



**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.

¹ 69 of 1964.

[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