no knowledge of why reports were written about some incidents, but not of others.

But then later Mr du Toit indicated that he didn't write reports because he wasn't a police officer.

The Plaintiff contends that Mr du Toit's contradicting testimony is evidence of Mr du Toit having been influenced by the Defendant's Whatsapp, and that Mr du Toit does not want to testify truthfully because it may count in the favour of someone who may be a pedophile.

With regards to the alleged SJC report, Mr du Plooy was not called as a witness, and Mrs Xotyeni, the complainant, was also not called as a witness.

The Plaintiff contends that, even if Mr du Plooy had indeed written that report, he only arrived after the incident had happened, and he had merely written what Mrs Xotyeni had told him had happened, and he is not a direct witness of anything.

Mr du Plooy's report is effectively hearsay.

The Plaintiff contends the Defendant has used a fabricated SJC report as evidence in this lawsuit.

The Plaintiff requests that the court disregard the contents of the SJC report.

The Plaintiff contends Mr du Toit refused to be a witness because he believed the Plaintiff's Whatsapp that the Plaintiff had recorded the Defendant's child in a towel, and because he had thought the Whatsapp meant its obvious interpretation, which was that the Plaintiff was a pedophile.

The Plaintiff contends Mr du Toit arrived at the Plaintiff's house in response to the Defendant's Whatsapp, and that Mr du Toit was not willing to testify that in court because he had been influenced negatively against the Plaintiff by the Defendant's Whatsapp, and that he was concerned that his security company's image may suffer if he testified in favour of someone who was accused of being a pedophile.

3.1.4 Plaintiff is ostracised

The Plaintiff had subpoenaed Mr Charl du Toit (owner of SJC Security), Mr Alex van Niekerk (the Kleinbron Estate manager, who had been one of the people who opened a CSOS case against the Plaintiff), Mrs Le-Lue van der Sandt (co-owner of Bok Radio, who had commented on the Defendant's Whatsapp), and another neighbour (Mrs Yvonne Viljoen, who had also opened a CSOS case against the Plaintiff) as witnesses, but they all refused to testify or to even see the Plaintiff's evidence.

The Plaintiff contends that the Defendant's Whatsapp was too shocking and serious for people to even give the Plaintiff a chance to explain himself.

3.1.5 Repercussions for the Plaintiff's family

The Plaintiff moved to Kleinbron Estate because it was safe and because his children could play outside in the park.

The Plaintiff and his children are now unable to do so because the Plaintiff fears another group of parents will confront them if they go outside.

Also, how does the Plaintiff explain to his children that they cannot go play outside in the park across from their house, and that they cannot make friends with the children who play outside, because the Plaintiff does not want them to be teased or bullied or ostracised because their father has been labeled a pedophile?

More concerning is, if the Plaintiff's name and photo has been circulated around the schools in the area, then the chances of him being able to put his children in a school in the area are very low.

No school, especially private schools, are going to allow a suspected pedophile near their school.

If the Plaintiff and his wife remain in the area, they may have to home-school their children as a result of the Defendant's Whatsapp.

The Plaintiff also bought a house in Kleinbron Estate because it is close to the Plaintiff's wife's elderly parents, so that his wife can help them. If the Plaintiff and his wife relocate far away, she will not be able to help them anymore.

The Plaintiff's wife is in a lawsuit with a construction company who worked on their house and who indicated that they may require an inspection in loco during the trial, so the Plaintiff is unable to relocate before the conclusion of his wife's lawsuit.

The Plaintiff and his entire family's safety and quality of living has been severely reduced.

3.1.6 Four baseless CSOS (Community Schemes Ombud Services) cases

The Plaintiff understands the Defendant's attorney successfully prevented the Plaintiff from discussing the CSOS cases in court, but the Plaintiff requests an indulgence from the court to consider the following argument from the Plaintiff that the CSOS cases (which all alleged that the Plaintiff's newly installed CCTV cameras were recording children's bedrooms and bathrooms) were opened as a direct result of the applicants being influenced by the Defendant's defamatory Whatsapp that the Plaintiff had recorded his child in a towel, and not because the applicants had independently come to the conclusion that the Plaintiff was recording his neighbours' children's bedrooms and bathrooms.

The Plaintiff understands that the four applicants have the right to litigate and to open CSOS cases against him, but the fact that (a) all four applicants opened the CSOS

cases in the few months following the Defendant's Whatsapp, (b) the fact that all four applicants alleged that the Plaintiff was recording their children's bedrooms and bathrooms, and (c) the fact that none of them provided any evidence for their allegations, leads the Plaintiff to believe that the CSOS cases were opened either directly or indirectly in response to the Defendant's Whatsapp.

The Defendant's Whatsapp was posted on 10 January 2022.

The Plaintiff started installing CCTV cameras on 17 January 2022.

Kleinbron Estate indicated via email that they had received various complaints regarding the Plaintiff's CCTV cameras since 17 January 2022 (**Addendum P26**).

Mrs Yvonne Viljoen, one of the Plaintiff's witnesses, was the first person to complain to Kleinbron Estate (this email is included in the protection order application).

The Plaintiff only started installing the cameras on 17 January 2022. They were not even functional yet and someone was already complaining about them.

It does not make sense for people to complain about a neighbour's CCTV cameras that are barely even up yet. The only reason people would complain about them is if they had already had a preconceived idea about the person installing them.

The Plaintiff contends that the CSOS cases were made either directly or indirectly in response to the Defendant's Whatsapp post, and that the Defendant's Whatsapp post made people worried that the Plaintiff was recording "little girls" "in their towels" or "in their bedrooms and bathrooms", even though he wasn't.

CSOS found in the Plaintiff's favour in each case, and that there was no evidence that the Plaintiff was recording children's bedrooms and bathrooms with his CCTV cameras.

The CSOS Act indicates that CSOS's decision is equal to a magistrate's court verdict, and in order to appeal a decision made by them, the applicant has to appeal to the high court.

Therefore, the Plaintiff has had to defend himself in four court cases already due to the Plaintiff's defamatory Whatsapp, and had potentially faced four high court appeals, if the applicants had chosen to appeal.

If the Plaintiff had not been able to manage the CSOS cases on his own, and if he had required the services of an attorney to assist him, he would have had to spend an enormous amount of money in legal fees, defending himself in four baseless court cases due to the Defendant's defamatory Whatsapp.

The same for this current civil lawsuit.

3.2 The nature and extent of the publication

The Defendant posted the Whatsapp on the Kleinbron Als Whatsapp group, which had 171 members at the time.

Kleinbron Estate is, according to their website, a luxury security estate, and the residents spent a lot of money to live here in a safe environment, the Plaintiff included.

There are approximately 700 households in Kleinbron Estate (as checked on the Kleinbron Estate weekly garden schedule, and can be confirmed on Google Maps), with probably 2 adults in each house.

It is reasonable to assume that the Defendant's Whatsapp has circulated to most households in the estate, and certainly to most that have children.

People can quickly and easily take a screenshot of the Defendant's Whatsapp, and send it to everyone in their contact list.

Those people can forward it again, so it is impossible to know how many people have read the Defendant's Whatsapp by now.

Parents in the estate would most likely have circulated the Whatsapp among their children's schools as well.

3.3 The reputation of the Plaintiff

The Plaintiff is a professional software developer with a postgraduate qualification. He has a wife and two small children for whom he provides, and for whom he is the only breadwinner. The Plaintiff is also studying towards his third degree, and he is paying for his wife to complete her fourth degree.

The Plaintiff and his wife moved to Kleinbron Estate about a year and a half before the defamation incident. Their first child was just born, so they spent a lot of time at home. They gradually started taking their son out to the park across from their house. They

started meeting their other neighbours, and they started becoming acquainted with them. The Defendant's defamatory Whatsapp did not allow the Plaintiff and his family to further build relationships with their neighbours.

The Kleinbron Estate manager and the owner of SJC Security refuse to have anything to do with the Plaintiff, and they were unwilling to testify in court.

The Plaintiff's children are still small (2 and 3 years old), and stay at home, but when they start attending preschool and school, if the principal or teachers of the school where the Plaintiff wants to enrol them, know about the Whatsapp, they will probably not allow the Plaintiff to enrol his children there.

If they do not initially know about the Whatsapp, the Plaintiff and his wife will have to live with the stress that someone may, during the course of their children's school years, find out about it, and then their children will be exposed to the trauma and shame of finding out that their father had been labeled a pedophile.

