

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

CASE NO: 2024-100941

DATE: 3 MARCH 2026

In the matter between:

GIDEON JACOBUS FRANCOIS VAN WYK (Snr) N O	First Applicant
TANJA HOMEWOOD N O	Second Applicant
GIDEON JACOBUS FRANCOIS VAN WYK (Jnr) N O	Third Applicant
ABRAHAM JACOBUS JANSE VAN RENSBURG N O	Fourth Applicant

[The above applicants are cited nomine officio in their Official capacities as the duly appointed trustees for the time being of THE GJF VAN WYK TRUST (IT 1386/10T)]

and

ANÉL LATEGAN N O	First Respondent
R JANSE VAN RENSBURG N O	Second Respondent
NJ GROBLER N O	Third Respondent

[The above respondents are cited nomine officio in their Official capacities as the duly appointed trustees for the time being of THE SOPHIA HELENA WISDOM TRUST (IT 3073/10T)]

Coram: Adams J

Heard: 24 February 2026

Delivered: 3 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 9:30 on 3 March 2026.

Neutral Citation: *Van Wyk (Snr) NO and Others v Lategan NO and Others* (2024-100941) [2026] ZAGPJHC --- (3 March 2026)

Summary: *Actio communi dividundo* – termination of joint ownership in a commercial property – parties *ad idem* that the joint ownership in the property should be terminated – however, they could not agree on the just and equitable mechanism by which such termination should be effected – that is the crisp issue for consideration in this matter – the respondents wanted to acquire the applicants' half share at a properly determined market value – they, therefore, proposed a termination mechanism involving valuation, accounting for expenses incurred by the parties and set-off of loan accounts as between the co-owners – the applicants proposed the appointment of a receiver and liquidator – and the sale at a public action of the whole property –

The basic notion underlying the *actio communi dividundo* is that no co-owner is normally obliged to remain such against his will – the Court has a wide equitable discretion in making a division of the joint property – regard should be had to *inter alia* the particular circumstances, what is most to the advantage of all the co-owners and what they prefer –

The Court accordingly fashioned an order that is just and equitable in the circumstances, having regard to the particular facts of this case.

ORDER

- (1) It is confirmed that the joint ownership of the GJF Van Wyk Trust (IT 1386/10T), represented by the first, second, third and fourth applicants, and the Sophia Helena Wisdom Trust (IT 3073/10T), represented by the first, second and third respondents, in Erf 3484, Brakpan Township, Registration Division IR, City of Ekurhuleni, Gauteng, held by them jointly under Deed of Transfer number: T9728/2011, situate at 99 Hoy Street (100 Jones Avenue), Brakpan, Ekurhuleni, Gauteng ('the property'), is terminated in terms of the *actio communi dividundo*.
- (2) The Sophia Helena Wisdom Trust shall purchase from the GJF Van Wyk Trust its undivided half share in the property ('the VWT Share') at a properly determined fair and equitable market value of the VWT Share.
- (3) The property shall be valued by an independent valuer, to be appointed by agreement between the parties,
- (4) Within ten days from date of this order, the parties shall agree on the identity of the independent valuer to be appointed to attend to the valuation of the property, whom the parties shall within five days of agreement being reached, instruct the independent valuer to perform a valuation in respect of the VWT share in the property.
- (5) Should the parties fail to reach agreement on the identity of an independent valuer within the 10-day-period referred to in paragraph (d) above, then an independent valuer shall independently be appointed for such purpose by the Estate Agency Affairs Board.
- (6) The value of the VWT Share in the property shall equate to 50% of the value of the property as determined by the independent valuer in accordance with paragraph (3) above.
- (7) The Van Wyk Trust shall transfer the VWT Share in the property to the Sophia Helena Wisdom Trust against payment by the Sophia Helena

Wisdom Trust to the Van Wyk Trust of the amount equal to 50% of the value of the property as determined by the independent valuer in accordance with paragraph (3) above.

