IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case No: **2025-060824**

In the matter between:

LANA JAYE JACKSON Applicant

and

RAY ERNEST PETERSEN First Respondent

THE REGISTRAR OF DEEDS Second Respondent

STANDARD BANK Third Defendant

Neutral citation: *Jackson v Petersen & Others* Case No 2925-060824 [2026] ZAWCHC (27-05-2026)

Coram : **MAPOMA, AJ**

Heard : 25 May 2026

Judgment : 27 May 2026

Summary : *Termination of joint ownership of immovable property – actio communi dividundo – requirements thereof – when can be invocable - free and bound ownership - factors to consider – just and equitable division of the property – party's purchase of the other's share on the property*

ORDER

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1. The joint ownership of the applicant and the first respondent in the immovable property known as Erf 3[...], Kraaifontein, situated at 3[...] M[...] Street, Zonnendal, Kraaifontein, Western Cape held by the applicant and the first respondent in terms of the Deed of Transfer Number T29889/1 ("the property"), is hereby terminated.

2. The applicant shall retain the property as her sole and absolute property, and take transfer thereof, into her name subject to the applicant making payment of a market related price to the first respondent for his half-share in the property.

3. The applicant shall be liable for payment of all the transfer costs relating to the transfer of the property into her name.

4. Should the applicant be unable to obtain the necessary financing to take transfer of the first respondent's share in the property and transfer same into her name within 3 (three) months from this Order, the property shall be sold in the open market, and the proceeds shall be divided between the parties in equal shares.

5. The first respondent shall sign all the necessary documents, and do all things necessary, to give effect to the sale and/or transfer of the property to the applicant within five (5) days of being requested to do so.

6. In the event that the first respondent fails to comply with paragraph 5 of the Order, the Sheriff or their lawful deputy is authorised and directed to sign on his behalf.

7. The first respondent shall pay costs of these proceedings, including counsel's costs at scale A of the High Court.

JUDGMENT

MAPOMA, AJ

[1] This is an opposed application founded upon the concept of *actio communi dividundo,* in terms of which the applicant seeks termination of the joint ownership in the immovable property that is co-owned by her and the first respondent. In pursuit of this relief sought, the applicant also seeks an order permitting her to retain sole of ownership property against the payment to the first respondent of his half share the market value of the property, alternatively, that the property be sold on an open market and the net proceeds divided equally between the parties.

[2] Both parties are registered owners of the immovable property known as Erf 3[...], Kraaifontein, situated at 3[...] M[...] Street, Zonnendal, Kraaifontein,

Western Cape held by the applicant and the first respondent in terms of the Deed of Transfer Number T29889/1 (the property). The Registrar of Deeds and Standard Bank, who are the property transfer registering authority and the financial institution with a registered mortgage bond in its favour over the property respectively, are cited in these proceedings purely as parties who have interests in the matter as such. Incidentally, none of these parties opposes this application.

[3] The brief background facts to the dispute are that during or about 14 December 2010, the applicant and the first respondent, who were romantically involved at the time, purchased the property jointly. Subsequent to this purchase, the property was duly registered in their names as co-owners with equal shares. The purchase was funded through the home loan in the amount of R711 000 (*Seven Hundred and Eleven Thousand Rand*), extended by Standard Bank.

[4] The parties purchased the property with the intention that it would serve as their family home and stayed together in the property. The respondent paid the monthly instalments for the bond, the municipal rates and levies. The applicant took care of the general maintenance of the property that included installation of the fireplace, furnishing, their family medical aid, groceries and general living expenses.

[5] Based on the comparative market analysis conducted by the property by the professional property practitioners during June 2024, the property was valuated at a market price of approximately R2 100 000.00 (*Two Million One Hundred Rands*). As at 2 March 2025, the outstanding balance in the home loan was

R35 927.55 (*Thirty-Five Thousand Nine Hundred and Twenty-Seven Rand Fifty-Five Cents*).