If the Plaintiff puts his children in a school in this area, there is most certainly going to be other parents from Kleinbron Estate with children in that school, and before long the whole school is going to associate the Plaintiff's children with a pedophile father.

The potential impact on the relationship between the Plaintiff and his children is another factor that needs to be considered. The Plaintiff's children may become fearful and distrusting of their father as a result of people having been influenced by the Defendant's Whatsapp.

The Plaintiff's wife is a housewife, but she was a teacher before that. The last school where she worked was El Shaddai Christian High School in Durbanville.

Due to the Defendant's Whatsapp, the Plaintiff's wife will also struggle to get a job as a teacher again in the area.

Christian schools have a higher moral standard than normal schools, so the chances of her getting another job at a Christian school in the area are even lower.

For all these reasons the Plaintiff has no choice but to relocate to somewhere far away where people do not know about the Defendant's Whatsapp.

<u>The character of the Plaintiff</u>

The Plaintiff is ordinarily an easy-going person, but he has a strong sense of justice and of what is fair.

He does not tolerate people who treat him unfairly. He attempts to deal with situations in a reasonable manner, but if the other side does not respond in a reasonable manner back to him, he will unapologetically and without hesitation expose their hypocrisy.

The Plaintiff remains logical and in control even when he is angry, as could be seen in court when the Defendant's attorney attempted to unfairly portray him in a negative light.

The Plaintiff's wife also supports the Plaintiff and vouches for his character.

The Plaintiff's wife could easily have chosen to distance herself from a man who has been accused of being a pedophile, and have divorced him to protect her children and to escape the stigma of being married to a pedophile.

Instead, she has made a concerted effort to clear his name and to assist him with finding out how the legal system works.

If the Plaintiff's wife was able to figure out how the legal system works in order to help clear her husband's name, she could also have figured out how to divorce the Plaintiff by accusing him of being a pedophile.

She already has a large number of people who would apparently be very willing to be her witnesses.

If the Plaintiff was really a pedophile, she could have sued him for everything.

If the Plaintiff really had been a pedophile, why does the Plaintiff's wife choose to expose herself to potential criminal action for hiding a pedophile?

Because she knows the Plantiff is not a pedophile, and because she also believes in doing the right thing – which is to clear her husband's name.

<u>The conduct of the Plaintiff during the incident</u>

The Plaintiff was standing in full public view when he was recording Mrs Franken. Mrs Franken knew she was being recorded, since she can be heard in the video telling the Plaintiff to stop recording her.

The Plaintiff only became aware of the Defendant standing on his balcony because Mrs Franken called out to the Defendant, and because the Defendant himself attempted to draw the Plaintiff's attention to himself by saying, "Hello."

The video shows that the Plaintiff recorded Mrs Franken until she turned her back on him. Then the Plaintiff turned his camera to the Defendant's balcony for 5 seconds, almost as an afterthought, and then he turned his camera back to Mrs Franken again.

Both the Defendant and Mrs Franken knew that the Plaintiff was standing there and recording. Both of them drew the Plaintiff's attention to the Defendant's balcony when they knew the Plaintiff was busy recording.

The Plaintiff was not hiding somewhere, secretly recording, and the Defendant did not "catch" the Plaintiff recording, as the Defendant's Whatsapp claims.

The Defendant was not targeting and focusing on the Defendant's alleged "child in a towel" in his recording, and he was not purposefully recording the children in the park. The video also shows there were no children around Mrs Franken when the Plaintiff started recording her.

The Plaintiff has no interest in recording children for the sake of recording children.

3.4 The conduct of the Defendant

During the incident the Defendant was on his balcony.

The Defendant's voice can be heard in the video saying, "Hello" to the Plaintiff, in a way that appears to be trying to attract the Plaintiff's attention.

The Defendant is standing on a balcony on the second story of his house, so he had a full and clear view of the Plaintiff, who was standing on the ground.

Mrs Franken indicated to the Defendant that the Plaintiff was recording her, and the Defendant would have been able to see that the Plaintiff was recording her.

The Defendant chose to draw the Plaintiff's attention to the balcony, when he knew the Plaintiff was recording.

The Defendant was directly responsible for attracting the attention of the Plaintiff to his balcony.

It is not reasonable for someone who knows someone is recording something, to draw attention to themselves, and when that person starts recording them as well, to then claim they had “caught” the person recording them (or their child, who they alleged was with them).

Since the Defendant appeared to have set a trap for the Plaintiff in order to get him to record his balcony, and since there wasn’t a child in a towel on the balcony, the Plaintiff contends the Defendant posting his Whatsapp was manipulative, abusive and cruel.

The motives of the Defendant

The Defendant alleged that his relationship with the Plaintiff had deteriorated after the incident on 10 January 2022, when the Defendant alleged that he had caught the Plaintiff recording his child in a towel.

However, all evidence points to the Defendant having known that he had *not* “caught” the Plaintiff, and that the Defendant had known that the Plaintiff had *not* recorded his child in a towel when he posted the Whatsapp.

Therefore, their relationship had *not* deteriorated as a result of the incident on 10 January 2022.

The Defendant also attempted to use the incidents on 19 October 2021 and 30 December 2021 as further justification for his Whatsapp, but the Defendant and his witnesses were unconvincing on this point.

Therefore, the relationship between the Plaintiff and Defendant had also *not* deteriorated as a result of the abovementioned two incidents.

The extremity of the defamation, the failure of the Defendant to provide a plausible motive for his Whatsapp, and the fact that the Plaintiff had not actually done anything to the Defendant to deserve his Whatsapp or other harassment, has led the Plaintiff to conclude that the Defendant did not, in fact, have a sufficient motive by himself to post the Whatsapp.

The Plaintiff has reason to believe that the Defendant’s Whatsapp was posted by him on the instruction of someone else, who *did* have sufficient motive and who would probably enjoy destroying the Plaintiff’s life.

That person is Charl Johnsen, the director of SealTek Cape.

SealTek Cape was contracted by the Plaintiff (with his wife signing the contract) in 2019 to do renovation work at their house to the value of about R250 000.

The Plaintiff paid them a R125 000 deposit, and they started the work.

However, the Plaintiff continually questioned SealTek Cape's lack of professionalism, and at one stage, near the end of the contract, the Plaintiff cancelled the contract.

When the Plaintiff's wife was alone at home with their baby, after a recent Caesarean section, Mr Johnsen and two of his employees came to the Plaintiff's house, pushed the Plaintiff's protesting wife out of the way with the front door and entered the house.

Mr Johnsen proceeded to paint sample paint on the walls, and told the Plaintiff's wife how things were going to be done.

After they left, the Plaintiff's wife indicated that if Mr Johnsen ever came back to their house, she would get a restraining order against him.

Because of a complicated situation with the previous owners of the house, the Plaintiff had to allow SealTek Cape to complete the remaining work, which was by that stage mainly the completion of the snag list, but on the condition that Mr Johnsen would not be allowed to be present.

On the alleged completion of the contract, the Plaintiff had SealTek Cape's work assessed by a third party, who indicated that much of the work on the quote had either not been done, or had been done to an unacceptably low standard.

Therefore, the Plaintiff refused to pay SealTek Cape the balance of their fee, and indicated that they were considering taking legal action against SealTek Cape for the incorrect work.

Mr Johnsen apparently pre-emptively initiated legal action against the Plaintiff's wife instead, who had signed the contract with them (case number 863/2020 at the Kuilsriver Magistrates Court).

The Plaintiff contends that Mr Johnsen's lawsuit is vexatious because Mr Johnsen knows that the work had been done incorrectly and that he was not entitled to the remaining money.

The Plaintiff wrote a negative review of SealTek Cape on HelloPeter, in which he mentioned Mr Johnsen by name, and for which Mr Johnsen initiated a defamation lawsuit against him.

The Plaintiff removed his review because he was not able to handle two lawsuits at that time.

The Plaintiff contends that Mr Johnsen wants to get revenge on him and his wife for them cancelling the contract with SealTek Cape, for indicating they would get a restraining order against him, and for the Plaintiff's negative HelloPeter post, among other things.

The Plaintiff contends that Mr Johnsen wanted to defame him in response to him having allegedly defamed Mr Johnsen on HelloPeter.