- (8) The parties shall do all such things, as well as execute and sign all documents, required to ensure the transfer of the VWT Share to the Sophia Helena Wisdom Trust in accordance with this Order. Should any party fail / refuse to do so within five days of being called upon to do so by the other, then the sheriff of the High Court is authorised to do so in their stead.
- (9) Pending the transfer of the VWT half share to the Sophia Helena Wisdom Trust, Chako shall continue to pay the monthly rental of R20 000 to each trust, without prejudice to any claim either trust may have against Chako for escalated rentals, which claims are not affected by this order.
- (10) Each party shall bear her/his/its own costs of this opposed application.

JUDGMENT

Adams J:

[1]. This matter, which came before me as an opposed application on Tuesday, 24 February 2026, concerns the termination of joint ownership in a commercial property, being Erf 3484, Brakpan Township, Registration Division IR, City of Ekurhuleni, Gauteng, held under Deed of Transfer number: T9728/2011, situate at 99 Hoy Street (100 Jones Avenue), Brakpan, Ekurhuleni, Gauteng ('the property'). The applicants, acting in their capacities as trustees of the GJF Van Wyk Trust ('the VW Trust'), and the respondents, acting as trustees of the Sophia Helena Wisdom Trust ('the Sophia Trust'), are co-owners of the property, each holding an undivided half share.

[2]. The parties are *ad idem* that the joint ownership in the property should be terminated. The crisp issue for determination is the just and equitable mechanism

by which such termination should be effected. The VW Trust seeks the appointment of a receiver and liquidator with powers to sell the property on the open market and to collect outstanding debts, including arrear rentals allegedly owed by the tenant, Chako Panelbeaters (Pty) Ltd ('Chako'). The Sophia Trust, whilst agreeing to the termination, proposes instead that it purchase the VW Trust's undivided half share at a market-related value, with adjustments to account for expenses incurred in relation to the Property.

[3]. The issues in the matter are to be decided against the factual backdrop, the facts in the matter being as set out in the paragraphs which follow.

[4]. The property was previously owned in undivided equal shares by Mr GJF van Wyk Snr and his erstwhile spouse, the late Ms SH van Wyk (née Pretorius). Upon their divorce in November 2007, a settlement agreement provided that each party would retain their undivided half share. During 2010, each spouse settled a trust – the VW Trust and the Sophia Trust respectively – and transferred their half shares therein. The Property has since been owned jointly by the two trusts.

[5]. On 5 November 2014, the two trusts concluded a written notarial lease agreement with Chako, a panel beating business. The lease was concluded for a period of twenty years, expiring on 31 October 2034. The material terms of the lease included: (a) Monthly rental of R40 000, payable in equal shares of R20 000 to each trust; (b) Annual escalation of 6% or in accordance with inflation, whichever is higher; (c) Obligations on Chako to maintain the property, pay all rates and taxes, utilities and insurance; (d) Any improvements effected by Chako would become the property of the trusts without any obligation to reimburse Chako; and (e) Any amendments to the lease would only be binding if reduced to writing and signed by all parties.

[6]. The foregoing bears emphasising and to that end I elaborate on the important provisions of the lease as follows

[7]. Chako was entitled to have improvements done on the property, at its own cost, and only after written approval was obtained from the trusts. Any such improvements would become the property of the trusts (as owners), and the trusts shall have no obligation to reimburse Chako for any such improvements. Chako was required to maintain all improvements on the property in a good condition, at its own expense, and same should be maintained in the same condition it was at the time that Chako took occupation of the property. Additionally, Chako would be liable for payment of the insurance in respect of the property, as well as insurance in respect of all equipment and goods held by Chako on the property.

[8]. Importantly, Chako was to be liable for the payment of all taxes and imposts levied on the property, for the duration of the lease agreement and it accepted liability for payment, directly to the local authority, for connection of electricity, supply of electricity, water, sanitary and any other services rendered to the property by the local authority.

[9]. The lease also provided that Chako would be liable and responsible to maintain all buildings, additions and accessories on the property, in the same good order and condition as it was received by Chako at the date of occupation, with the trusts liable for the repair of any structural defects which may transpire during the period of the lease agreement.

[10]. The importance of these provisions of the lease agreement between the Trusts and Chako lies therein that, in the absence of either of the two Trusts having any obligations whatsoever in relation to the property and its upkeep, the two trusts cannot, as a matter of common sense, have incurred claims against one another. Moreover, on the evidence before me, it is abundantly clear that neither of the Trusts incurred any expenses in relation to their co-ownership of the property. On the contrary, all the parties in this application seem to accept that such expenses were in fact incurred by Chako.

