IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: **2025-031785**

1) REPORTABLE: **NO**
2) OF INTEREST TO OTHER JUDGES: **NO**
3) REVISED.

...[redacted] 06 May 2026

SIGNATURE **DATE**

In the matter between:

HUI ZHUANG	First Applicant
YULAN SHI	Second Applicant
and	
EMPIRE PURIFICATION (PTY) LTD	Respondent
ALLAN HENDERSON	Second Respondent
CINDY HENDERSON	Third Respondent
PETRU HENDERSON	Fourth Respondent

JUDGMENT

MM MOJAPELO AJ:

Introduction

[1] This is an application for the winding-up of a private company, Empire Purification (Pty) Ltd, brought by a married couple, one of whom is its shareholder, on the grounds of commercial insolvency and, principally, that it is just and equitable to do so. The matter also involves a counter-application by the remaining shareholders, who resist liquidation and seek instead a court ordered buy out of the applicants' interest under section 163 of the Companies Act 71 of 2008. At its heart, this case is about the breakdown of a business relationship between two groups of shareholders who came together with different skills and resources to build a company, but who have since found themselves in an irretrievable deadlock that neither side disputes.

The Parties

[2] The first applicant is Hui Zhuang, a Chinese national who, together with the second applicant, provided the initial capital for the establishment of the company. The second applicant is Yulan Shi, who holds 40 shares in the first respondent, representing a 40% shareholding, and who is a director of the company.

[3] The first respondent is Empire Purification (Pty) Ltd, a private company duly incorporated and registered in accordance with the laws of the Republic of South Africa, with registration number 2019/041956/07. The second respondent is Allan Henderson, who is a director of the company. He is married to the third respondent, Cindy Henderson, who holds a 30% shareholding in the first respondent. The fourth respondent is Petru Henderson, the sister-in-law of the second respondent,

who holds the remaining 30% shareholding in the first respondent and is likewise a director thereof.

[4] It is a matter of procedural record that when this application was initially launched, the first respondent was cited as the sole party to the proceedings. The second, third, and fourth respondents subsequently sought joinder to the main application as respondents and simultaneously assumed the role of co-applicants in the counter-application. The joinder application is not opposed and should as a matter of course, be granted.

[5] This intervention by the individual respondents is telling. It signifies a recognition by the parties that the true dispute lies not in the company's separate corporate personality, but in the underlying rights and obligations existing between the natural persons who comprise its membership. Their joinder confirms the characterization of the first respondent as a domestic company and brings into sharp focus the "quasi-partnership" nature of the entity.

The Formation of the Company

[6] Empire Purification (Pty) Ltd was incorporated and registered in the Republic of South Africa during 2019, under registration number 2019/041956/07. The company was established as a vehicle for a joint venture between the applicants, who are Chinese nationals and who provided the financial capital necessary to establish and grow the business, and the Henderson family, who brought with them the operational expertise, local knowledge, and management capacity required to run the enterprise on a day-to-day basis. The business of the company is the purification and supply of water, a sector that requires both technical know-how and sustained operational involvement.

[7] From its inception, the company was structured as a closely held entity with a small number of shareholders who were personally known to one another and who entered into the venture on the basis of a relationship of mutual trust and confidence. The shareholding was divided such that the second applicant, Ms Shi, held 40 shares representing a 40% interest, while Cindy Henderson and Petru Henderson

each held 30 shares representing a 30% interest apiece, giving the Henderson family a combined majority of 60% of the issued share capital. The first applicant, Mr Zhuang, was not a registered shareholder but contends that he provided substantial financial resources to the company by way of loans, and that he is accordingly a creditor of the company in his own right.

[8] The arrangement, as it was understood by the applicants, was that Ms Shi and Mr Zhuang would provide the capital and financial backing for the venture, while the Hendersons would manage and operate the business. This division of roles, capital on the one side and operational management on the other, is a common feature of joint ventures of this kind, and it is precisely the kind of arrangement that the courts have recognised as giving rise to a quasi-partnership, notwithstanding the formal corporate structure through which it is conducted. For a period following its incorporation, the company appears to have operated without significant incident, and the business grew under the day-to-day management of the Henderson family.

