Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 21021/2013

In the matter between:

NONKULULEKO MBALO Applicant

v

ZOLANI MAKHOSONKE First Respondent

STANDARD BANK OF SOUTH AFRICA Second Respondent

REGISTRAR OF DEEDS Third Respondent

CITY OF CAPE TOWN Fourth Respondent

Court: Justice J Cloete

Heard: 5, 6 and 13 May 2015

Delivered: 22 June 2015

JUDGMENT

CLOETE J:

Introduction

[1] These are motion proceedings, coupled with a referral to oral evidence, in which the applicant seeks relief on the basis of the *actio communi dividundo*.

[2] The applicant and the first respondent (*'respondent'*), who opposes some of the relief sought, are the joint owners in equal undivided shares of an immovable property, being Erf 4…… U….. C…... L……, Western Cape (*'the property'*). The second respondent is the holder of the mortgage bond registered over the property. Along with the third and fourth respondents it abides the court's decision. For sake of convenience I will refer to the applicant and respondent as *'the parties'* where necessary.

Common cause facts

[3] The parties became involved in a romantic relationship during 2003. The applicant fell pregnant and their son, L, was born in January 2004.

[4] The applicant resided with her mother at the time but wished to purchase her own home. She made enquiries and selected the property, which was to be built

on a *'plot and plan'* basis. It was on the market at a total price of R164 612. She did not qualify for a home loan in this amount. She approached the respondent who agreed to combine his income with hers to enable her to qualify.

[5] During December 2004 their joint application was approved by the second respondent subject to the registration of a mortgage bond in the same amount over the property as security. It was subsequently transferred into their joint names. The dwelling on the property was completed during April 2005. The parties and L resided there from May 2005 until March 2008 when the respondent permanently vacated it following the breakdown of their relationship. The applicant and L still reside there.

[6] During the period in which the parties jointly resided at the property the respondent contributed an agreed amount of R2 000 per month. After his departure the parties agreed that he would contribute R1 000 per month towards L's maintenance which he has paid but not increased since 2008. The only amount which he expended on maintenance and improvements to the property was R5 000 for a vibacrete wall.

[7] From inception of their co-ownership the applicant paid all the monthly bond instalments as well as municipal charges. She also expended a total amount of R19 800 on improvements thereto, made up as follows:

2005:	Burglar bars	R 3 500
2006:	Built in cupboards in kitchen	R 6 800

2008:	Laminated flooring	R 1 000
2012:	Brick wall and gate	R 8 500
Total:		R19 800

[8] Over the years since 2008 the applicant has made various attempts to reach an agreement with the respondent regarding the termination of their co-ownership. These attempts proved fruitless and she launched these proceedings on 19 December 2013.

[9] The applicant initially sought orders that the respondent transfer his undivided half share to her for no consideration. During her subsequent testimony she accepted that he may well be entitled to some form of compensation and left it in the hands of the court to determine what would be just and equitable. The respondent agrees that the co-ownership must be terminated but insists that he must receive the full value of his half share net of the amount owing to the second respondent and disposal costs.

[10] The agreed market value of the property is R365 000 and the agreed amount owing to the second respondent under the mortgage bond is R118 067. The parties also agreed that the total amount paid on account of the bond during the period of their cohabitation (i.e. 1 May 2005 until 1 March 2008) was R65 237, and the total amount paid on the bond since inception is R226 044.

Issues to be determined

[11] In terms of an order of Roux AJ of 29 August 2014, the issues to be determined at the hearing of oral evidence were:

11.1 The basis upon which co-ownership of the property was agreed between the parties;

11.2 Whether the respondent is entitled to compensation upon termination of co-ownership, and if so, in what amount; and

11.3 What a just and equitable method of terminating the co-ownership would be.

[12] In *Lekup Prop Co 4 (Pty) Ltd v Wright* 2012 (5) SA 246 (SCA) at para [32] the Supreme Court of Appeal set out the approach to be taken when evaluating evidence in motion proceedings, coupled with a referral to oral evidence on limited issues, as follows:

> *'A referral to trial is different to a referral to evidence on limited issues. In the latter case, the affidavits stand as evidence save to the extent that they deal with dispute(s) of fact; and once the dispute(s) have been resolved by oral evidence, the matter is decided on the basis of that finding together with the affidavit evidence that is not in dispute.'*

Evidence on the disputed issues

[13] The applicant testified that after she fell pregnant with L (her second child) she began to seriously consider securing a home for herself and her children. She was living with her mother in Nyanga but it was cramped and inconvenient, given that her elder child had just commenced preschool in Athlone and she was employed in a clerical position in the finance department of the University of Cape Town with its offices in Mowbray. She liked the Langa area which was closer to the school and her work. She herself had attended school there and she was familiar with the area.