The Plaintiff contends that the Defendant moved into the house next to the Plaintiff on the instructions of Mr Johnsen, and that the Defendant's "job" is to harass the Plaintiff into settling his wife's lawsuit with Mr Johnsen.

The Plaintiff met the Defendant for the first time in the week that Mr Johnsen sent a summons to the Plaintiff's wife.

The Plaintiff contends the Defendant and his wife's real jobs are to harass people and to evict people from their houses for illegal reasons.

The Plaintiff contends that the Defendant's wife is not an anesthetist as she claims, and that the reason why she was unwilling to answer medical questions, was because it would expose that she was not really an anesthetist.

The Plaintiff contends that since the Defendant (and Mrs Franken) are illegally harassing him, they use the excuse that the Plaintiff is "recording children" to deter the Plaintiff from recording them when they are harassing the Plaintiff, in order to prevent him from gathering evidence of their crime.

Mrs Franken moved into the house on the other side of the Plaintiff a few months after the Plaintiff met the Defendant for the first time.

The other timeline of events with the Defendant and Mrs Franken, which will form part of the protection order trial against the Defendant, match too closely with important dates of the Plaintiff's wife's lawsuit with Mr Johnsen.

The Plaintiff did not discuss the Defendant's motives in this trial, because it would be an important part of the protection order hearing, and the Plaintiff did not want to jeopardise the outcome of the protection order by revealing to the Defendant how much he knew before the time.

The Plaintiff contends that Mr Johnsen is paying the Defendant to harass and defame the Plaintiff among his neighbours, the estate management, SJC Security, and the school community, so that the Plaintiff will be forced to move far away to escape from the Defendant and from the stigma of having been labeled a pedophile, but more importantly, far enough away from the Kuilsriver Magistrates Court that his wife will not be able to continue attending trial dates, and that she will settle with Mr Johnsen.

The large amount of money that Mr Johnsen must have spent on legal fees and harassment so far must surely outweigh the amount of money that he could reasonably get from the Plaintiff in a settlement, so the Plaintiff reasons that the harassment is not only about the money that the Plaintiff felt he had unfairly lost when the Plaintiff refused to pay him the remaining R125 000.

The Plaintiff contends that Mr Johnsen probably has a vengeful and abusive personality and that he in unable to move on with his life until he either runs out of money to harass the Plaintiff, or until the Plaintiff has been utterly and completely destroyed by him.

4. Law / Case Law

According to the Law of Evidence Amendment Act, 1988,

> 1. (1) Any court may take judicial notice of the law of a foreign state [...]

4.1 Fearn and Ors v Board of Trustees of the Tate Gallery

The most recent legal precedent and case law that the Plaintiff was able to find that is relevant to this case is *Fearn and Ors v Board of Trustees of the Tate Gallery* which was heard in the England and Wales High Court. The verdict was appealed in the Supreme Court, but the appeal was dismissed.

Please see the following links for the full judgement and the appeal:

https://www.bailii.org/ew/cases/EWHC/Ch/2019/246.html

https://www.bailii.org/ew/cases/EWCA/Civ/2020/104.html

Fearn and Ors v Board of Trustees of the Tate Gallery involved the owners of some flats which neighbour the Tate Gallery on the South Bank in London.

The Tate Gallery built a 360-degree viewing platform whose panoramic view included the general living areas of the Claimants' flat interiors.

Many visitors took photographs and videos which included the insides of the Claimants' flats, and posted them on social media.

The Claimants felt that their privacy was being invaded, and they asked the Court to order the Tate Gallery to prevent members of the public and others from "observing" the publicly visible areas of their flats to ensure their privacy.

The Court found in favour of the Tate Gallery and indicated that the mere viewing of a neighbouring property was not enough for a nuisance claim to succeed.

The intended use of the viewing gallery was to view, and not to invade privacy, and the Claimants should have implemented measures to ensure their own privacy.

The Judge found that even though individuals have a reasonable expectation of privacy inside their homes, the Claimants had engaged in a self-induced exposure to the outside world where there was no legitimate expectation of privacy.

People in publicly visible areas, such as those in front of my house, and even on the Defendant's balcony, do not have a legitimate expectation of privacy.

I copy relevant parts of the judgement below.

> Whether anything is an invasion of privacy depends on whether, and to what extent, there is a legitimate expectation of privacy.

> [...] one does not expect so much privacy in a balcony [...]

> It can hardly be disputed that a person has a reasonable expectation of privacy in relation to much of what occurs in the home and in relation to the home itself.

Not all overlooking becomes a nuisance. Whether anything is an invasion of privacy depends on whether, and to what extent, there is a legitimate expectation of privacy.

Some remedial steps could be taken. There are several.

(a) The owners could lower their solar blinds. [...]

(b) The owners could install privacy film. [...]

(c) They could install net curtains. [...]

(d) At least one occupant has put some medium height plants in the winter gardens. As a matter of screening they are not hugely effective, and taller plants could restore some privacy. However, the other three measures are the significant ones which fall for consideration.

The victim of excessive dust would not be expected to put up additional sealing of doors and windows; the victim of excessive noise would not be expected to buy earplugs. However, privacy is a bit different. Susceptibilities and tastes differ, and in recognition of the fact that privacy might sometimes require to be enhanced it has become acceptable to expect those wishing to enhance it to protect their own interests. I refer, for example, to net curtains. In the present case, if the occupiers find matters too intrusive they can take at least one of the measures referred to above. It will, of course, detract from their living conditions, but not to an unacceptable degree. Looking at the overall balance which has to be achieved, the availability and reasonableness of such measures is another reason why I consider there to be no nuisance in this case.

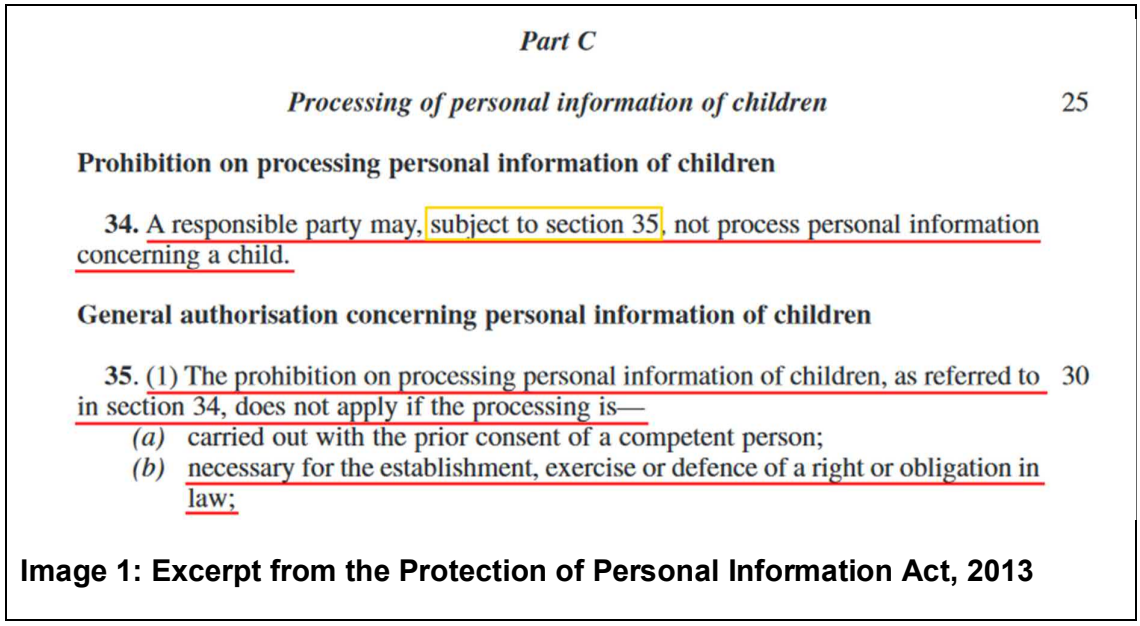
I should mention one further factor relied on by at least two of the claimants, and that is the effect of there being **children** in the flats. As appears above, some of the occupants will not allow their children or grandchildren to be exposed in the flats. Mr

Weekes sought to pray in aid the particular need to protect children. He relied on *Weller v Associated Newspapers* [2016] 1 WLR 1541. While I do not ignore that factor, I do not think that it has much weight in the calculation I have to make or the balance I have to strike. The children do not have their own privacy claim under nuisance because they are not the owners of the land. Their privacy interests are part of the greater privacy interests of the parent owners, but do not add anything substantial to the latter's significant interests. The viewing gallery has not been constructed, and is not used, deliberately so as to give a view of children, and children would not necessarily be on view in the flats all the time though it is, of course, a perfectly "normal" activity to bring up children in a residential area. I am far from sure that every parent would feel quite the same level of sensitivity (though I respect the views of those who do), and if there is felt to be a danger then the remedial steps which are open to the parents and grandparents (identified above) are steps which they could reasonably be expected to take.