The Breakdown of the Relationship

[9] The relationship between the shareholders began to deteriorate over time, and by the latter part of 2024, it had broken down to the point where the parties were no longer able to work together or to agree on the future direction of the company. The precise causes of the breakdown are disputed, and the papers reveal a number of contested factual issues which are addressed in greater detail below. What is not in dispute, however, is that by December 2024, the relationship had deteriorated to such an extent that the respondents' own attorneys wrote to the applicants' attorneys stating that it appeared just and equitable that the company be liquidated. A second letter to a similar effect followed in March 2025. Notwithstanding those concessions, the parties were unable to reach an agreement on the terms of a separation, and the applicants ultimately launched the present application.

The Issues for Determination

[10] The issues which this court is called upon to determine are the following:

10.1. Whether the respondents have established the jurisdictional requirements for relief under section 163 of the Companies Act 71 of 2008, and if so, whether the court should exercise its discretion to order a buy-out of the applicants' interest at the price proposed by the respondents or at a fair value to be determined by an independent accountant.

10.2. Whether, in the event that the section 163 counter-application fails, the applicants have established that it is just and equitable to wind up Empire Purification (Pty) Ltd under section 81(1)(d)(iii) of the Companies Act 71 of 2008.

10.3. Whether the applicants have established the commercial insolvency ground for winding-up, having regard to the disputed loan accounts claimed by Mr Zhuang and Ms Shi.

10.4. What order, if any, should be made in respect of the costs of both the main application and the counter-application.

[11] Before turning to the merits, it is appropriate to observe that this matter was argued on the papers as they stand, without the resolution of any disputes of fact by way of oral evidence. Where disputes of fact arise on the affidavits, the court has applied the well-known approach in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)*, namely that where there is a genuine dispute of fact which cannot be resolved on the papers, the matter must generally be decided on the respondents' version, unless that version is so far-fetched or clearly untenable that it falls to be rejected on the papers alone. However, as will become apparent from the analysis that follows, the resolution of the principal issues in this matter does not ultimately turn on the disputed factual questions, but rather on the legal framework applicable to quasi-partnerships and the undisputed fact of the irretrievable breakdown of the relationship between the shareholders

Chronology of Correspondence: Liquidation, and Proposed Sale of Shares

[12] During February 2024, the first material step on the papers appears to have been an approach by Allan Henderson to Shane, the second applicant's brother, enquiring whether Yulan Shi would be prepared to sell her shares in the company. On the respondents' version, this approach was accompanied by a valuation and an indication that Henderson was prepared to purchase Shi's interest for approximately R1 million. This is significant because it shows that the dispute initially manifested itself not as an immediate liquidation dispute, but as an attempt to engineer a separation by means of a share sale.

[13] That proposal then moved into attorney correspondence. In a letter dated 24 May 2024 (referred to in the papers as annexure AH3), the applicants' attorney recorded that the possible purchase and sale of Shi's shareholding had already been discussed and that specific offers had been made by Henderson. The applicants' attorney stated that he had been instructed to assist in negotiating the purchase price and the possible sale of the shares in order to finalise matters between the parties and proposed that a meeting be convened to facilitate the calculation and documentation necessary for a sale. At that stage, therefore, the correspondence reflects that the parties were still exploring a consensual exit.

[14] The negotiations continued in June 2024. On 16 June 2024, the respondents communicated further regarding valuation, and on the same date, the applicants' attorney responded that Shi would consider an offer of R1 403 194.00, provided that it could be confirmed to be a valid and market-related offer. Shortly thereafter, on 20 June 2024, the respondents provided further clarification as to how the figure was said to have been made up, including reference to the value attributed to the shares and the loan account. Then, on 24 June 2024, the applicants' attorney requested bank statements and further figures. This part of the correspondence shows that the negotiations were already becoming contentious because valuation and financial disclosure had become disputed.

[15] By 11 September 2024, the tenor of the correspondence had changed materially. Instead of proceeding with Shi's exit, the applicants' side advanced a

different proposal, namely that the Henderson side's interest be acquired. On the papers, this was framed as an offer involving R2 million for the relevant Henderson shareholding. Thus, by September 2024, the parties were no longer aligned on who should exit the company; each side was effectively positioning for control of the business, which is an important marker of the developing deadlock.

[16] The respondents' attorneys rejected that proposal in correspondence dated 17/18 September 2024 (annexure AH9). That rejection was short and unequivocal. The significance of this exchange is that, once the applicants ceased being willing sellers and instead sought to acquire the respondents' interests, the prospect of a negotiated buy-out became more remote. The correspondence from this point onward reflects not a cooperative valuation process, but adversarial positioning.

