REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-236483

(1) REPORTABLE: **no**
(2) OF INTEREST TO OTHER JUDGES: no
(3) REVISED: yes

[redacted]

20 May 2026 **GB ROME**

In the matter between:

KARISHA MUDLIAR	First Applicant
KARISHA MUDLIAR N.O.	Second Applicant
and	
FINE ASSET INVESTMENTS 447 CC	First Respondent
Registration Number: **2007/086903/23**	
MANORAMMA MUDLIAR	Second Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be on 120 MAY 2026

ROME AJ:

Introduction

[1]. This is an application for the final winding-up of the first respondent on the just and equitable ground. The first applicant seeks that relief in her personal capacity and also in her representative capacity in the estate of the late Prema Kanthan Mudliar.

[2]. The first respondent is Fine Asset Investments 447 CC, a close corporation registered under number 2007/086903/23.

[3]. The papers show that the corporation was used as an investment and property development vehicle and that its assets consist predominantly of immovable property units in the Kariwood scheme. The application is opposed by the second respondent.

[4]. The principal issue is whether the relationship necessary for the continued functioning of the first respondent has broken down to the point where its affairs can no longer properly be administered in the ordinary way.

[5]. The second respondent raises points concerning locus standi, lis alibi pendens, prematurity, and the proposition that winding-up is inappropriate in the case of a solvent close corporation.

[6]. Those points do not answer the case the applicant in substance makes. That case is that, following the death of her father on 31 December 2023, the relationship between herself and the second respondent, her mother, broke down completely; that attempts to convene meetings and resolve disputes failed; that the second

respondent refused to cooperate in the management of the corporation and in relation to property sales; and that the result is deadlock in relation to its affairs.

Legal framework

[7]. The statutory source of the court's power is the winding-up jurisdiction applicable to close corporations. Section 68(d) of the Close Corporations Act 69 of 1984 provides that a corporation may be wound up by a court if it appears, on application to the court, that it is just and equitable that the corporation be wound up. Section 66 of that Act applies the winding-up provisions of the Companies Act, with necessary modifications, to the liquidation of close corporations.

[8]. In relation to solvent companies, section 81(1)(c)(ii) and section 81(1)(d)(iii) of the Companies Act 71 of 2008 recognise that a court may wind up a solvent company where it is otherwise just and equitable to do so. Although this matter concerns a close corporation, the principles developed in relation to the just and equitable winding-up of companies are directly relevant.

[9]. In Thunder Cats Investments 92 (Pty) Ltd and Another v Nkonjane Economic Prospecting & Investment (Pty) Ltd and Others[i], Malan JA explained that the phrase "otherwise just and equitable" in section 81(1)(d)(iii) is wide and is not confined to the specific statutory examples of deadlock[ii].

[10]. The traditional categories remain relevant, including loss of substratum, illegality or fraud, oppression, deadlock, and cases analogous to the dissolution of a partnership.

[11]. Of particular importance is the category sometimes described as the deadlock principle or the domestic company / quasi-partnership principle. In Thunder Cats[1] the Supreme Court of Appeal explained that this principle applies to small domestic companies where, because of an express, tacit or implied arrangement, a personal relationship of confidence and trust exists between the members in relation to the company's affairs. Where that relationship fails, winding-up may be just and equitable.

[12]. In Apco Africa (Pty) Ltd and Another v Apco Worldwide Inc[iii], Ponnan JA reiterated that "the just and equitable provision is not to be limited to cases where the substratum of the company has disappeared or where there has been a complete deadlock"[iv]. the just and equitable ground is not limited to cases of complete deadlock or disappearance of substratum. Where a company is formed or continued on the basis of a personal relationship involving mutual confidence, an understanding that members will participate in the conduct of the business, and restrictions on transfer of interests, equitable considerations may justify winding-up.

[13]. In Apco Africa[v] Ponnan JA noted that actual deadlock is not always essential. What matters is whether it has become impossible for the participants to place in one another the confidence that each is entitled to expect in the conduct of the enterprise.

[14]. A party's fault in contributing to the breakdown is relevant but not necessarily

---

1

decisive. In Thunder Cats Malan JA reiterated and confirmed the principle that a lack of clean hands is not an absolute bar to seeking winding up under the aegis of the just and equitiable ground[2]. The Court must assess the respective contributions to the breakdown, but even fault on the part of the applicant will not necessarily prevent a winding-up order where the effect of the breakdown is paralysis and where a liquidator is required to place the entity's affairs under competent independent control.

[15]. Motion court principles remain relevant. Final relief on motion is determined in accordance with Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd[vi]. However, not every denial gives rise to a real dispute of fact. A dispute must be genuine, material and relevant to the issue the court must decide.

Locus standi

[16]. It is convenient to deal first with standing.

[17]. The challenge to locus standi cannot be sustained.

[18]. The applicant alleges that she has been a member of the corporation since May 2007 and that she holds a 20% member's interest in it. That allegation is expressly admitted in the answering affidavit, at least to the extent of her membership reflected in the CIPC records.