The assessment that I have carried out is the usual one applicable to nuisance, even if privacy protection now arises via the application of Article 8. That Article generally requires an assessment (among other things) of whether the claimant has a reasonable expectation of privacy. As stated elsewhere in this judgment, in my view an assessment of that nature would be almost identical to the balancing exercise between the defendant's use of the land in the locale in question and the sort of give and take that would be reasonable for the claimant. It would arrive at the same result. The sort of factors which mean that the claimants cannot claim that the use of the viewing gallery is a nuisance mean that they do not have a reasonable expectation of privacy, if that is relevant. I need say no more about it than that.

4.2 POPI Act

Since the Defendant has made the complaint that the Plaintiff “records children”, the Plaintiff would like to point out that the POPI Act makes express provision for the recording of children if the recording is “necessary for the establishment, exercise or defence of a right or obligation in law”, such as the safety of one’s property, and to gather evidence of crime.



Part C

Processing of personal information of children 25

Prohibition on processing personal information of children

34. A responsible party may, subject to section 35, not process personal information concerning a child.

General authorisation concerning personal information of children

35. (1) The prohibition on processing personal information of children, as referred to in section 34, does not apply if the processing is— 30

(a) carried out with the prior consent of a competent person;

(b) necessary for the establishment, exercise or defence of a right or obligation in law;

Image 1: Excerpt from the Protection of Personal Information Act, 2013

The Plaintiff's house has been vandalised, and he is being harassed by the Defendant and Mrs Franken.

The Plaintiff has applied for a protection order against the Defendant, and the Defendant, on receipt of the interim protection order, applied for a protection order against the Plaintiff.

The Plaintiff's recording clearly shows that the person who his camera was focused on most of the time before the Defendant's defamatory Whatsapp, was Mrs Franken.

The only reason the Defendant's balcony was recorded was because the Defendant drew the Plaintiff's attention to him. If the Defendant had not drawn the Plaintiff's attention to him on his balcony, the Plaintiff would not even have known he was there, and he would not have recorded him or his balcony.

The Plaintiff has no interest in recording children for any other reason than for attempting to establish who is involved in harassing him.

The Plaintiff's wife posted on the Kleinbron Als group on 30 December 2021 that they were vandalised and harassed.

The Plaintiff also indicated that he was harassed and vandalised in his reply to the Defendant's wife's CSOS application.

The Plaintiff again repeated it to the Defendant at the trial.

When the Plaintiff asked the Defendant during cross-examination whether he had seen his wife's Whatsapp post on the Kleinbron Als group on 30 December 2021, asking if anyone else in the estate was also vandalised or harassed, the Defendant replied that he had not seen that message because he was on holiday.

The Defendant's only reply to the Plaintiff indicating to him *three times* that his house had been vandalised, was essentially that he didn't know it had happened.

Why is the Defendant not at all concerned that there are vandals in the estate, and that they were targeting the property right next to him?

The Defendant's response to the news that the Plaintiff's house had been vandalised is not the response of a reasonable (and innocent) person.

Even though the Plaintiff has a strained relationship with the Defendant, a reasonable and innocent neighbour would have been alarmed that a criminal had been in their neighbour's back yard and had possibly climbed over their shared boundary wall to vandalise their neighbours' property.

A reasonable and innocent (and empathetic) neighbour would have asked what had happened, and what had been damaged.

The Defendant has shown absolutely no empathy or even just mere curiosity about the fact that the Plaintiff's house had been vandalised at all.

A reasonable and innocent neighbour would have been worried about the safety of their own property.

A reasonable and innocent neighbour would have asked for details about the vandalism.

The Defendant did not do any of these.

A reasonable and innocent neighbour would want to ensure it does not happen again, and be relieved that a neighbour was trying to find out who had done it, because that would protect their own property from crime as well, even if their relationship with their neighbour was strained.

But the only thing the Defendant says is that he does not know about it.

It doesn't make sense at all, and, even though this issue is not the matter to be decided in this lawsuit, the Defendant's reactions indicate that he had most likely been involved in the vandalism at the Plaintiff's house, which was a pre-planned activity.

The Plaintiff contends that the Defendant's defamatory Whatsapp post had most likely also been pre-planned designed to cause the Plaintiff to relocate.

4.3 Isparta v Richter and Another 2013 (6) SA 529 (GNP)

The following case law is also relevant to this lawsuit.

Link to the full verdict:

https://www.saflii.org/za/cases/ZAECGHC/2019/27.pdf

Relevant aspects of the verdict are given below.

> [16] At 16:38, the first defendant posted the second comment which is alleged to be defamatory:
>
> "Aan alle mammas en pappas...wat dink julle van mense wat stief tiener boeties toelaat om klein sussies (6) te bad elke aand net omdat dit di ma se lewe vergerieflik??? - witn P O"
>
> The following comments were posted in response:
>
> "L-M C Not a chance"
>
> "C Polite Oh hell nee sal dit nooit toelaat me"
>
> [17] The context of the last posting by the second defendant is the following:
>
> ... Another (photograph) shows the plaintiff's stepson in the bathroom, apparently being pelted by one of the children with a wet sponge. The plaintiff said to the second defendant regarding the photographs, "Die pampoene (apparently a pet name for the children) het n wiskundeles in die bad gekry". This is obviously a jovial domestic moment. Only a depraved mind can see impropriety therein.
>
> [32] The first comment is to the effect that the plaintiff is meddlesome and interfering. It is a personal message addressed to the plaintiff. If the first defendant had an issue with the plaintiff, she could have addressed it with her personally However, she chose to publish it on Facebook where all her friends and friends of the plaintiff

would read it. Although the first message does not constitute serious defamation, publication thereof on her Facebook wall was gratuitous and with the intention to place the plaintiff in a bad light.

[33] The second impugned posting is scandalous to the extreme. It suggests that the plaintiff encourages and tolerates sexual deviation, even paedophilia. Some of the defendants' friends lapped it up with relish and added their own snide comments, compounding the damage to the plaintiff's reputation.

[34] I therefore find that both statements are defamatory, individually and collectively.

The sentence in the above verdict, "Only a depraved mind can see impropriety therein" pinpoints so exactly the core matter of this lawsuit.

On 10 January 2022 the Plaintiff was recording Mrs Franken, someone who he did not trust and who he suspected had been involved in a crime at his house. She was in a publicly visible place with no reasonable expectation of privacy.

The Plaintiff's attention was drawn by the Defendant himself to the Defendant's balcony, which was also a publicly visible place with no reasonable expectation of privacy, and he recorded the Defendant's balcony for 5 seconds as well.

After that the Plaintiff resumed recording Mrs Franken.

The Defendant's Whatsapp that he had "just caught the guy from 91 Frangipani filming my child in a towel" after the Defendant had drawn the Plaintiff's attention to where the alleged child in a towel was, can be so accurately described as, "Only a depraved mind can see impropriety therein."

Eight people replied to the post and expressed that they were shocked.

Some indicated that the Defendant had to call the police, including the Defendant's friend and witness, Mr Thys van Tonder.

The replies to the Defendant's Whatsapp also compounded the damage to the Plaintiff's reputation.

5. Two prior incidents of alleged aggression

The Defendant attempts to portray the Plaintiff as an illogical individual who exhibits extreme aggression towards children who are “just playing” outside, due to two prior incidents which occurred on 19 October 2021 and 30 December 2021.

The Plaintiff disputes the Defendant’s portrayal of him as illogically aggressive.

Even if the Plaintiff was illogically aggressive towards children in the abovementioned two incidents, it is still a strawman argument to use those allegations as “proof” that the Plaintiff had been caught recording the Defendant’s child in a towel, or that the Defendant was justified to post it.