[6] There is one minor child born in 2012 of the romantic relationship between the parties. The romantic relationship, which was foundational to the acquisition and co- ownership of the property, was terminated by the applicant on 1 July 2023 when she moved out of the property with the minor child whom she maintains single handedly. The first respondent continues to reside in the property, but the applicant is servicing the bond.

[7] The termination of the romantic relationship, according to the applicant, was triggered by her discovery that, unbeknown to her, the first respondent had not been employed for the past seven years and had fallen in arrears with his financial obligations, all of which he failed to disclose to her. This led to, among other things, the suspension of the minor child from school due to school fees that were due and owing.

[8] On 1 October 2024, the applicant through her legal representatives, addressed a letter to the first respondent where she tabled a formal request that the parties' joint ownership of the property be terminated. The applicant proposed that the first respondent either purchase her half-share in the property at a market related value, alternatively that the property be sold and the net proceeds divided equally between the parties. The applicant recorded that the parties' romantic relationship had broken down and that the continued ownership of the property was no longer viable, thence she invited the first respondent to engage constructively with the proposal in order to avoid unnecessary litigation.

[9] On 17 October 2024, the first respondent responded to the applicant's proposal by email where he was agreeable to purchase the applicant's portion but in the unspecified future of four to six months. The applicant did not agree but proposed a settlement agreement for termination of co-ownership. An exchange of email correspondence between the parties resulted in them coming to a conclusion to divide the property.

[10] On 7 November 2024, the applicant and first respondent concluded the settlement agreement in terms of which they agreed to the termination of their joint ownership of the property. In the agreement the parties also agreed, *inter alia,* that they would obtain a market valuation of the property and that both parties would be entitled to obtain financing for the purchase of the other's 50% share in the property; that the party who first obtains the finance of the mortgage bond would be the party entitled to purchase the other's share, and would be liable for payment of the transfer costs relating to the transfer of registration of the property in his or her sole name.

[11] In January 2025, the applicant obtained a pre-approved bond for an amount of R1,050,000 (*One Million and Fifty Thousand Rand*) for the purchase of the 50% of the value of the property. On 30 January 2025, the applicant presented the offer to purchase to the first respondent but received no response from the first respondent. Instead, the first respondent sought some extensions of time to be enabled to purchase the applicant's share contrary to the terms of the settlement agreement.

[12] Frustrated by the stance taken by the first respondent, on 13 May 2025, the applicant instituted these proceedings and set the matter down for hearing on 5 June 2025. On the date of hearing of this matter, the first respondent appeared in

court with a legal representative and indicated that he was opposing the application. However, he did not file any opposing papers notwithstanding the fact that he was served personally with the full set of the application papers on 19 May 2025 for the matter that was set down for 5 June 2025.

[13] On 5 June 2025, the application was postponed to 1 August 2025, to enable the parties to reach possible settlement of the matter, and the first respondent was duly served with the notice of set down to that effect. This postponement also presented the first respondent with further opportunity to file his opposing papers in the event of the settlement failing, so that he could be ready to effectively oppose the matter.

[14] On 1 August 2025, the first respondent attended court in person, having failed to file any opposing papers. The matter was postponed to the semi-urgent roll to 25 May 2026. In terms of the court order of 1 August 2025, the first respondent was required to file his answering affidavit, if any, on or before 20 November 2025, and the applicant would file her replying affidavit by 20 February 2026. No answering affidavit was filed by the first respondent.

[15] On 25 May 2026, the date of the hearing, the first respondent appeared in person. He informed the Court that he was opposing the application, and that in doing so, he would argue the matter himself. During the hearing, the first respondent argued that he needed to be afforded opportunity to buy the applicant's half share of the property once he obtains finance. This is the basis of the first respondent's opposition of the application. He further contended that when he was able to, he serviced the bond repayment and as such, paid a substantial contribution thereto.

[16] The respondent confirmed that he concluded the settlement agreement referred to above, and that he understood the terms of the settlement agreement, yet he persisted that he wanted to buy out the applicant. He confirmed that he had no fixed employment and had no pre-approved finance to buy the applicant's half share of the property.