[17] The next phase of correspondence concerned what may fairly be described as the skirmishes about the company's financial affairs and management. On 21 October 2024, and again more forcefully on 11 December 2024, the applicants' attorney sought financial documentation and explanations regarding the affairs of the company. In the applicants' later papers, these requests are linked to complaints about unexplained expenses, Takealot payments, directors' remuneration, and, in particular, transactions involving funds allegedly paid to Petru Henderson. Those letters are relevant because they show that the dispute had by then escalated beyond a mere disagreement about price and had become a broader challenge to the propriety of the company's management and financial dealings.

[18] The respondents' attorneys replied on 13 December 2024, and this is one of the most important pieces of correspondence in the matter. In that letter, the respondents' attorneys stated, first, that Ms Shi had never been involved in management, secondly, that their clients again extended an offer to purchase her shares, and, critically, thirdly, that "*having regard to the correspondence and contents thereof, it appears that it would be just and equitable that the company be liquidated.*" The same letter added, as an alternative, that Shi could consider purchasing the shares of the other two shareholders, in which event she would become the 100% shareholder. This letter is plainly important because it contains an express statement by the respondents' attorneys that liquidation appeared to be the

appropriate just and equitable outcome, while at the same time still leaving open the possibility of a buy-out either way.

[19] The applicants' attorney responded on 20 January 2025. In that letter, he recorded that instructions had been taken regarding paragraphs 10 and 11 of the respondents' letter and requested a clear indication of the amount offered for Shi's shares, as well as the amount the respondents would accept for the sale of their own shares. This letter is important because it demonstrates that the applicants did not immediately accept liquidation as the only path but still attempted to ascertain whether a clean commercial separation by means of a buy-out remained possible.

[20] Matters escalated further in the correspondence dated 27 February 2025. In that letter, the applicants' attorney stated expressly that it was clear that the parties were "unwilling and/or unable to continue the business relationship." He recorded that an offer had been made by the respondents to purchase Shi's shares and loan account for R2 250 000.00, formally declined that offer, and then made a counterproposal that the applicants would purchase the shares and loan accounts of Cindy Henderson and Petru Henderson for the same amount of R2 250 000.00. This is a highly material letter because it contains an express acknowledgement, from the applicants' side, that the relationship had broken down and that a continuing business relationship was no longer viable.

[21] According to the papers, that counter-offer was required to be accepted by 28 February 2025, failing which it would lapse, and no acceptance was received in time. The failure of this proposed buy-out is significant because it appears to be the last serious attempt to resolve the deadlock by means of a negotiated sale of shares.

[22] On 4 March 2025, the respondents' attorneys sent a further important letter, annexed in the replying papers as XR4. In that letter, they rejected the applicants' offer to purchase their shareholding. More importantly, they stated that they held instructions "*to proceed with the liquidation of the Company*" and asked the applicants' attorneys to confirm an address at which the application for liquidation could be served. This is the second crucial letter from the respondents' attorneys expressly indicating that the company should be liquidated. Read together with the letter of 13

December 2024, it strongly supports the contention that, at least before the litigation positions hardened, the respondents themselves regarded liquidation as the proper course.

[23] The applicants' papers also refer to a further without prejudice letter dated 5 March 2025, in which a final offer was made to purchase the respondents' entire 60% shareholding for R3 million, said to be an attempt to recover a company allegedly created and funded by the applicants. Whether that proposal remained open and capable of acceptance is disputed on the papers, but for present purposes, it is another indication that, right up to the eve of litigation, the parties were still oscillating between two possible exits: either a sale of shares or liquidation.

[24] The liquidation application was then launched on 7 March 2025. On the applicants' version, the application followed after repeated unsuccessful attempts to achieve a buy-out and in circumstances where the respondents' own attorneys had twice stated, in writing, that liquidation was the appropriate course. Thereafter, however, the respondents changed their stance in the litigation and resisted liquidation, contending instead for relief under section 163 and for an order compelling Shi to sell her shares.

