

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no 2025-031824

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 20 May 2026

In the matter between:

G[...], C[...], A[...]

Applicant

And

G[...], T[...], K[...]

First Respondent

STANDARD BANK LIMITED

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This application concerns the termination of co-ownership of immovable property held by the parties following the breakdown of their marriage. The first respondent appeared in person. The dispute, as evident from the issues persisted with at the hearing, largely centred on the following issue: what mechanisms should be used to bring the co-ownership interest to an end, more specifically, how the properties' values must be determined. At the hearing, there was no real controversy over whether co-ownership should be terminated. I work on the premise that both parties agreed to terminate the co-ownership, as set out in more detail below.

Background

[2] The applicant and the first respondent are going through an acrimonious divorce. During the subsistence of their marriage, they became co-owners of two immovable properties, the “I[...] property” and the “C[...] property”. The co-ownership continued after the marriage broke down, but is now a source of ongoing dispute.

[3] The applicant and the minor children reside at the I[...] property. The applicant submits that the first respondent no longer resides there and does not contribute to its expenses. The case developed over time. Initially, it concerned the regulation of living arrangements and the requirement that the first respondent vacate the common home. It then evolved into an application to terminate co-ownership, which was initially opposed but is now accepted. As indicated, all that remains is to determine *how* the co-ownership must be terminated. There is no agreement on that.

[4] On 24 July 2025, the applicant provided the first respondent with two estate agent valuations that he obtained in respect of both properties, and sought her agreement that sole ownership of both properties be transferred to him and that he would make payment to the first respondent of her share (50%) of the equity in both properties.

[5] The first respondent rejected the proposal, obtained a higher valuation of the I[...] property, and invited the applicant to appoint his own certified property valuer to value it. The first respondent proposed that she take the transfer of the C[...] property, that he keep the I[...] property, and that the applicant pay the transfer costs. The applicant then suggested appointing a certified valuer, sharing the valuer's costs, and having each party pay for the transfer of the property into their name.

[6] After that exchange, nothing further was heard from the first respondent until about 18 February 2026, shortly before the matter was heard, when a belated answering affidavit was filed. She filed a memorandum from Metro Urban Valuers (Pty) Ltd, which valued the I[...] property at R12 million and the C[...] Property at R4,5 million. In the meantime, the applicant also appointed a valuer, who valued the I[...] property at R9 million.

[7] At the hearing, the first respondent, appearing in person after both sets of attorneys employed withdrew, asked that, if the application is not dismissed, the Court direct an independent valuation process. This would allow the properties to be valued by a jointly appointed valuer, or, if agreement could not be reached, by an independently appointed valuer, after which an appropriate mechanism could be implemented for transfer or sale.

[8] For this reason, the applicant submitted that the Court is not faced with a genuine dispute as to whether co-ownership should terminate, and that the application should not be dismissed. All that is needed is a mechanism for terminating the co-ownership, which he contends is why the leave to amend his notice of motion should succeed, as it aligns the relief with the position the Court then had to adjudicate, thereby enabling an order that is equitable in the circumstances.

[9] I agree that, at the time of the hearing, the dispute was narrowed to the mechanisms rather than to the question of whether termination should be ordered. In that respect, the amended notice of motion sets out a basis for a termination mechanism and will be allowed.

The law

[10] A co-owner cannot, except in exceptional circumstances, be compelled to remain a co-owner against their will. Where the relationship between co-owners has broken down, and they are unable to agree on a practical means of dividing the property, the Court may be approached to determine how to terminate the co-ownership and resolve related patrimonial claims.

[11] The *actio communi dividundo* has long formed part of South African law. It enables co-owners not only to divide jointly held property but also to settle claims arising from expenditure incurred or benefits derived in relation to the common

property.¹ The action involves both dividing the object itself and making the necessary financial adjustments to ensure fairness among the co-owners.

[12] *Robson v Theron*² explains that the Court enjoys a broad equitable discretion when resolving disputes of this kind. If physical division is impossible, impractical or inequitable, the Court may award the property to one co-owner against payment of compensation to the other, or it may direct that the property be sold and that the proceeds be divided in accordance with a just allocation.

[13] *Van Onselen NO v Kgengwenyane*,³ recognises that the modern approach is flexible. That flexibility is especially important when immovable property serves as a home, when minor children are involved, when one co-owner seeks to retain the property, or when the market value is contested. In such circumstances, a court may prefer a staged mechanism: first, an opportunity for one party to buy out the other at a value determined by an objective process; failing that, a sale on the open market; and, failing that, a sale by auction.