Applicable Legal Principles

[17] The *action communi dividundo* is a common law legal concept whose genesis is traceable to Roman-Dutch law. It is a legal remedy that is invoked by a co-owner of the property to terminate its co-ownership and seek division of a jointly held property. In a seminal judgment that confirmed the application of this principle in the South African law, the Supreme Court of Appeal (SCA) in *Robson v Theron*,[1] stated the underlying principle that no one is forced to remain a co-owner forever.

[18] Thus, where there is refusal by a co-owner to divide the property, any joint owner can approach the court and claim the division of the joint ownership of the property.[2]

[19] In *Robson*,[3] the SCA summarized the applicable principles as follows:

1) No co-owner is normally obliged to remain a co-owner against his will;
2) This action is available to those who own specific tangible things *(res corporals)* in co-ownership, irrespective of whether the co-owners are partners or not, to claim division of the joint property;
3) Hence this action may be brought by a co-owner for the division of joint property where the co-owners cannot agree to the method of

[1] 1978(1) SA 841(A)
[2] TMN v YN (2025/232707) [2026] ZAGPJHC 256 (6 March 2026) at 32
[3] Ibid

division. Since a partnership asset is joint property which is held by the partners in co-ownership, it follows that a partner may as a co-owner bring this action for the division of a partnership asset where the co-partners cannot agree to the method of its division. …;

4) It is for purposes of this action immaterial whether the co-owners possess the joint property jointly or neither of them possess it or only one of them is in possession thereof;
5) This action may also be used to claim as ancillary relief payment of *praestationes personales* relating to profits enjoyed or expenses incurred in connection with the joint property;
6) A court has a wide equitable discretion in making a division of joint property. This wide equitable discretion is substantially identical to the similar discretion which a court has in respect of the mode of distribution of partnership assets among partners as described by Pothier.'

[20] In *Abrahams v Edross*,[4] this court confirmed that the court's discretion in applying *actio communi dividundo* is intentionally wide, as the court may adopt any method of division that is fair and equitable in resolving the deadlock between the co-owners. This approach re-enforced the principle that was pronounced in *Robson,*[5] where the court stated that consideration of fairness and equity are essential in exploring the wide judicial discretion to determine a just and practical method of division in the given circumstances.[6]

Issues

[4] 2024 JDR 5147 (WCC)
[5] Ibid, 1978(1) SA 841(A)
[6] Ibid, at 858F-G

[21] The central issue for determination is whether the applicant has made out a case for termination of the joint ownership in terms of the *actio communi dividundo*. If the answer is in the affirmative, the next issue to determine what is the just and equitable mechanism for the division of the property.

Evaluation

[22] It is common cause that parties are joint owners of the property, and that they acquired the property when they were in a romantic relationship and used the property as their common home.

[23] It is apposite to consider the type of co-ownership *in casu,* namely whether it is free or bound co-ownership. This is so because the law distinguishes the two types of co-ownership. This distinction is relevant in determining whether *actio communi dividundo* can be invoked to terminate the co-ownership in a particular case. While this point has not been raised by the parties, I am mindful that the first respondent is not legally represented, hence in my view, this issue requires consideration and pronouncement upon.

[24] What makes this distinction a relevant consideration by the Court is that where there is an underlying legal relationship connecting the co-ownership by the parties, *actio communi dividundo* cannot be invoked to terminate the co-ownership of the property while the underlying relationship is in place. This is because the co-ownership by the parties is tied to the underlying legal relationship.[7]

[25] If, however, there is no such underlying legal relationship founding the co-ownership, the latter is a free co-ownership, and the *actio communi dividundo* is

[7] PN v AE 2024 JDR 3989 (WCC)

invocable. On the facts before Court, the only relationship that existed between the parties was a romantic relationship, which has terminated. The question is whether the relationship in question ties the co-ownership of the parties to the property.