[25] In summary, the correspondence reveals a clear progression: first, an attempted purchase of Shi's shares by the Henderson side; second, disputes over valuation and disclosure; third, increasingly hostile exchanges concerning the company's financial affairs and alleged irregularities; fourth, express written statements by the respondents' attorneys on 13 December 2024 and 4 March 2025 that the company ought to be liquidated or that they held instructions to proceed with liquidation; and finally, the collapse of all buy-out proposals, followed by the institution of liquidation proceedings and the respondents' later volte-face in seeking to compel a sale by way of section 163 relief.

The Respective Cases of the Parties on the Mode of Separation

[26] It is common cause, and indeed apparent from the correspondence traversed above, that both sides accept that the relationship between the shareholders has

broken down irretrievably and that a separation of interests is inevitable. The dispute before this court is therefore not whether the parties should part ways, but rather how that separation should be effected. The applicants contend that the appropriate mechanism is a final order of liquidation under section 81(1)(d)(iii) of the Companies Act 71 of 2008, on the grounds that it is just and equitable to wind up the company. The respondents, by contrast, resist liquidation and seek relief under section 163 of the Act, contending that the appropriate remedy is a court-ordered buy-out of the applicants' interest at a price to be determined.

The Applicants' Case

[27] The applicants press for liquidation on two grounds, namely commercial insolvency and the just and equitable ground. In practice, the weight of their case rests on just and equitable grounds. They submit that Empire Purification (Pty) Ltd is a quasi-partnership, being a small, closely held company founded on a relationship of mutual trust and confidence between the shareholders, and that the trust which underpinned that relationship has been irretrievably destroyed. They rely on the well-established principle, affirmed in *Knipe and Others v Kameelhoek (Pty) Ltd and Another 2014 (1) SA 52 (FB)*, that where a domestic company of this nature has been reduced to a state of deadlock and the personal relationship between its shareholders has collapsed beyond repair, the court is entitled and in appropriate cases obliged to wind it up on just and equitable grounds, even where the company remains technically solvent.

[28] The applicants further submit that the respondents' own conduct and correspondence fortify this conclusion. They point, in particular, to the two letters from the respondents' attorneys, dated 13 December 2024 and 4 March 2025, in which the respondents' attorneys expressly stated that it appeared just and equitable that the company be liquidated and that they held instructions to proceed with liquidation. The applicants contend that these admissions are not merely relevant to the factual question of breakdown; they go further and constitute a concession by the respondents themselves that the jurisdictional requirements for a just and equitable winding-up are satisfied. On this basis, the applicants argue that the respondents'

current resistance to liquidation is opportunistic and inconsistent with the position they adopted before the litigation commenced.

[29] In addition, the applicants rely on what they describe as a pattern of financial irregularities and exclusion from the affairs of the company. They contend that the second applicant, Ms Shi, was excluded from management, denied access to financial information, and that unexplained transactions, including payments of approximately R440 000 to Petru Henderson, were effected without her knowledge or consent. These allegations, they submit, reinforce the conclusion that the relationship has broken down and that no meaningful participation in the company's affairs remains possible for the applicants.

[30] The applicants further contend that the commercial insolvency ground is established by reason of the loan account owed to the first applicant, Mr Zhuang, which they place at approximately R4.1 million, and the outstanding loan account of Ms Shi, which they contend exceeds R3.3 million. On their version, the company is unable to pay its debts as they fall due, and liquidation is warranted on that ground as well. This version of the applicant's case is highly disputed and the applicants' counsel readily abandoned it as a ground for the current liquidation application. The court will therefore not consider this ground.

The Respondents' Case

[31] The respondents do not dispute that a separation is necessary. Their case, however, is that liquidation is a disproportionate and oppressive remedy in the circumstances, and that the court should instead exercise its discretion under section 163 of the Companies Act to order a buy-out of the applicants' interest. They contend that the bringing of the liquidation application itself constitutes conduct that is oppressive and unfairly prejudicial to the respondents and to the company, within the meaning of section 163(1), because it threatens to destroy a viable and solvent business that the Henderson family has built up and managed since 2019.

[32] The respondents submit that the company is financially healthy, pointing to cash reserves of approximately R1.4 million and ongoing trading operations. They

contend that Mr Zhuang is not a creditor of the company and that the commercial insolvency ground accordingly falls away entirely. On their version, the loan accounts claimed by the applicants are either non-existent or substantially overstated, and the financial records of the company do not support the figures advanced by the applicants. They further submit that Ms Shi was never operationally involved in the company and that her role was, at best, that of a passive investor, such that her exclusion from management cannot be characterised as oppressive conduct.