[11]. From the inception of the lease, Chako paid only the base rental amount of R20 000 per month to each trust and did not pay the escalated amounts

provided for in the lease. Neither trust demanded payment of the escalated rentals until late 2023, after the Van Wyk faction had exited Chako. During October 2023, Mr van Wyk Jnr resigned as a director of Chako and transferred his shareholding to Ms Lategan, who is now the managing director and a 49% shareholder of Chako. The Van Wyk faction thus severed its ties with the business.

[12]. On 26 July 2024, the Sophia Trust's attorneys addressed a letter to the VW Trust's attorneys, recording that the Sophia Trust accepted that the co-ownership in the property should be terminated and the Sophia Trust signalled its intention to acquire the VW Trust's half share at a properly determined market value. The Sophia Trust also proposed a termination mechanism involving valuation, accounting for expenses incurred by the parties and set-off of loan accounts as between the co-owners.

[13]. The VW Trust did not respond to this proposal. Instead, on 18 July 2024, the VW Trust had already set out its own proposal for termination, which entailed the appointment of a receiver and liquidator. When the Sophia Trust rejected that proposal, the VWT launched the present application.

[14]. The principles governing the termination of joint ownership are well established. In *Robson v Theron*¹, the Appellate Division held as follows: -
 'The basic notion underlying the *actio communi dividundo* is that no co-owner is normally obliged to remain such against his will ... The Court has a wide equitable discretion in making a division of the joint property, having regard, *inter alia*, to the particular circumstances, what is most to the advantage of all the co-owners and what they prefer.'

[15]. The Court also held that where it is impossible, impracticable or inequitable to make a physical division of the joint property, the court in exercising its equitable discretion may award the joint property to one of the co-owners

¹ *Robson v Theron* 1978 (1) SA 841 (A) at 855A-F.

provided that he compensates the others or cause the joint property to be put up to auction and the proceeds divided among the co-owners.

[16]. In *Sonnekus v Sonnekus*², this Court reaffirmed these principles and added that the court's wide discretion includes the power to appoint a receiver and liquidator with appropriate powers to give effect to the termination of co-ownership. Importantly, the court emphasised that any order granted must be clear, exact compliance, and be capable of being enforced.

[17]. In *Sonnekus*, the court varied a divorce order that had terminated co-ownership but failed to provide a clear mechanism for implementation. The court substituted it with a detailed order providing for the appointment of a liquidator with specified powers, including valuation, sale of the property, and distribution of proceeds after accounting for contributions and benefits.

[18]. The present matter similarly requires the court to exercise its wide equitable discretion to fashion an order that is just and equitable in the circumstances, having regard to the particular facts of this case.

[19]. The VW Trust contends that the appointment of a receiver and liquidator is necessary to ensure a transparent process and to collect arrear rentals allegedly owed by Chako. It argues that the Sophia Trust's proposal improperly seeks to impose liability on the VW Trust for expenses that were, in terms of the lease, the responsibility of Chako. Moreover, the VW Trust points to the material conflict of interest facing Ms Lategan, who is both a trustee of the Sophia Trust and the managing director and major shareholder of Chako.

[20]. The Sophia Trust, in turn, argues that its proposed mechanism is simpler, more cost-effective, and respects its contractual right of first refusal contained in the agreement dated 10 November 2014. It contends that the VW Trust's mechanism would result in an unconstitutional arbitrary deprivation of its property

² *Sonnekus v Sonnekus* 2022 JDR 2806 (GJ).

by compelling it to sell its half share against its will, in circumstances where it is willing and able to purchase the VW Trust's share at a market-related value.

[21]. I am persuaded that, all things considered, the mechanism proposed by the Sophia Trust is the more just and equitable one in the circumstances of the matter. I do, however, not agree with its proposal that there should be a complicated and an elaborate statement and abatement of an account relating to supposed amounts due by and in favour of the co-owners as a result of *inter alia* debts incurred by one or both of the Trusts in relation to the property. On the evidence before me, there is no need for such, especially if regard is had to the provisions of the lease agreement concluded with Chako, which, in essence, was liable for any and all expenses in relation to the property. Moreover, Chako is not entitled to be compensated for any improvements effected by them to the property.