[19]. That is sufficient to clothe her with standing in her personal capacity.

[2] Thunder Cats, supra at paragraph 27

[20]. The papers also record that she alleges she is a creditor of the corporation in the amount of R1,267,232, comprising an outstanding member's loan account and amounts allegedly due under a consultancy agreement, although that indebtedness is disputed

[21]. It is not necessary to resolve that dispute for present purposes. Her standing as member is sufficient.

[22]. The issue concerning her position as executrix, and the challenge to the transfer of the deceased's 40% member's interest, may have relevance in other proceedings. They do not, however, displace her standing in her own right as a 20% member. Nor does the so-called gift issue affect the position. Whatever disputes may exist concerning other interests or their derivation, they do not answer the applicant's reliance on her own admitted 20% interest.

[23]. The point based on locus standi must therefore fail.

Lis alibi pendens and prematurity

[24]. The second respondent also relies on lis alibi pendens and prematurity.This is said to arise from pending KwaZulu-Natal proceedings concerning, amongst other things, the disputed transfer of the deceased's member's interest and the first applicant's position as executrix.

[25]. The defence of lis alibi pendens is a dilatory plea. It does not extinguish a claim. At most, it stays or postpones proceedings where the same dispute is pending elsewhere.

[26]. The requirements are well established. As was stated by Wallis JA in Caesarstone Sdot-Yam Ltd v World of Marble and Granite 2000 CC and Others[vii]

"As its name indicates, a plea of *lis alibi pendens* is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years."

[27]. The difficulty for the second respondent is that those requirements are not met here. The pending KwaZulu-Natal proceedings concern different relief and different issues: the validity of the transfer of the deceased's member's interest and the first applicant's possible removal as executrix. This application concerns whether the first respondent should be wound up because the relationship necessary for its continued functioning has irretrievably broken down and because the close corporation can no longer be administered or operated to the advantage of its members.

[28]. It is important to note that the issue of whether the first applicant remains executrix has no bearing on her personal 20% member's interest. Nor does it answer the central question whether the relationship between the remaining family participants has broken down so completely that the close corporation can no longer function

as the domestic property enterprise it was intended to be.

[29]. Even if the second respondent were ultimately successful in the KwaZulu-Natal proceedings, the first applicant would remain, on the papers before me, a member of the close corporation in her own right. The core impasse would remain: the first applicant and the second respondent are unable to cooperate in relation to the affairs of the close corporation.

[30]. The pending proceedings therefore do not render this application premature. They also do not furnish a basis to stay it.The plea of lis alibi pendens must therefore fail.

Solvency and the "last resort" point

[31]. The papers do show that the corporation is solvent. But that is not a bar to relief on the just and equitable ground. The application is expressly framed under section 81(1)(c) and (d) of the Companies Act 71 of 2008 read with section 67 of the Close Corporations Act 69 of 1984. There is force in the general proposition that winding-up of a solvent entity is a serious remedy and should not be granted lightly. But the proposition only goes so far.

[32]. Where a corporation is effectively rendered dysfunctional by a complete breakdown in the relationship between the relevant members, and where that breakdown causes deadlock in relation to operational decisions, a final winding-up may be the only practical and fair remedy. That is particularly so where the entity is not dormant. The papers show that this corporation is a property development

and investment vehicle requiring decisions to be made concerning the sale and management of units.

Breakdown and deadlock

[33]. It is necessary to identify the matter for what it is. The second respondent's answering affidavit does not dispel the breakdown. On the contrary, its tone and content further demonstrate it. The answering affidavit advances serious allegations against the first applicant, including allegations of fraud, appropriation, exclusion, ulterior motive and misconduct. Those allegations are denied. I do not need to decide whether they are true. Their existence, repetition and intensity demonstrate that the relationship of trust has collapsed.

[34]. The matter is an unfortunate domestic and nuclear family breakdown. On the papers it is not possible reasonably to conclude that the first applicant is the sole cause of the breakdown in her relationship with her mother. The record reveals mistrust, mutual suspicion, failed communication, recourse to attorneys, and multiple proceedings. Whatever the rights and wrongs of particular incidents, the relationship necessary for this family close corporation to function has gone.

[35]. There is no realistic prospect that ordinary business decisions can be made by these members acting together. The second respondent has refused to attend or recognise members' meetings. She has sought to involve non-members in the close corporation's affairs. She has objected to steps taken by the first applicant in respect of taxes, municipal obligations, banking and property transactions. She disputes the first applicant's entitlement to be involved in management at all.

[36]. The first applicant, for her part, seeks to bring the close corporation's affairs to an end through liquidation. The second respondent resists that and contends that the first applicant's conduct has created the impasse. Even if that contention were relevant to fault, it does not answer the objective question whether the close corporation can still operate on the basis of mutual trust and co-operation. It plainly cannot.