[33] On the question of remedy, the respondents propose that the court order Ms Shi to sell her 40% shareholding and her loan account to Allan Henderson and Petru Henderson for R2 million, or alternatively for such fair value as may be determined by an independent accountant appointed by the court. They contend that this remedy is less drastic than liquidation, that it preserves the business as a going concern, and that it is consistent with the approach endorsed in *De Wit NO and Another v Smit and Others 2026 (2) SA 130 (WCC)*, where the court recognised that a buy-out may in appropriate circumstances, be a more equitable remedy than winding up. The respondents further argue that the applicants' true motive in seeking liquidation is not to vindicate a legitimate grievance but to extract value from a business they did not build, and that the court should be slow to grant a remedy that would effectively destroy the livelihoods of those who have managed and grown the company.

The Jurisdictional Requirements of Section 163

[34] What emerges from the respective cases is a fundamental tension between two competing principles. On the one hand, the applicants invoke the court's jurisdiction to wind up a quasi-partnership whose foundations have collapsed, relying on the respondents' own prior concessions as evidence that the jurisdictional threshold is met. On the other hand, the respondents invoke the court's equitable discretion under section 163 to fashion a less drastic remedy that preserves the business, while contending that the applicants' resort to liquidation is itself an act of oppression. The resolution of this tension requires the court to determine, first, whether the jurisdictional requirements for section 163 relief are established on the papers, and secondly, whether, if they are not, a just and equitable winding-up is the appropriate and proportionate response to the breakdown that both parties acknowledge has occurred.

[35] The starting point is the proper construction of section 163 of the Companies Act 71 of 2008. Section 163(1) confers jurisdiction on the court to grant relief where a shareholder or director of a company establishes that any act or omission of the company, or a related person, or the business of the company, has been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant. The section is a remedial provision of wide scope, but it is not without limits. As was made clear in *De Wit NO and Another v Smit and Others 2026 (2) SA 130 (WCC)*, the section requires the establishment of jurisdictional facts before the court's discretion to grant relief is engaged. Those jurisdictional facts are substantive in nature: the applicant for section 163 relief must demonstrate that there has been conduct in the affairs of the company, or in the exercise of the powers of a director or prescribed officer, that meets the statutory threshold of oppression, unfair prejudice, or unfair disregard of interests. It is not sufficient to point to a commercial dispute or a breakdown of relations in the abstract; the conduct complained of must be identifiable, must relate to the affairs of the company, and must cross the threshold of unfairness or oppression as those concepts have been developed in the case law.

[36] Applying those principles to the present matter, the respondents' section 163 case faces a fundamental difficulty. The conduct which the respondents identify as oppressive or unfairly prejudicial is, in substance, the bringing of the liquidation application itself. They contend that the institution of proceedings to wind up a solvent and viable company, in circumstances where the applicants were passive investors who contributed little to the operational success of the business, constitutes conduct that unfairly prejudices the respondents and the company. That contention, however, conflates the exercise of a legal right with oppressive conduct in the affairs of the company. The bringing of a liquidation application is a legitimate invocation of a statutory remedy. It is not, without more, an act or omission in the conduct of the company's business or affairs within the meaning of section 163(1). To hold otherwise would be to use section 163 as a shield against the exercise of rights that the legislature has expressly conferred on shareholders, which is not the purpose for which the section was designed. The authority in *De Wit* supports this approach: the court in that matter was careful to distinguish between conduct that genuinely

oppresses a shareholder in the context of the company's affairs and conduct that is merely commercially inconvenient or strategically unwelcome to the opposing party.

[37] Furthermore, the respondents' section 163 case is materially undermined by their own prior conduct and correspondence. As set out in the chronology above, the respondents' attorneys stated expressly on 13 December 2024 that it appeared just and equitable that the company be liquidated, and again on 4 March 2025 that they held instructions to proceed with liquidation. A party that has itself identified liquidation as the appropriate remedy, and that has communicated that position in writing to the opposing party, is in a poor position to contend thereafter that the institution of liquidation proceedings by the other side constitutes oppressive or unfairly prejudicial conduct. The respondents' volte-face in this regard is not merely a matter of credibility; it goes to the heart of whether the jurisdictional threshold for section 163 has been crossed. If the respondents themselves regarded liquidation as just and equitable at the time of those letters, it is difficult to see how the applicants' decision to pursue that very remedy can be characterised as oppressive. The respondents' change of position, coming as it did only after the litigation commenced and after the applicants declined to sell their shares at the price offered, has the appearance of a tactical manoeuvre rather than a genuine grievance rooted in the affairs of the company.