[14] The principles do not prescribe a specific outcome in every situation. Instead, they establish the legal framework within which the Court must exercise its discretion in light of the particular facts. The analysis is highly fact-dependent, focusing on the parties' demonstrated contributions, the credibility of valuation material, the extent of any prejudice involved, the feasibility of transfer, and the fairness of the proposed mechanism.

[15] In this case, continuing co-ownership is no longer viable. On the material presently available, both parties have at different times and in different ways proposed termination, but have been unable to agree. The court now needs to evaluate the options and determine an equitable solution.

¹ Van der Merwe LAWSA "Things" volume 27 par 217 and the authorities he cites, namely Grotius 3 28 9; *Oosthuyzen v Plessis* (1887) 5 SC 69; *Fryer v Engelbrecht* 1910 CTR 863; *Runciman v Schultz* 1923 TPD 4.

² *Robson v Theron* 1978 (1) SA 841 (A) at 856 C

³ 1997 (2) SA 423.

Various options

[16] One possible approach could be to determine that the valuation dispute has become too fixed, or that the parties' history of non-cooperation is too deeply rooted, to warrant a lengthy transfer mechanism, and that the matter should proceed directly to sale, either through a private treaty under controlled conditions or, if that fails, via auction. This approach aligns with authorities that endorse sale as a viable remedy when a buy-out is impractical or could lead to further deadlock.

[17] This approach is not feasible, as the applicant indicates that he intends to reside at the property with his minor children, who now need stability and have settled into the house. Furthermore, both parties indicated that they favour a structured valuation approach with a buy-out option for the applicant. Such an approach will be more equitable and proportionate in this instance.

[18] Given that termination is common cause, such an approach will require the Court to order an objective valuation mechanism and confer a first option on one party to acquire the other's share within fixed time periods. Such an order would reflect a flexible and equitable approach, while, where feasible, recognising the practical preference to avoid a forced sale that may unnecessarily erode value.

[19] Such a mechanism requires appropriate safeguards given the acrimony between the parties. An independent valuer, agreed by the parties or, failing agreement, appointed by the Chairperson of the appropriate professional body, must determine the fair market values within a fixed period. The applicant is then afforded a defined window to acquire the first respondent's undivided half share at that value, with due provision for release from the existing bond and the allocation of transfer costs. If the applicant does not exercise that option timeously, the properties will be listed on the open market under controlled marketing conditions, and if a private sale is not achieved within the specified period, they will be sold by public auction.

On these facts

[20] The applicant's amended notice of motion provides that two independent estate agents in the relevant areas will value the properties. These properties will

then be marketed at the average of those valuations. Each party will have an exclusive period to market the properties, and the applicant will have the right of first refusal to match any qualifying offer. The first respondent has proposed appointing an independent valuer.

[21] A mechanism that takes into account the overlapping proposals by the parties, and that affords the applicant an opportunity to buy out the first respondent's shares in one or both properties, involves the following: An independent valuer, agreed between the parties, or failing agreement appointed through the Chairperson of the appropriate professional body, determines the fair market values of the I[...] and C[...] properties within a fixed period. The valuation is to be used to afford the applicant an opportunity to exercise his right to buy out the first respondent's shares in one or both properties, if he so wishes, at the determined value, with due provision for the release from the existing bond and the allocation of transfer costs. This must be done within a specified time.

[22] If the applicant does not exercise or cannot enforce the buy-out option within the specified period, the properties will be listed on the open market at a fair, market-related price. They will be marketed by the parties' chosen estate agents within a specified timeframe, with cooperation duties similar to those outlined in the amended notice of motion.

[23] If, despite these efforts, the properties remain unsold within an additional defined period, the order permits a sale at public auction under the sheriff's supervision. The sheriff has the authority to sign all necessary transfer documents, make payments to the bondholder and other creditors, and distribute the net proceeds among the parties, subject to any justified adjustments.

[24] The staged mechanism of a buy-out option, followed by an open-market sale and, if necessary, a sheriff's auction, is intended to ensure that the co-ownership dispute reaches a final resolution within defined timeframes, rather than continuing indefinitely. It also leaves the extent of further escalation largely in the parties' hands: the more promptly they cooperate at each stage, the less need there will be to invoke the next, more intrusive step.