[22]. The simple point is that an order, as proposed by the Sophia Trust, to set-off loan accounts between the two Trusts would serve no purpose – none whatsoever. There is no evidence of any facts in support of such an order. The VW Trust has not incurred any expenses in relation to the property, nor has the Sophia Trust. The legal obligation or liability for these expenses befell Chako as provided for in the lease agreement.

[23]. I am otherwise inclined, in the exercise of my discretion, to go along with the Sophia Trust proposal, because it is common cause that the VW Trust wishes to sell its half share. The identity of the purchaser ought to be irrelevant to the VW Trust provided it receives fair market value for its share. The Sophia Trust has tendered to purchase the VW Trust's share at a properly determined market value. There is no suggestion that the Sophia Trust is unable to pay such value. The VW Trust's insistence on a sale to a third party, in the face of this tender, is difficult to comprehend on any rational basis.

[24]. Second, the Sophia Trust's proposal appropriately separates the disputes between the co-owners from the disputes between the trusts and Chako. The

claim for arrear rentals is a claim by the trusts, as lessors, against Chako as lessee. It is not a claim by one trust against the other. The VW Trust is, in my view, not precluded from pursuing its claim against Chako independently, whether before or after the termination of co-ownership. The suggestion that such claim must be collected by a receiver and liquidator as part of the termination process is misplaced.

[25]. I reiterate, however, that the accounting mechanism proposed by the Sophia Trust – recording expenses incurred by the parties as loan accounts and setting them off – is totally unnecessary and is at odds with the facts in the matter. I have already alluded to the fact that, on the evidence before me, there are no debts due by or owing to any one of the Trusts in relation to their joint ownership of the property, excepting off course only the claims relating to the annual increases to the rental payable by Chako, which were never implemented. Those claims, as I have also already indicated, can and should be pursued by the Trusts on their own and separate from the termination of the joint ownership.

[26]. The simple point is that it cannot be said with any conviction that there would be any claims such as expenses for necessary improvements to the property. It is, as contended on behalf of the VW Trust, that many, if not all, of these expenses were contractually the responsibility of Chako.

[27]. I am also of the view that the appointment of a receiver and liquidator in the manner proposed by the VW Trust is disproportionate to what is required. This is not a liquidation or sequestration. The issues are relatively straightforward: the property must be valued and the VW Trust's share must be purchased at a fair value. These tasks can be accomplished by the parties themselves, with the assistance of independent valuers and, if necessary, the court. The appointment of a receiver would entail unnecessary expense and complexity.

[28]. Most importantly, and this requires particular emphasis, the Sophia Trust's proposal does not compel it to sell its share against its will. The VW Trust's proposal would do exactly that. While a co-owner cannot ordinarily be compelled

to remain a co-owner against his will, it does not follow that a co-owner can compel another co-owner to sell his share against his will, particularly where the latter is willing to purchase the former's share at fair value. To order otherwise would, as the Sophia Trust contends, constitute an arbitrary deprivation of property contrary to section 25(1) of the Constitution.

[29]. The Constitutional Court in *First National Bank of SA Ltd t/a WesBank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a WesBank v Minister of Finance*³ held that a deprivation of property is arbitrary if the law does not provide sufficient reason for the deprivation or is procedurally unfair. In evaluating whether there is sufficient reason, regard must be had to the relationship between the purpose of the deprivation and the person whose property is affected, the nature of the property, and the extent of the deprivation.

[30]. In this case, the purpose of the termination mechanism is to give effect to the parties' agreement that co-ownership should end. That purpose can be fully achieved by the Sophia Trust's proposal, which involves a willing sale by the VW Trust and a willing retention and acquisition by the Sophia Trust. There is no need to compel the Sophia Trust to sell its share to achieve that purpose. The VW Trust's proposal, which would compel such a sale, therefore lacks sufficient reason and would be arbitrary.