[38] It follows that the jurisdictional requirements of section 163 have not been established on the papers. The respondents have not identified conduct in the affairs of the company that meets the statutory threshold of oppression or unfair prejudice. Their counter-application accordingly falls to be dismissed.

Whether It Is Just and Equitable to Wind Up the Company

[39] The dismissal of the section 163 counter-application does not, of itself, determine the main application. The court must still consider whether the applicants have established the jurisdictional requirements for a just and equitable winding-up under section 81(1)(d)(iii) of the Act. The applicable principles are well settled.

[40] In *Apco Africa (Pty) Ltd v Apco Worldwide Incorporated 2008 (5) SA 615 (SCA)* the Supreme Court of Appeal affirmed that, in the case of a quasi-partnership

company, equitable considerations may justify liquidation even absent proof of actual operational deadlock. The court emphasised that where the relationship between the members is rooted in personal confidence, mutual trust and a legitimate expectation of participation in management, an irretrievable breakdown of that relationship may itself render it just and equitable that the company is wound up. The enquiry is accordingly not limited to whether the company can continue to function mechanically or formally, but extends to whether the substratum of trust and confidence upon which the association was founded has been destroyed beyond repair. In such circumstances, the inability to restore the requisite relationship between the parties may constitute sufficient grounds for liquidation.

[41] The decision in *Thunder Cats Investments 92 (Pty) Ltd v Nkonjane Economic Prospecting & Investment (Pty) Ltd* 2014 (5) SA 1 (SCA) is instructive on the ambit of the "just and equitable" ground for winding-up in terms of s 81(1)(d)(iii) of the Companies Act 71 of 2008. The Supreme Court of Appeal emphasised that the enquiry is not confined to a numerus clausus of categories but entails a flexible evaluation of a "cluster of considerations", grounded in equity and fairness.

[42] The Supreme Court of Appeal in *Thunder Cats* clarified the expansive nature of the court's discretion under the "just and equitable" ground. At paragraph 14, the Court held that the specific instances of deadlock enumerated in s 81(1)(d)(i) and (ii) of the Companies Act are merely illustrative and not exhaustive, noting that the inclusion of the word "otherwise" in s 81(1)(d)(iii) serves to extend rather than limit the grounds for winding-up to include any other species of deadlock. This principle was further bolstered at paragraph 15, where the Court, drawing on the heritage of section 344(h) of the 1973 Act, affirmed that a winding-up on this basis "postulates not facts but only a broad conclusion of law, justice and equity." Consequently, the "just and equitable" provision is not confined to cases analogous to other statutory grounds, nor is it restricted to a fixed category of circumstances; instead, it provides a flexible mandate to ensure a just result where the foundational trust of a corporate entity has vanished.

[43] In *Knipe and Others v Kameelhoek (Pty) Ltd and Another 2014 (1) SA 52 (FB)*, the court confirmed that a just and equitable winding-up of a solvent company is

competent where the company is a quasi-partnership, being a small, closely held company founded on a relationship of mutual trust and confidence, and where that relationship has broken down irretrievably.

[44] Turning to the present matter, it is clear that Empire Purification (Pty) Ltd is a quasi-partnership. It is a small, closely held company with only three shareholders, all of whom were known to one another personally and who came together on the basis of a relationship of trust and mutual confidence. The company was not incorporated as a vehicle for arm's length investment; it was established as a collaborative venture between the applicants, who provided the capital, and the Hendersons, who provided the operational expertise and management. That personal dimension to the relationship is the hallmark of a quasi-partnership, and neither party seriously disputes that the company has that character.

[45] It is equally clear that the relationship of trust and confidence which underpinned the quasi-partnership has broken down irretrievably. The breakdown is not merely asserted by the applicants; it is confirmed by the respondents' own correspondence. The letters of 13 December 2024 and 4 March 2025 from the respondents' attorneys, in which they stated that liquidation appeared just and equitable and that they held instructions to proceed with liquidation, are admissions of the most direct kind. A party that instructs its attorneys to state, in writing, that the company ought to be wound up on just and equitable grounds cannot thereafter be heard to say that the relationship has not broken down to the point where winding-up is warranted. Those letters, read together with the history of failed negotiations, the disputes over financial disclosure, the allegations of irregular transactions, and the complete absence of any functioning relationship between the shareholders, paint a picture of a quasi-partnership that has been reduced to a state of irretrievable deadlock.