According to Detective Bezuidenhout, one of the Plaintiff’s witnesses, only one criminal case had been opened against the Plaintiff (regarding the incident on 30 December 2021), and the prosecutor decided not to prosecute.

If the Plaintiff was such a dangerous and erratic person, surely there would have been multiple criminal cases opened against him, and surely the Plaintiff would have been prosecuted by now.

The Plaintiff contends that Mr Thys van Tonder and Mrs Chantel Lober are actually witnesses that are irrelevant to this case, since they were not present when the Plaintiff recorded the Defendant’s balcony.

The Plaintiff considers their testimonies to be baseless attempts at character assassination, but the Plaintiff will address them below for the sake of completeness.

5.1 Incident on 19 October 2021

Regarding the incident on 19 October 2021, the Defendant indicated in his testimony to the court that there had been a party in front of the Plaintiff’s house, and that the Plaintiff thought that the Defendant had been involved.

The Plaintiff queries what kind of people lets their children hold a party in front of someone else’s house and is then surprised when the homeowner is unhappy about it?

A group of children had kept making a noise outside the Plaintiff's house between 20:00 and 22:00 in the preceding weeks. They kept waking up the Plaintiff's 6-month-old baby.

The Plaintiff and his wife had asked them politely to be quiet on previous evenings.

On 19 October 2021, the Plaintiff again went to tell them to stop making a noise outside his house.

Three men who were in Mrs Franken's front yard, including Mr Thys van Tonder, confronted the Plaintiff.

5.1.1 Thys van Tonder's testimony

The Plaintiff contends that he had told the children sternly to stop making a noise, and that he had not acted in an aggressive manner towards them at all.

The Plaintiff contends his actions were reasonable considering the situation.

Mr van Tonder alleged that his child was one of the children who were outside the Plaintiff's house when the Plaintiff went to tell them to keep quiet.

Mr van Tonder alleged that one of the other children had come into the house to tell them that the Plaintiff was shouting at them.

Mr van Tonder alleged that as he was walking out of Mrs Franken's house, he saw the Plaintiff shouting at the children. Mr van Tonder said he could see his 12-year-old son and that he was very fearful.

The Plaintiff wonders why, if the Plaintiff had acted in such an aggressive and fearful manner, all the children had not run away in fear?

Why did they just stand there?

Also, surely if someone's child is making a noise outside someone else's house at night, that person can reasonably expect someone to come and tell the children to keep quiet.

Mr van Tonder alleged that the incident occurred in the early evening between 19:30 and 20:00.

Mr van Tonder's allegation that it was early evening was an attempt to portray the Plaintiff as someone who irrationally complains about children making a noise at a time of day when it is reasonable for children to play outside.

However, the video shows that it was pitch-dark already when the incident occurred.

Therefore, it could not have occurred between 19:30 and 20:00, and occurred much later, at a time when it would not be reasonable for children to play and make a noise outside.

The right that the Defendant and their witnesses seem to be claiming is not the right of their children to play outside at a reasonable time of day.

The right that the Defendant and his witnesses appear to be claiming for their children is the right to make an excessive noise in front of the Plaintiff's children's bedroom windows late at night when the Plaintiff's children are sleeping.

During the incident, when the Plaintiff indicated to Mr van Tonder and his friends that the children in the street were making a noise and waking up his baby, nobody apologised.

Nobody indicated that they would tell their children to stop making a noise.

Even in court, Mr van Tonder did not seem in the least bit concerned or apologetic that his child had been making so much noise that he was waking up the Plaintiff's children.

The Defendant and his witnesses alleged that they had bought houses in Kleinbron Estate so that their children can play outside in the streets.

The Defendant and his witnesses' attempt to portray the Plaintiff as being too feebleminded to understand that children play in the streets, is condescending and patronising.

Of course the Plaintiff had also bought a house in Kleinbron Estate so that his children can play outside when they are older.

His children were 6 months old and 1 ½ years old at the time of this incident.

Is Kleinbron Estate only for older children who can play outside alone at night?

Is Kleinbron Estate not for babies and small toddlers who need consistent bedtimes and enough sleep at night?

Why do the Defendant and his witnesses' children have more rights to enjoy the estate than the Plaintiff's children do?

Why do the Defendant and his witnesses demand the Plaintiff's respect for their children to play outside, but they give no respect to the Plaintiff's children who need to sleep?

The Defendant's attorney asked Mr van Tonder if anybody aggressively approached the Plaintiff, and Mr van Tonder replied, "Nobody touched him."

But Mr van Tonder wasn't asked whether anybody touched the Plaintiff.

He was asked if anybody aggressively approached him.

Why would Mr van Tonder, instead of giving a simple "no" answer to the question whether anybody aggressively approached the Plaintiff, but instead reply with "Nobody touched him."

The Plaintiff contends Mr van Tonder did not answer the question directly, because somebody did aggressively approach the Plaintiff.

And that person was Mr van Tonder himself.

The Plaintiff queries why Mr van Tonder is attempting to hide his own aggressive behaviour that evening from the court, if Mr van Tonder's aggressive behaviour had been completely justified by the Plaintiff's alleged irrational aggressive behaviour towards defenceless little children?

Surely a father whose children are in danger would be justified to act aggressively in order to protect his children.

The Plaintiff contends Mr van Tonder is attempting to hide his own aggressive behaviour from the court because Mr van Tonder's aggressive behaviour was *not* justified, and because the Plaintiff's behaviour was not irrationally aggressive towards the group of children who were making a noise.

After Mr van Tonder aggressively approached the Plaintiff, the Plaintiff called SJC Security and when the security guard arrived, the guard indicated that he had just been there 5 minutes ago to tell the children to be quiet.

The children had not listened to the security guard, and had continued making a noise.

The children did not seem to have respect for the authority of the security guard.

The children had apparently not gone to tell their parents they had just been told to keep quiet by a security guard.

The children had apparently completely ignored the security guard and kept making a noise.

When the Plaintiff asked Mr van Tonder, “Did you tell Mr Fitchat, "Jy praat nie so met my kind nie", "Het jy gedrink?", "Ja, bel sekuriteit"”, Mr van Tonder replied “I didn’t hear that in the video.”

What a strange reply. Why did Mr van Tonder not just say no, if he had not said those things?

Because Mr van Tonder had said those things to the Plaintiff, and he did not want the court to know that he had spoken aggressively and condescendingly to the Plaintiff.

It is not reasonable for Mr van Tonder to say that the Plaintiff is an aggressive person because the Plaintiff told a group of children who were making a noise outside his house and waking up his baby to be quiet.

The Plaintiff contends Mr van Tonder was not a very credible witness.

Furthermore, it is not reasonable for adults, such as Mr van Tonder, to base their opinions on what children say. It is, frankly, completely the other way around, it is reasonable for children to base their opinions on what adults say.

If children in the estate think the Plaintiff is aggressive, it is because the adults told them the Plaintiff is aggressive, not because children independently think the Plaintiff is aggressive apart from what adults have told them.

Children are not capable of rigorously analyzing complex situations and reaching definitive conclusions on which to base their opinions, by themselves.

If adults did not falsely allege the Plaintiff is aggressive, then children also would not allegedly allege the Plaintiff is aggressive.

"Aggression" is a complex emotion, and children are not mentally prepared to understand the motive for why someone is allegedly being aggressive, and thus, such an opinion can only be informed by an adult to a child.

The adults do not make the false allegation that the Plaintiff is aggressive, because the children made the false allegation to them. It is the other way around.

Children were not questioned in the trial as witnesses to deliver testimony, so the Plaintiff disputes the adults' testimony as hearsay and not credible that they believe the Plaintiff is dangerous because of what their children said to them.

5.2 Incident on 30 December 2021

The Defendant included an SJC report of the incident on 30 December 2021 whose authenticity the Plaintiff contends, as detailed previously in this document.

5.2.1 Chantel Lober's testimony

Mrs Lober alleged that she had two daughters, aged 10 and 13.

She alleged that her daughters play with the Defendant's children, who are aged 3 and about 6.

She alleged that the day in court was the first time that she had seen the Plaintiff.

Mrs Lober alleged that on 30 December 2021 her youngest daughter and Bongi came to her and that they told her that the Plaintiff had approached Bongi in the road.

Mrs Lober alleged that Bongi had slipped a note under the Plaintiff's door and that the Plaintiff allegedly told her that his dog would bite her and kill her if she did it again.