Costs

[25] The general approach in cases under the *actio communi dividundo* should be that each party pays their own costs, because the litigation usually stems from the co-ownership relationship rather than from fault on either side. However, this rule does not apply if one co-owner's behaviour has unnecessarily prolonged the proceedings or caused the other party to incur costs that could have been avoided with better cooperation.

[26] This is such a case. The first respondent initially opposed the termination of co-ownership, prompting this application. From July 2025 onward, after the applicant made proposals, the first respondent was largely unresponsive. Her answering affidavit was late, preventing the applicant from filing a proper reply. By the hearing, the sole remaining issue was how to end the co-ownership. Much of the litigation, along with the associated costs, was therefore unnecessary. Given these circumstances, it is fair that the first respondent bears the applicant's costs on a party and party scale A.

Order

[27] The following order is made:

1. The joint ownership in the following jointly owned immovable properties is hereby terminated:
 - a. Erf 2[...], I[...], Gauteng Province, measuring 3718 square metres and held under title deed no. T[...] and situated at 5[...] 5[...] Avenue, I[...], Johannesburg, Gauteng ("the I[...] property"); and
 - b. Erf 5[...] C[...] Park, Gauteng Province, measuring 1070 square metres and held under title deed no. T[...] and situated at 3[...] L[...] Avenue, C[...] Park, Johannesburg, Gauteng ("the C[...] property").
2. The properties as described in paragraph 1 are to be valued by an independent valuer to be appointed by agreement between the parties within 15 days of this order, or failing agreement, by an

independent valuer appointed by the Chairperson of the South African Institute of Valuers, within 30 days of this order, with the costs of such a valuer to be shared equally between the parties.

- a. Once valuations have been obtained, the applicant shall, within 60 days, have the right to elect to buy out the first respondent's share in the properties, and shall, on transfer of ownership into his name, make payment to the first respondent of 50% of the equity in the respective properties on the date of transfer.
 - b. The equity in the property shall be calculated by deducting the outstanding bond amount at the date of transfer, as well as any:
 - i. Amounts payable and outstanding to the municipalities;
 - ii. The cost of obtaining compliance certificates in respect of *inter alia* electricity, electric fence and gas;
 - c. The first respondent shall take every reasonable step to facilitate the transfer of ownership into the applicant's name and shall sign all documentation required of her in order to effect such transfer within 7 days of written demand from the applicant's conveyancer;
 - d. In the event of the first respondent failing to comply with the above or refusing to sign and all documentation required in order to transfer ownership and/or the mortgage bonds into the applicant's name, the Sheriff of the above Honourable Court is hereby authorised to do so in the first respondent's stead.
3. In the event that the applicant does not elect to buy out the first respondent's share in either or both properties within 60 days, the property or properties will immediately be placed on the open market to be marketed by two estate agents: the one to be chosen by the applicant, the other by the first respondent. The value of the properties will be the average of the two estate agents' valuations.

- a. The equity that is left after the sale will be equally shared between the applicant and the respondent;
 - b. The equity in the property shall be calculated by deducting the outstanding bond amount at the date of transfer, as well as any:
 - i. Fees or commission owing to the agent/s;
 - ii. Amounts payable and outstanding to the municipalities;
 - iii. The cost of obtaining compliance certificates in respect of *inter alia* electricity, electric fence and gas;
4. If the property is (or properties are) not sold within 8 months of it being on the open market, the property or properties shall be placed in the hands of the Sheriff to be put up on auction within 6 months of appointment, with a reserve price that is calculated by deducting 15% off the value in paragraph 3, at a public auction to be conducted by the Sheriff.
- a. The Sheriff will have the authority to:
 - i. Sign all documents necessary to transfer the property to the purchaser;
 - ii. Pay the bondholder the amount outstanding on the mortgage bond registered against the title deed(s);
 - iii. Settle any outstanding municipal rates and taxes from the sales proceeds;
 - iv. Deduct reasonable sale-related expenses, including auction costs and agent commissions;
 - b. The net proceeds of the auction shall be divided equally between the parties, after the deductions outlined in paragraph 4(a).
5. The first respondent is to pay the costs of this application, to be taxed on scale A.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 23 February 2026

Date of judgment: 20 May 2026

For the applicant: M Abro instructed by Di Siena Attorneys

For the respondent: In person