[37]. In these circumstances, the case falls squarely within the domestic company or partnership-analogy line of authority described in Apco Africa (Pty) and Thunder Cats. The close corporation was a small family enterprise. It depended on personal confidence. The first applicant and her late father were, on the papers, the operational drivers. The second respondent was a family member and member of the close corporation, but not an active operational participant. After the deceased's death, the fragile personal arrangement collapsed.

[38]. The second respondent submits that the close corporation is solvent, asset-rich and capable of continuing. That submission treats solvency as if it answers the just and equitable enquiry. It does not.

[39]. The close corporation's business is property-related. The evidence shows that its remaining material function is the orderly administration, and the sale and realisation of its property portfolio. It must pay liabilities, attend to rates, taxes and municipal obligations, address tenant issues where they arise, consider and accept or reject offers, sign transfer documents, manage banking and deal with the proceeds.

[40]. The breakdown has caused a practical deadlock in the close corporation's ability to make operational decisions, particularly in relation to sales. The example of the lapsed property offer is material. The applicants say an above-market offer was received, information was furnished, and the second respondent delayed and then rejected the sale without reason. The second respondent disputes the characterisation, but not in a manner that creates a material dispute requiring oral evidence. The real point is that the close corporation cannot transact without co-operation, and co-operation is absent. The fact that the close corporation is not a conventional trading company does not make the deadlock immaterial. A property holding and development entity can be paralysed by an inability to decide whether, when and how to sell properties, how to meet carrying costs, and how to administer assets pending sale. That is precisely the position here.

[41]. The continued existence of the close corporation in these circumstances is not neutral. It risks further legal costs, further carrying costs, further delay, and further erosion of value. It also prolongs the family conflict by preserving a structure that requires co-operation from persons who are no longer capable of co-operating.

The oral submission concerning mediation and prejudice in liquidation

[42]. Counsel for the second respondent emphasised in oral argument that, because of a reduction in value that might be realised if the properties were sold in a liquidation process in a collective way or at broadly the same time, the second respondent would suffer prejudice in the value of her effective interest, and that the matter ought instead to have gone to mediation.

[43]. I am unpersuaded by that submission. In the first place, the mediation point was advanced only in oral argument. There was no suggestion on the papers that the matter ought not to have proceeded to hearing in the absence of mediation

[44]. In the second place, there is no indication on the papers that mediation would have produced a more orderly sale process, or a better realisation of values, in respect of the properties owned by the first respondent. It is important to note that if the respondents' case was that winding-up ought not to be granted on the just and equitable ground because some other process of sale would achieve a better realisation of value, that case ought to have been set out in answer. It was not.

[45]. The difficulty with the submission is deeper than that. The allegation that liquidation is not just and equitable because a different sort of realisation process would achieve greater sale prices is, in itself, an acknowledgement that the breakdown has rendered the ordinary administration of the first respondent untenable.

[46]. Once it is accepted, even implicitly, that the parties can no longer realise the company's assets through the normal processes of internal administration and decision-making, the submission tends to support rather than weaken the conclusion that the relationship necessary for the functioning of the company has broken down beyond repair.

Conclusion

[47]. The applicant has established that there has been an irreconcilable breakdown in the relationship necessary for the continued functioning of the first respondent.

[48]. That breakdown has caused deadlock in relation to operating decisions, including decisions concerning sales.

[49]. In those circumstances, the continued existence of the corporation serves no beneficial purpose. A liquidator can realise the assets, pay liabilities, and distribute the balance in accordance with the members' respective rights.

[50]. It is accordingly just and equitable that the first respondent be finally wound up.

Costs

[51]. The notice of motion seeks a final winding-up order and costs, including costs against the second respondent if she opposes Given the nature of the opposition and the conclusion reached, costs should follow the result.

Order

The following order is made:

1. The first respondent, Fine Asset Investments 447 CC (Registration Number: 2007/086903/23), is placed under final winding-up.
2. The costs of the application, including the costs occasioned by the opposition of the second respondent, are to be paid by the second respondent at the scale C as provided for in Uniform Rule 67A. .

__[redacted]______________

GB ROME
ACTING JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT C-M de Vos

Instructed by ***Senekal Inc.***

COUNSEL FOR SECOND RESPONDENT ***A.B.G. Choudree.***

Instructed by ***Phipson De Villiers Attorneys***

DATE OF HEARING ***7 MAY 2026***
DATE OF JUDGMENT ***20 MAY 2026***

---

[i] Thunder Cats Investments 92 (Pty) Ltd and Another v Nkonjane Economic Prospecting & Investment (Pty) Ltd and Others 2014 5 SA 1 (SCA) at paragraphs 15–17, 27–29, and 33.

[ii] Thunder Cats supra at paragraphs 12-14

[iii] Apco Africa (Pty) Ltd and Another v Apco Worldwide Inc 2008 (5) SA 615 (SCA**)** paragraphs 17 to 21

[iv] *Ibid* at paragraph 18

[v] *Ibid*, paragraph 21

[vi] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E – 635D.

[vii] Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others 2013 (6) SA 499 (SCA)at paragraph 2