Mrs Lober alleged that on 10 January 2022, her two daughters ran into the house and said to her that the gentleman (the Plaintiff) was recording them again.

Mrs Lober alleged that she quickly got dressed and went to the Plaintiff's house to ask him if her daughters had done something naughty that would make him record them.

She alleged that many of the parents were taking offence that their children were being recorded.

Mrs Lober alleged that the reason why her daughter came to her on 10 January 2022, telling her that the Plaintiff was recording children again, was because Mrs Lober alleged that after the incident on 30 December 2021 she had told her daughter that if the Plaintiff recorded children again, to come to her.

But the Plaintiff had not recorded children on 30 December 2021, though, so it doesn't make sense for Mrs Lober to have told her daughter that.

Mrs Lober alleged that she was going to go to the park and when she got there, there were other parents there in front of the Defendant's house and in the area between the Defendant and Plaintiff's houses.

Mrs Lober alleged that Mr Charl du Toit was there and that he indicated that he would take it on himself to find out from the Plaintiff what was going on.

Mrs Lober's version of the timeline of events does not match the timeline of events of the Plaintiff's videos.

The Plaintiff's videos indicate the following:

20:05pm Plaintiff started recording (**Addendum P06**)

20:07pm Plaintiff recorded Defendant's balcony (**Addendum P07** at 00:54 in video)

20:08pm First time children are visible in video, and they are only calmly and curiously looking at the Plaintiff (**Addendum P07** at 1:00 in video)

20:18pm Defendant posted his Whatsapp

20:23pm Group of people outside Defendant and Plaintiff's houses (**Addendum P09**)

20:26pm an SJC car arrives and Mr du Toit gets out (**Addendum P10** at 02:48 in the video).

If Mrs Lober's children became alarmed and ran to their mother, they would only have done so after 20:08. The video shows that it was still light outside.

Addendum P10, which was when there was a group of people gathered in front of the Plaintiff and Defendant's houses, was taken from 20:23. The video shows that it was already dark at that time.

If you listen to the conversations of the people in **Addendum P10**, it sounds as though the people in front of the Plaintiff and Defendant's houses were greeting each other and speaking to the Plaintiff as if they had just arrived, and not been there for a long time, including when the Plaintiff had recorded Mrs Franken and the Defendant's balcony.

Since that group of people were not there when the Plaintiff recorded the Defendant's balcony, and they only apparently arrived shortly before 20:23, then Mrs Lober would have taken about 15 minutes to get to the Plaintiff's house.

Mrs Lober did not indicate how far her house was from the Plaintiff's house, but it seems unlikely that it would have taken that long for her to get to the Plaintiff's house.

Even Mr du Toit, who lives in probably the furthest distance away from the Plaintiff's house in the estate, only took 8 minutes to get to the Plaintiff's house.

The different parts of Mrs Lober's testimony also do not match.

Mrs Lober alleged that her child ran home and told her that the Plaintiff had recorded her in the park.

Mrs Lober alleged that when her child ran to her, her child looked scared "for the first time."

Which 10-year-old child has not been scared at least once before?

Mrs Lober also alleged that she wanted to get to the Plaintiff's house so quickly that she ran out the door to the Plaintiff's house.

But when Mrs Lober was asked what her opinion was of the Defendant's Whatsapp that the Plaintiff had been caught recording a child in a towel, Mrs Lober very nonchalantly indicated that she just thought the Plaintiff had recorded a child in his personal space in a towel.

Why does Mrs Lober consider her child being recorded by someone in a public space an apparent emergency, but she doesn't think anything different of that same person being caught recording a child in a towel in their personal space, and she doesn't judge them.

Mrs Lober vehemently indicated that people must have consent to record children in public places such as the park and at school events, but she alleges she doesn't mind someone recording a child in a towel in his private space.

It doesn't make sense at all.

The Plaintiff wanted to show the video to Mrs Lober to show her that he had been recording Mrs Franken, and not her daughter, but Mrs Lober did not want to see the video.

The Plaintiff does not know if the Defendant's attorney had shown her the video before the trial or not.

If the Defendant's attorney had shown her the video, then Ms Lober would have seen the Plaintiff had not recorded her child, and it is strange that she would come to court as a witness for the Defendant and tailor her story around his.

If the Defendant's attorney had not shown her the video, then is it not human nature to want to see the recording that you thought someone had made of your child?

Mrs Lober's reactions seemed to indicate that it did not make a difference to her whether the Plaintiff had actually recorded her child or not.

Why was she not eager to see the video?

Why keep insisting the Plaintiff had recorded her child?

The reason is the same as the Defendant's – so that she can keep hanging it over the Plaintiff's head that he had recorded her child even though he hadn't.

5.2.2 Mrs Johnson's testimony

In addition to the above two incidents, Mrs Johnson alleged that there had been another incident of aggression involving the Plaintiff and children.

Mrs Johnson alleged that a toddler came to get a ball from the Plaintiff's grass and that the Plaintiff had yelled at the toddler, and that his mother was scared.

Mrs Johnson alleged that the incident had been reported to her by parents who had been standing on the corner at the time.

When she was asked for more detail, Mrs Johnson alleged that the Plaintiff was holding his dog when children walked past and they were scared, and that the Plaintiff had laughed and thought it was amusing.

When Mrs Johnson was asked who reported it to her, the Defendant's attorney told her she didn't have to answer that.

Mrs Johnson initially indicated that the Plaintiff yelled at a toddler who was accompanied by his mother, and who came to get a ball from his grass, but when she was questioned further, she indicated that the Plaintiff had already been standing there with his Rottweiler, apparently to frighten children who were walking past.

Which mother in her right mind would send a toddler to get a ball from the grass of a man who is standing there aggressively with a Rottweiler and who is laughing when children who walk past look scared?

When the alleged group of parents saw the Plaintiff with his Rottweiler allegedly standing there, why did they not warn the mother with the toddler?

Did the mother not see the Plaintiff who was allegedly there herself?

Why did the alleged group of parents not warn the alleged children to not walk past him?

The alleged children who had allegedly walked past were also not in Mrs Johnson's first version of her story.

Surely if that had happened, at least some of the people involved would have taken the matter further.

Did not one of them have a phone on hand to record this apparent mentally unstable man who was terrorising children and toddlers with a Rottweiler, and laughing at them?

Why was no criminal case opened against him?

At least the parents would have reported it to SJC, and a report would have been written.

The Defendant was apparently able to get the SJC report of 30 December 2021, so why was he not able to get the SJC report of this incident as well?

On the other hand, another SJC report would also merely be hearsay, because the person who would have written it would also not have been a direct witness of the incident, so it would not have helped the Defendant's case much.

Mrs Johnson's story does not make sense, and since she did not witness it herself, and the Defendant did not bring any of the alleged direct witnesses to testify, Mrs Johnson's version is in any case hearsay, and the Plaintiff asks the court to disregard this part of Mrs Johnson's testimony.

The detective indicated only one criminal case had been opened against the Plaintiff, and that was regarding the incident on 30 December 2021.

Surely if the Plaintiff was so aggressive, more people would have opened criminal cases against him?

6. Witnesses

Defendant's Witnesses

The Defendant called four witnesses, Mrs Chantel Lober, Mr Thys van Tonder, Mrs Marine Franken and Mrs Marianne Johnson.

Mrs Marianne Johnson is the Defendant's wife.

Mr Thys van Tonder and Mrs Marine Franken indicated they have known the Defendant for years and that they were friends from church.

Mrs Lober indicated that her children and the Defendant's children played together, and so she had also become friends with the Defendant.

All the Defendant's witnesses were either his friends or family.

All of the Defendant's witnesses indicated that they did not interpret the Defendant's Whatsapp post as meaning that the Plaintiff has sexually deviant inclinations towards children.

The Plaintiff contends that the Defendant's witnesses had been coached to reply in a way that would benefit the Defendant, at the expense of the truth.

None of the Defendant's witnesses seemed remorseful or ashamed that they were actively trying to cause further damage to the Plaintiff's reputation and to his life.

I contend the Defendant's witnesses deliberately attempted to deceive the court and have been party to the leading of perjured testimony.

Plaintiff's Witnesses

None of the people the Plaintiff called as witnesses were willing to testify, with the exception of Detective Bezuidenhout.

