

SOUTH AFRICA / JUDGMENT

Bergmann v Bergmann and Another (2022/042484) [2024] ZAGPJHC 854 (29 August 2024) [2024] ZAGPJHC 854

COURT

South Gauteng High Court, Johannesburg

BEFORE

WJ du Plessis

CASE / FILE NUMBER

2022/042484

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

THE

HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

2022/042484

1.

REPORTABLE: Yes ☐ / No ☐

2.

OF INTEREST TO OTHER JUDGES: Yes ☐

/ No ☐

3.

REVISED: Yes ☐ / No ☐

Date: 29 August

2024 WJ du Plessis

In

the matter between:

MARITA
ASTRID BERGMANN
Applicant
and
HAROLD
ANDRÉ BERGMANN
First
Respondent
BERMAT
PROPERTY INVESTMENTS CC
Second
Respondent

Coram:

Du Plessis AJ
Heard
on: 13 August 2024
Decided
on: 29 August 2024
This
judgment has been delivered by uploading it to the CaseLines digital
database of the Gauteng Division of the High Court of
South Africa,
Johannesburg, and by e-mail to the attorneys of record of the
parties. The deemed date and time of the delivery is
10H00 on 29
August 2024.
ORDER
The

following order is made:

1.
The matter is struck from the roll for failure of the applicant to
abide by the Rules of court and failure to comply with
the practice
manual.
2.
The applicant is to pay the costs of the application on scale A.

JUDGMENT

DU PLESSIS AJ

Introduction

- [1] This is an application to direct that the first respondent be removed as a member of the second respondent as contemplated in ss 36 and or 49 of the Close Corporations Act,[1] and for some ancillary relief related to it. There is also a counter-application to sell the immovable property owned by the second respondent and ancillary relief. The counter-application is unopposed.

- [2] After the application was launched and the answering affidavit and counter application were delivered, the applicant did not file a replying affidavit, practice note, or heads of argument. The first respondent obtained a court order on 4 October 2023 to compel the applicant to deliver a practice note, heads of argument, chronology and lists of authorities as per the practice manual, which she failed to do. She also did not take steps to enrol the matter, prompting the first respondent to do so. She also did not take steps to withdraw the matter. The latter failure has an implication for the cost order sought and granted.
- [3] The practice note of the first respondent indicated that he persists with the counter application and sought the main application

to be dismissed, raising various points “in limine”. On the day of the hearing, Mr Boden indicated they no longer seek relief in terms of the count application and that they merely seek for the application to be dismissed, with costs, on scale C, since the first respondent had to incur various costs.

- [4] In terms of 9.8.2.13 of the Practice Manual of this Division is clear that:

Unless condonation is granted on good cause shown by way of written application, failure on the part of the applicant to deliver heads of argument and/or a practice note will result in the matter being struck from the roll with an appropriate order as to costs; and failure on the part of the respondent to deliver such documents will result in the Court making such order as it deems fit, including an appropriate order as to costs. The failure to timeously serve and file heads of argument shall not constitute a ground for postponement of an application.

- [5] The applicant thus failed to comply with the practice directives of the court. The matter will thus be struck from the roll, with the appropriate cost order. I am not convinced that the importance, value or complexity of the matter warrants a scale more than the default “A” scale.

Order

- [28] The following order is made:

1. The matter is struck from the roll for failure of the applicant to abide by the Rules of court and failure to comply with the practice manual.
2. The applicant is to pay the costs of the application on scale A.

WJ du Plessis

Acting Judge of the High Court

For the Applicants:

CE Boden instructed by JJS Manton Attorneys

For the Respondents:

Grundlingh & Associates Attorneys

[1] 69 of 1964.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2024/854.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/bergmann-v-bergmann-and-others-unknown-topic-agpjhc-2024>

Prepared on 9 October 2026 · Esheria