[31]. I am not persuaded by the VW Trust's argument that there is no merit in the Sophia Trust's reliance on the right of first refusal. The agreement of 10 November 2014 is clear: neither trust would be entitled to dispose of its half share without first offering it to the other trust. The Sophia Trust has signalled its intention to acquire the VW Trust's share. While the formal requirements of a written offer may not have been strictly complied with, the substantive intention

³ *First National Bank of SA Ltd t/a WesBank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a WesBank v Minister of Finance* 2002 (4) SA 768 (CC).

is clear. The court, in exercising its equitable discretion, should have regard to the substance rather than form.

[32]. For all of these reasons, an order should be granted as proposed by the respondents, with the modification as discussed *supra*.

Costs

[33]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*⁴.

[34]. *In casu*, the applicants have had a measure of success in that they will get fair value for their half share in the property, whilst retaining the right to pursue a claim for arear rental against a third party. They are furthermore under no obligation to engage in a statement and debatement of accounts in circumstances where there are no debts due *inter partes* the Trusts. The respondents, on the other hand, are not compelled to dispose against their will of their half share in the property.

[35]. Both parties have been partially successful. There should therefore be no order as to costs and each party should bear his/her/its own costs.

Order

[36]. In the result, I make the following order: -

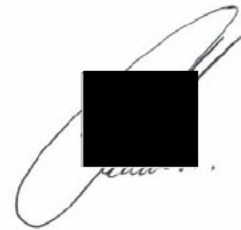
- (1) It is confirmed that the joint ownership of the GJF Van Wyk Trust (IT 1386/10T), represented by the first, second, third and fourth applicants, and the Sophia Helena Wisdom Trust (IT 3073/10T), represented by the first, second and third respondents, in Erf 3484, Brakpan Township, Registration Division IR, City of Ekurhuleni, Gauteng, held by them jointly

⁴ *Myers v Abramson*, 1951(3) SA 438 (C) at 455

under Deed of Transfer number: T9728/2011, situate at 99 Hoy Street (100 Jones Avenue), Brakpan, Ekurhuleni, Gauteng ('the property'), is terminated in terms of the *actio communi dividundo*.

- (2) The Sophia Helena Wisdom Trust shall purchase from the GJF Van Wyk Trust its undivided half share in the property ('the VWT Share') at a properly determined fair and equitable market value of the VWT Share.
- (3) The property shall be valued by an independent valuer, to be appointed by agreement between the parties,
- (4) Within ten days from date of this order, the parties shall agree on the identity of the independent valuer to be appointed to attend to the valuation of the property, whom the parties shall within five days of agreement being reached, instruct the independent valuer to perform a valuation in respect of the VWT share in the property.
- (5) Should the parties fail to reach agreement on the identity of an independent valuer within the 10-day-period referred to in paragraph (d) above, then an independent valuer shall independently be appointed for such purpose by the Estate Agency Affairs Board.
- (6) The value of the VWT Share in the property shall equate to 50% of the value of the property as determined by the independent valuer in accordance with paragraph (3) above.
- (7) The Van Wyk Trust shall transfer the VWT Share in the property to the Sophia Helena Wisdom Trust against payment by the Sophia Helena Wisdom Trust to the Van Wyk Trust of the amount equal to 50% of the value of the property as determined by the independent valuer in accordance with paragraph (3) above.
- (8) The parties shall do all such things, as well as execute and sign all documents, required to ensure the transfer of the VWT Share to the Sophia Helena Wisdom Trust in accordance with this Order. Should any party fail / refuse to do so within five days of being called upon to do so by the other, then the sheriff of the High Court is authorised to do so in their stead.

- (9) Pending the transfer of the VWT half share to the Sophia Helena Wisdom Trust, Chako shall continue to pay the monthly rental of R20 000 to each trust, without prejudice to any claim either trust may have against Chako for escalated rentals, which claims are not affected by this order.
- (10) Each party shall bear her/his/its own costs of this opposed application.

A handwritten signature in black ink, appearing to read 'L R Adams', is written over a solid black rectangular redaction box.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	24 February 2026
JUDGMENT DATE:	3 March 2026
FOR THE APPLICANTS:	W J Bezuidenhout
INSTRUCTED BY:	Van Wyk Van Heerden Attorneys Inc, Paarl, Western Cape
FOR THE RESPONDENTS:	P Lourens
INSTRUCTED BY:	Werksmans Attorneys Inc, Sandton