[46] The respondents' contention that a buy-out under section 163 is a less drastic and more proportionate remedy does not assist them once the section 163 counter-application has been dismissed. The question then becomes whether, in the absence of a viable alternative remedy, a winding-up order is appropriate. The authority in *Knipe* is instructive in this regard. The court in that matter held that where the parties

cannot agree on a fair price for the shares, and where the offer made by one side is not accompanied by proper financial disclosure or is not genuinely reflective of the value of the business, the court will not decline to grant a winding-up order on the basis that a buy-out remains theoretically available.

[47] In the present matter, the respondents' offer of R2 million for the applicants' interest has been disputed from the outset. The applicants contend that the offer does not reflect the true value of the business and does not account for the loan accounts they claim are outstanding. The respondents have not provided full financial disclosure in support of their valuation, and the history of the negotiations reveals that the parties have been unable to agree on a price despite extended correspondence. In those circumstances, the court cannot be satisfied that a buy-out at the price proposed by the respondents would be fair or that it would constitute a genuine and adequate remedy for the applicants.

[48] It is also relevant that the applicants have raised allegations of financial irregularities in the management of the company, including unexplained payments to Petru Henderson and disputes about the accuracy of the financial records. Those allegations have not been adequately answered in the papers. While the court is not in a position to make final findings of fact on disputed affidavit evidence, the existence of unanswered allegations of this nature is a further factor that weighs in favour of winding-up, since it suggests that the affairs of the company may not have been conducted with the transparency and propriety that the applicants were entitled to expect as shareholders.

[49] Taking all of these considerations together, the court is satisfied that it is just and equitable to wind up Empire Purification (Pty) Ltd. The company is a quasi-partnership whose foundational relationship of trust has collapsed beyond repair. Both parties have, at various points, acknowledged that liquidation is the appropriate outcome. The respondents' section 163 counter-application has failed to establish the jurisdictional requirements for that relief. No viable alternative remedy has been placed before the court that would adequately protect the applicants' interests. In those circumstances, a final order of winding-up is both warranted and proportionate.

[50] For completeness, it is noted that the applicants also press for liquidation on the ground of commercial insolvency, relying on the loan accounts allegedly owed to Mr Zhuang and Ms Shi. That ground is contested on the papers, and the disputes of fact regarding the existence and quantum of those loan accounts cannot be resolved on motion proceedings. However, given that the just and equitable ground has been established independently and without reference to the commercial insolvency ground, it is not necessary for the court to resolve those factual disputes in order to grant the relief sought. The winding-up order will accordingly be granted on the just and equitable ground alone.

Conclusion

[51] It has been demonstrated above that both parties agree that the relationship between the shareholders of Empire Purification (Pty) Ltd has broken down irretrievably and that a separation of their respective interests is unavoidable. The dispute before this court has accordingly been confined to the appropriate mode of that separation. Having considered the papers, the authorities, and the submissions of counsel, the court is satisfied that the respondents have failed to establish the jurisdictional requirements for relief under section 163 of the Companies Act 71 of 2008, and that the applicants have, on the other hand, established that it is just and equitable that the company be wound up.

[52] The section 163 counter-application falls to be dismissed for the reasons set out above. In summary, the conduct identified by the respondents as oppressive or unfairly prejudicial amounts, in substance, to nothing more than the exercise by the applicants of a statutory right to seek the winding-up of a company in which they hold a substantial interest. That is not conduct in the affairs of the company that crosses the threshold of oppression or unfair prejudice within the meaning of section 163(1). The respondents' case is further fatally undermined by their own prior written concessions that liquidation was just and equitable, concessions which they have sought to resile from only after the litigation commenced and after the negotiations over a buy-out broke down. That conduct is inconsistent with the good faith that equity demands of a party seeking relief under section 163, and it deprives the respondents' counter-application of the moral foundation upon which such relief must rest.