The Plaintiff contends his witnesses were not willing to testify because they had been influenced by the Defendant's Whatsapp to think that the Plaintiff was a pedophile and that they were not willing to be involved in a case involving an alleged pedophile.

The Plaintiff contends that the fact that all his witnesses were unwilling to testify further proves defamation.

Mr Charl du Toit's short testimony was discussed above.

Mr Alex van Niekerk had also opened a CSOS case against the Plaintiff, alleging that the Plaintiff was recording children's bedrooms and bathrooms. The Plaintiff contends

Mr van Niekerk refused to testify because he had been either directly or indirectly influenced by the Defendant's Whatsapp.

Mrs Yvonne Viljoen indicated to the court that she was not willing to testify, because she did not know the Plaintiff.

However, Mrs Viljoen had complained to Kleinbron Estate in an email about the Plaintiff's CCTV cameras on the day that the Plaintiff started installing them, before the cameras were even functional.

Mrs Viljoen also opened a CSOS case against the Plaintiff, alleging that his CCTV cameras were recording her children's bedrooms and bathrooms.

The Plaintiff contends Mrs Viljoen's email of complaint to Kleinbron Estate and her CSOS case against the Plaintiff were as a result of the Defendant's Whatsapp.

The Defendant had also told the court that he had never met Mrs Viljoen before, but Mrs Viljoen indicated in her CSOS pleadings that she knew three neighbours had made CSOS cases against the Plaintiff.

The three people who made CSOS cases against the Plaintiff at that stage were Mrs Viljoen, Mrs Franken and Mrs Johnson – the Defendant's wife.

The Plaintiff finds it unlikely that the Defendant had never met Mrs Viljoen before, but that Mrs Viljoen knew about the Defendant's wife's CSOS case, which was on the exact same topic as the Defendant's Whatsapp – that the Defendant was recording children.

Mrs Le-Lue van der Sandt had replied to the Defendant's Whatsapp, "Is dit 'n inwoner, hoe gebeur dit", but she was unwilling to testify in court regarding her reply.

Contradictions

Does it make sense for someone to have a normal relationship with his neighbours, and then to suddenly become aggressive towards them?

Does it make sense for someone to be a pedophile who wants to be near children, but also to allegedly set his Rottweilers on them?

Does it make sense that someone is locked up in their house and terrorising the children in the estate at the same time?

It doesn't. If people are that extreme, they are usually either the one or the other.

Unless the Defendant is accusing the Plaintiff of being mentally unstable.

If the Defendant wishes to allege that the Plaintiff is mentally unstable, the Defendant is put to the proof thereof.

Surely a psychological assessment of the Plaintiff can provide the necessary information.

The Plaintiff contends that the Defendant has not requested the Plaintiff to undergo a psychological evaluation, because then there would be proof that the Plaintiff is not mentally unstable, and then the Defendant cannot continue implying that the Plaintiff is mentally unstable.

The Defendant alleges he wants to “rekindle” his relationship with the Plaintiff, but he also wants to defame the Plaintiff at the same time.

The Defendant kept indicating to the Plaintiff that he had 20 witnesses who saw the Plaintiff recording his child in a towel.

However, in the trial it turned out that the 20 witnesses had been children, and the Defendant alleged in cross-examination that children cannot be witnesses.

What had happened to the group of people who is seen in **Addendum P10**, but not in **Addendum P07**?

The Defendant alleged they had been there when the Plaintiff had allegedly recorded his child in a towel. Why did they not come to testify? They were adults.

The Defendant alleges he runs a foundation for underprivileged children, so he apparently spends a lot of time with children.

How can someone who spends a lot of time with children, think that children are able to understand the complex situation of an adult man recording a child in a towel, and that they would be able to testify in court about what they had seen?

Mr Johnson testified that he did not think the Plaintiff was a pedophile, and that he only wanted to warn people that the Plaintiff was a danger to children because he was allegedly recording them.

The Plaintiff contends the reason why the Defendant provided this conflicting testimony is for him to evade the legal repercussions of defamation, and to stop the Plaintiff from gathering evidence of harassment against the Defendant.

7. Summary – Requirements for Defamation

On 10 January 2022, the Defendant alleged in a public Whatsapp group that he had just “caught” the Plaintiff recording his “child in a towel”.

7.1. The requirements for defamation

7.1.1 Wrongful

The Defendant failed to prove that the Plaintiff had recorded his child in a towel, and he failed to prove that he had “caught” the Plaintiff recording his child in a towel.

The Plaintiff contends that the Defendant had known that the Plaintiff had not recorded his child in a towel.

Despite that, the Defendant still posted the Whatsapp.

7.1.2 Intentional

Since the evidence shows that the Defendant had known the Plaintiff had not recorded his child in a towel, the Plaintiff contends that the Defendant posting his Whatsapp was posted with the intention to cause as much damage to the Plaintiff’s reputation as possible.

The Defendant’s malicious disposition towards the Plaintiff is further evidenced by his refusal to apologise or retract his Whatsapp after the Plaintiff sent him evidence that he had not recorded his child in a towel.

7.1.3 Published

The Defendant admitted to publishing the Whatsapp post.

7.1.4 Defamatory statement

The Defendant’s Whatsapp implied the Plaintiff had been secretly recording a half-naked little girl and that her enraged father had discovered him doing it.

The Defendant’s Whatsapp implied that the Plaintiff was a sexual predator who preys on vulnerable little girls.

The Defendant’s Whatsapp implies that the Plaintiff is a pedophile and a danger to children.

All the people who commented on the Defendant's Whatsapp were shocked and some urged the Defendant to call the police.

7.1.5 Concerning the Plaintiff

The Plaintiff was identified by his address in the Whatsapp "the guy from 91 Frangipani".

Since the Whatsapp group was that of the residents of Kleinbron Estate, identifying the Plaintiff by his address made him more easily identifiable by the other residents in the estate.

The fact that a group of angry people arrived outside the Defendant's house within 5 minutes after the Defendant posted his Whatsapp, and that they were asking him why he was filming children indicates that they were easily and almost immediately able to identify the Plaintiff after the Defendant's Whatsapp.

8. Summary - Quantum

8.1 The seriousness of the defamation

The group of angry people included someone called Ben, who asked the Plaintiff why he was recording children, and Ben told the Plaintiff that he felt as though he was "in 'n porno."

Reponses to the Defendant's Whatsapp included people saying the Defendant had to call the police.

Mr Charl du Toit, the owner of SJC Security, personally came to the Plaintiff and Defendant's houses within 8 minutes of the Defendant posting his Whatsapp.

Mr du Toit denies coming in response to the Defendant's Whatsapp, but Mr du Toit's testimony in court does not match the video taken of him on arrival to the scene.

The Plaintiff contends Mr du Toit did come in response to the Defendant's Whatsapp, but that he was unwilling to admit it in court because it would strengthen the Plaintiff's case, who he thought was a pedophile.

The Plaintiff is ostracised by SJC Security, the Kleinbron Estate manager, and his various neighbours. Nobody was willing to testify for him.

The repercussions on the Plaintiff's children is probably the most concerning.

The Plaintiff's children are unable to go play outside in the park because the Plaintiff fears being confronted by a group of people again.

When his children are older they will most likely be teased or bullied or ostracised by other children because their father has been labeled a pedophile.

The members of the Whatsapp group who have children have most likely circulated the Defendant's Whatsapp around their friends who also have children in schools in the area.

The Plaintiff will be unable to place his children in a school in the area, because, if the principal or teachers already know of the Whatsapp, they will not allow a suspected pedophile to enrol his children in their school.

If the principal and teachers do not already know, the Plaintiff and his wife will live in constant stress that someone will find out, and then the backlash on their children will be devastating.

If the Plaintiff and his wife remain in the area, they may have to home-school their children as a result of the Defendant's Whatsapp.

They will have to grow up alone and resentful of their father.

The Plaintiff has also had to defend himself in four baseless CSOS cases, which the Plaintiff contends were made as a direct or indirect result of the Defendant's Whatsapp because all four applicants opened CSOS cases in the few months after the Defendant's Whatsapp, all four alleged that the Plaintiff was recording children's bedrooms and bathrooms, and none of them provided any evidence for their allegations.

The CSOS Act indicates that CSOS's decision is equal to a magistrate's court verdict, and in order to appeal a decision made by them, the applicant has to appeal to the high court.

Therefore, the Plaintiff has had to defend himself in four court cases already due to the Plaintiff's defamatory Whatsapp.