[26] In my view, while the parties in this case acquired the property as 'partners' and cohabited in it for some time, unlike marriage in community of property, or universal partnership, this type of relationship does not create any underlying legal relationship that ties the parties' co-ownership of the property. Thus, the parties are free to unravel the co-ownership independent of the romantic relationship, which in any event, has terminated.

[27] On the facts, what was a romantic relationship between the parties, leading to the co-acquisition of the property, came to an end. The undisputed evidence is that, now that the relationship between the parties is extinct, and they do not enjoy the existence of the property together, the continued co-ownership is unworkable. Further, the first respondent cannot afford the bond repayment in any event.

[28] Thus, on proper consideration of the matter in its entirety, I am satisfied that the applicant has made out a proper case for the dissolution of the joint ownership of the property in term of the *actio communi dividundo*.

[29] The next question for consideration is what the just and equitable mechanism is to divide the property. The facts are that upon the demise of the relationship, the applicant left the property and stays somewhere with the minor child born of the relationship between the parties. The applicant is employed

and services the bond in respect of the property. She has obtained the pre-approval for a bond to purchase the first respondent's half share on the property.

[30] The first respondent has no fixed employment but stays in the property. He concluded a settlement agreement with the applicant wherein he agreed, *inter alia*, that the first party to obtain finance would be the one to purchase the other's half share in the property. Despite insisting on being afforded time to purchase the applicant's half-share contrary to the settlement agreement, the first respondent did not obtain any finance to purchase.

[31] In conclusion, having considered all the relevant facts, I am of the view that, being the mother and custodian of the minor child born of the relationship between the parties, and being the party paying the bond, it is fair, just and equitable that the applicant be the suitable party to retain ownership of the property and to purchase half-share of the notional purchase price thereof.

Costs

[32] It is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. This is more so in the present case, where the opposition had no legal basis. The applicant has succeeded in her claim and is therefore entitled to an award of costs on a party and party scale.

[33] In terms of Rule 67A of the Uniform Rules of Court, Counsel's fees in the context of a party and party costs in the High Court are awarded on Scales A, B, and C as the case may be, depending on a number of factors set out in Rule 67A(3) to be considered when setting out a scale of costs. Such factors include the complexity of the matter, value of the claim, importance of the relief sought and any other relevant factors.

[34] I do not consider the matter as complicated, more so when the parties had agreed that the division had to take place. The narrow point of disagreement was the sentimental resistance by the respondent insisting to be one who purchases the applicant's half share even when the odds are not in his favour. I am of the view that Scale A is appropriate in this case.

Order

[35] In the result, the following order is made:

1. The joint ownership of the applicant and the first respondent in the immovable property known as Erf 3[...], Kraaifontein, situated at 3[...] M[...] Street, Zonnendal, Kraaifontein, Western Cape held by the applicant and the first respondent in terms of the Deed of Transfer Number T29889/1 ("the property"), is hereby terminated.

2. The applicant shall retain the property as her sole and absolute property, and take transfer thereof, into her name subject to the applicant making payment of a market related price to the first respondent for his half-share in the property.

3. The applicant shall be liable for payment of all the transfer costs relating to the transfer of the property into her name.

4. Should the applicant be unable to obtain the necessary financing to take transfer of the first respondent's share in the property and transfer same into her name within 3 (three) months from this Order, the

property shall be sold in the open market, and the proceeds shall be divided between the parties in equal shares.

5. The first respondent shall sign all the necessary documents, and do all things necessary, to give effect to the sale and/or transfer of the property to the applicant within five (5) days of being requested to do so.

6 In the event that the first respondent fails to comply with paragraph 5 of the Order, the Sheriff or their lawful deputy is authorised and directed to sign on his behalf.

7. The first respondent shall pay costs of these proceedings, including counsel's costs at scale A of the High Court.

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ZL MAPOMA

ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff	:	Adv R Potgieter
Instructed by	:	Botma & Associates, Cape Town
Counsel for the Respondents	:	In person
Instructed by	:	N/A