[53] The just and equitable ground for winding-up has been established clearly and on multiple bases. The company is a quasi-partnership in the sense recognised in *Knipe and Others v Kameelhoek (Pty) Ltd and Another 2014 (1) SA 52 (FB)*. The personal relationship of trust and confidence that underpinned that quasi-partnership has collapsed beyond any prospect of repair. The respondents' own attorneys confirmed as much in writing on two separate occasions. No fair and genuine offer of a buy-out has been placed before the court that would constitute an adequate alternative remedy. The allegations of financial irregularities in the management of the company remain unanswered. In these circumstances, a winding-up order is not merely available; it is the only remedy that will do justice between the parties.

Costs

[54] I turn to the question of costs. The ordinary rule is that costs follow the event. That rule is subject to the court's discretion, which must be exercised judicially and in accordance with the equities of the case. In contests of this kind involving a small, domestic/quasi-partnership company and allegations that directors/shareholders have acted in a manner prejudicial to a co-owner, courts routinely have regard to the parties' conduct in the litigation when fixing costs. This approach is supported by the authorities referred to herein above, *Thunder Cats Investments*, *Knipe and Others* and *De Wit NO*. These decisions confirm that where the trust and confidence underlying a quasi-partnership have evaporated, the court's equitable discretion extending to costs must be exercised to prevent one party from unfairly burdening another with the expense of unnecessary litigation.

[55] In exercising my discretion, I find the following features of the respondents' conduct to be of particular concern:

55.1. The respondents, through their legal representatives, explicitly conceded the necessity of liquidation on two occasions prior to the launch of this application. In a letter dated 13 December 2024 (Annexure "X3" to the Founding Affidavit), the respondents' attorneys stated at paragraph 11 that "*it appears that it would be just and* *equitable that the company be liquidated*." This stance was reaffirmed in a letter dated 4 March 2025 (Annexure "XR4" to the Replying Affidavit), in which they stated they held "*instructions to proceed with the liquidation of the Company.*"

55.2. The respondents' subsequent reversal of this position upon the filing of the applicants' papers was entirely unexplained and highly opportunistic. By opposing the very relief they had previously championed, the respondents caused the applicants to incur substantial legal costs that were inherently avoidable. This type of volte-face is deprecated in our law as it unnecessarily multiplies trials and burdens the court's roll.

55.3. Furthermore, the respondents' litigation conduct, characterised by the late disclosure of material financial information and the advancement of a counter-application under section 163 that lacked a sound jurisdictional basis, materially prolonged these proceedings. Such conduct echoes the prejudicial behaviour addressed in *De Wit*, where costs (including two counsel) were awarded against directors whose contrivances forced unnecessary litigation.

[56] While the applicants did not seek punitive costs, the complexity of the matter and the respondents' role in inflating the litigation requirements justify costs for senior counsel on scale C. As observed in *Thunder Cats* and *Knipe*, where a party's opposition is found to be obstructive rather than bona fide, the court is entitled to ensure the successful party is not out of pocket for costs necessitated by such opposition.

Order of Court

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

1. Allan Henderson, Cindy Henderson and Petru Henderson are hereby joined as second, third and fourth respondents, respectively.

2. The counter-application by the second, third, and fourth respondents is dismissed with costs, including costs of senior counsel on scale C.

3. The first respondent, Empire Purification (Pty) Ltd (Registration Number: 2019/041956/07), is placed under provisional winding-up in the hands of the Master of the High Court, on the ground that it is just and equitable to do so, as contemplated in section 81(1)(d)(iii) of the Companies Act 71 of 2008.

4. A *rule nisi* is hereby issued, returnable on 15 June 2026, calling upon all interested parties, including creditors and members of the first respondent, to show cause, if any, on the return date, why the provisional order of winding-up should not be made final.

5. Service of this order shall be effected as follows:

   5.1. By the Sheriff upon the first respondent at its registered address;

   5.2. By publication in the Government Gazette once; and

   5.3. By publication in a local newspaper circulating in the area in which the first respondent conducts its business, once.

6. The costs of the liquidation application shall be the costs in the liquidation of the first respondent.

[redacted]

MM MOJAPELO
ACTING JUDGE
HIGH COURT GAUTENG DIVISION, PRETORIA
06 May 2026

Appearances:

Counsel for the Applicant	:	**Adv D van den Bogert**
Attorney for the Applicant	:	**Coombe Inc Attorneys**
Counsel for the Respondent	:	**Adv A P Bruwer**
Attorney for the Respondent	:	**DDV and Chiba Attorneys**