If the Plaintiff had required the services of an attorney to assist him, he would have had to spend an enormous amount of money in legal fees, defending himself in four baseless court cases due to the Defendant's defamatory Whatsapp.

8.2 The nature and extent of the publication

The Defendant posted the Whatsapp on the Kleinbron Als Whatsapp group, which had 171 members at the time.

There are approximately 700 households in Kleinbron Estate, with probably 2 adults in each house.

It is reasonable to assume that the Defendant's Whatsapp has circulated to most households in the estate, and certainly to most that have children, and among their other friends who have children in the area.

The Whatsapp has most likely been circulated among parents and teachers at schools in the area as well.

8.3 The reputation of the Plaintiff

The Plaintiff is a professional software developer with a postgraduate qualification. He has a wife and two small children for whom the Plaintiff provides, and for whom he is the only breadwinner. The Plaintiff is also studying towards his third degree, and he is paying for his wife to complete her fourth degree.

The Plaintiff works from home.

The Plaintiff's wife is currently a housewife, but she was a teacher before that.

If the Plaintiff puts his children in a school in this area, there is most certainly going to be other parents from Kleinbron Estate with children in that school, and before long the whole school is going to associate the Plaintiff's children with a pedophile father.

The Plaintiff's children may become fearful and distrusting of their father as a result of people having been influenced by the Defendant's Whatsapp.

The Plaintiff's wife will also struggle to get a job as a teacher again in the area.

8.4 The conduct of the Defendant

The Defendant was standing on his balcony and had a clear view of the Plaintiff when he was recording Mrs Franken.

The Defendant was directly responsible for attracting the attention of the Plaintiff to his balcony, by saying “Hello” to the Plaintiff, who he knew was recording.

It is not reasonable for someone who knows someone is recording something, to draw attention to themselves, and when that person starts recording them as well, to then claim they had “caught” the person recording them (or by extension, their child).

9. Closing Statement

The Plaintiff had worked hard and spent a large amount of money to buy a house in Kleinbron Estate in order for him and his wife to raise their children in peace and safety.

By defaming the Plaintiff, the Defendant had not only taken away the Plaintiff’s good name, but also the life of peace and safety that the Plaintiff had worked so hard for to provide for his family.

The overwhelming evidence shows the Defendant’s allegation that he had caught the Plaintiff recording his child in a towel, was not true, and that the Defendant had known it.

Despite this, the Defendant still posted the Whatsapp.

The Defendant alleged to the court that he wanted all the best for the Defendant, but he also alleged that after he posted the Whatsapp he didn’t think about it again.

Did the Defendant have no consideration for the shameful repercussions of his Whatsapp to the Plaintiff?

The shameful repercussions for the Plaintiff’s children?

The shameful repercussions for the Defendant’s own child who was mentioned in the Whatsapp?

The Defendant has absolutely no consideration for children at all – neither for the Plaintiff’s, nor for his own.

The Defendant used his own child in an abusive manner on a public forum, so that he could falsely hold himself up as a public protector of children.

The Defendant is someone who is willing to say anything and to use anyone, including his own child, to ruin other people’s lives.

The Defendant's allegation that he wanted to "talk about" the incident with the Plaintiff and that he wanted to "rekindle their relationship" was a blatant lie.

The Defendant refused to apologise or to show any remorse or even just a grain of understanding for the Plaintiff's explanation or situation.

The Defendant wanted to ruin the Plaintiff.

The Defendant has provided no plausible reason for why he harbors such ill will towards the Plaintiff.

Instead, the Defendant has made a concerted effort to portray himself as the 100% innocent owner of a foundation for under-privileged children and whose friends all attend church and go on church outreaches.

However, the Defendant has made no effort to take responsibility for any of his actions or for their repercussions.

The Defendant owns up to nothing and has an excuse for everything.

On the other hand, the Plaintiff has not attempted to hide any of his motives or actions from the court.

The Plaintiff admitted to the Rottweilier and BB gun incidents, and even brought a detective to court who could have given the court any details they wanted regarding the BB gun incident, for which a criminal case was opened against him, but which was dismissed.

The Defendant's attorney did not ask even one questions to the detective.

Instead she relied on an apparently forged SJC report.

Surely if the BB gun incident had been such an extreme criminal act by the Plaintiff, the Defendant's attorney could have asked the detective many questions and completely expose the Plaintiff as an illogically aggressive individual.

But she didn't.

But regardless of any other incidents in which the Plaintiff was involved before 10 January 2022, the matter that is to be decided in this lawsuit, is whether the Plaintiff had been caught by the Defendant recording his child in a towel, and whether the Defendant had been justified in posting his Whatsapp.

Either the Plaintiff was caught recording the Defendant's child in a towel, or he wasn't.

Either the Defendant is someone who really caught his neighbour secretly recording his child in a towel and he wanted to warn his neighbours about someone who he thought was a genuine threat to children, or he is someone who publicly, falsely and cruelly accused the Plaintiff of recording his child in a towel, in order to destroy the Plaintiff's reputation and his life.

Either the Defendant's child was the victim of an apparent pedophile who was caught recording him in a towel; or he is the victim of his own father, who intentionally and publicly published the shameful act of an apparent pedophile, but an act that did not really happen, and associated it with his child.

The Plaintiff contends the latter in all three scenarios above.

The Defendant's Whatsapp was an act of profound cruelty. Not just to the Plaintiff, but also to the Plaintiff's wife and children.

The intention of the Defendant's Whatsapp is clear – to publicly accuse the Plaintiff of being a pedophile.

The Plaintiff's wife will struggle to find another teaching job at a school in the area.

When the Plaintiff's children are older and they learn of the allegations, it will have a devastating impact on them, on their relationships with their friends, and on their relationship with their father.

They may fear him, be ashamed of him, and not want to have anything to do with him.

They may wonder if there is anything wrong with themselves as well.

The Defendant's Whatsapp was false, it was defamatory, and it caused irreparable harm.

The Plaintiff is a good man and does not deserve to have his life, his wife's life, and his children's lives destroyed by one Whatsapp.

This lawsuit is an attempt by the Plaintiff to do as much damage control as possible before his children have to face the repercussions when they are older.

Since the Defendant's Whatsapp has taken away the Plaintiff's reason for moving to Kleinbron Estate, the amount that the Plaintiff is claiming in damages is part of the conveyancing fees that the Defendant spent to buy his house in Kleinbron Estate.

Mrs Johnson alleges that she is an anesthetist, which the Plaintiff disputes, but be that as it may, she insists that it is so.

Anesthetists' salary is approximately R100 000 per month, so R200 000 is not an exorbitant amount for the Defendant and his wife to pay in damages.

Even though the Plaintiff is seeking financial compensation from the Defendant, the more important issue for the Plaintiff is for his name to be publicly cleared.

The Plaintiff needs his name cleared for things to be restored to how they were before the Defendant posted his Whatsapp.

The Plaintiff needs his name cleared for him to have freedom of movement again.

The Plaintiff needs his name cleared for his children to not live in fear and shame.

The Plaintiff needs his name cleared for his children to have normal lives.

In the event that the court finds in the Plaintiff's favour, due to the Defendant's continued insistence that the Plaintiff recorded his child in a towel, and due to the Defendant's Whatsapp most likely having been circulated beyond people who are on the Whatsapp group, the Plaintiff requests that the court include in the verdict that the Defendant publish an apology and retraction on the Kleinbron Estate Facebook page in addition to publishing it on the Kleinbron Als Whatsapp group.

If the Defendant continues refusing to apologise, the Plaintiff requests permission from the court to post a screenshot of the relevant part of the verdict which indicates that the court found that the Defendant did not record the Plaintiff's child in a towel.

The Plaintiff was a self-represented litigant in this lawsuit, and even though it was very difficult for him to navigate his way through the legal system with very little legal knowledge, he has done his best to stand up for himself and to fight to restore his good name.

Wayne W. Dyer once said, "Your reputation is in the hands of others. You can't control that. The only thing you can control is your character."

The Plaintiff's character is to fight for the truth and for justice, and the Plaintiff believes that he has been successful in proving to the court that had been falsely and unjustly accused of something he had not done, and that he had been intentionally and maliciously been defamed by the Defendant's Whatsapp.

The Plaintiff requests the court to find in his favour and to give him and his family their lives back.