[14] While looking around for a suitable property to purchase she approached the second respondent to ascertain what amount she would qualify for in the event of her making application for a home loan. She was told that on her income at the time she would qualify for a maximum amount of R120 000. There were no properties available for R120 000 or less in the Langa area. The applicant believed that she could nonetheless afford to purchase one of the properties there which ranged in price between R140 000 and R160 000, even though she did not earn an income deemed sufficient for the bank's qualifying criteria.

[15] Knowing also that she intended advancing in her career with a concomitant increase in her income, the applicant approached a friend and work colleague, Ms Patiwe Ntshongwana. She proposed that, in order to enable her to qualify for a home loan in the desired amount, she and Ms Ntshongwana make a joint application to the second respondent on their combined incomes so that she

could secure a property. Her plan was that once she started earning a greater income she and Ms Ntshongwana would approach the bank to have herself substituted as the sole mortgagor. If the second respondent required that the property be registered in their joint names, then simultaneously with her being substituted as sole mortgagor she would also take transfer of Ms Ntshongwana's undivided half share.

[16] Her evidence is supported by the affidavit of Ms Ntshongwana in which she confirms the aforegoing and that:

> *'In terms thereof, my assistance would entail merely lending my name as a joint applicant for the home loan, however, the applicant would carry the full responsibility for the loan repayments and financial commitments towards the bank.*
>
> *It was never our understanding or intention that by so assisting the applicant I would have a right to a portion of the property or a claim of any sort towards the property. The whole exercise was to assist the applicant to qualify for a home loan with the bank.*
>
> *Although I was prepared to assist the applicant on this basis, unfortunately, my application for credit was turned down by the bank. For that reason I was unable to assist the applicant and I believe she then approached the* [first] *respondent, on a similar basis.'*

[17] The applicant remained determined to secure a home for herself and her children. When she found the property, she decided to turn to the respondent for assistance, given the nature of their relationship, that L was his child, and that he

earned an income considerably higher than either her or Ms Ntshongwana. She trusted him and told him that he could even reside at the property with them if he wished.

[18] The respondent agreed to assist her. When they met with the developer to sign the documents required for the joint application for a home loan they were informed that: (a) the property would have to be registered jointly in their names; and (b) if the property was ever sold they would *'have to split profits and losses'*. This did not concern the applicant because: (a) she did not envisage having to sell the property other than to upgrade; and (b) it was to be the future home of herself and her children and she accepted full financial responsibility for it.

[19] According to the applicant no specific discussion took place about the terms of the parties' co-ownership. The respondent was aware of what had transpired with Ms Ntshongwana and this, coupled with her simple request to him to assist her by combining his income with hers for the purpose of enabling her to qualify, led her to believe that their arrangement would be no different. In addition, the respondent showed scant interest in the property, both during its construction and thereafter, and his actual financial contributions merely served to reinforce her understanding of their arrangement. When the respondent vacated the property in March 2008 he had already purchased himself another home and he has been residing there ever since.

[20] It was also the applicant's testimony that the size of the dwelling which she (alone) selected to be built from the various available options was based on what she could afford, and not on what the parties could jointly afford. The improvements which she subsequently effected to the property were entirely her own decision because, in accordance with her understanding of their arrangement, there was no need to first consult with the respondent or obtain his permission. He never objected. The vibacrete wall for which he paid during his occupation of the property was a safety measure to prevent direct unfettered access from the street. It was this wall which the applicant subsequently replaced at her own expense to enable a gate to be installed.

[21] It was the applicant's evidence that the arrangement during the period of their cohabitation was that all of the expenses of the joint household (including the bond instalments and municipal charges) would be shared equally. The applicant calculated that one-half of these expenses equated on average to roughly R2 000 per month, and this amount was agreed. At the applicant's suggestion the respondent paid it to her in cash. This arrangement continued even when the respondent's brother resided with the parties from some time in 2006 until he vacated the property together with the respondent in March 2008. After the respondent's departure the parties agreed that R1 000 per month would be paid by him as maintenance for L.

[22] After he left the property the respondent told the applicant that *'I must take his name off the bond'.* She accepted this without objection and undertook to approach the second respondent in this regard. However the respondent then suggested that the property be sold *'so that he could get his share, because he said he would not just have put his name* [on the bond] *without getting anything* [in return]*'.* The applicant refused. She also refused his next suggestion, namely to rent one of the two bedrooms at the property so that she could raise an amount sufficient to pay the respondent the value of his net undivided half share.

[23] The applicant disputed the respondent's version that he had viewed the arrangement between them as an arm's length joint investment. She maintained that all of her attempts to resolve their dispute over subsequent years came to nought. She could never get a clear indication from the respondent of what exactly he wanted in order to settle the matter and all offers which she made were rejected, even after one of these had been accepted by him. Her evidence was borne out by various items of correspondence to which she was referred.

[24] It was also her testimony that whereas initially she had earned R4 000 per month gross and R3 600 per month net, as an administrative assistant she currently earns R14 284 per month gross and R10 639 per month net. She has approached the second respondent and it has granted her a pre-approved loan of R320 000, including what is currently owed under the mortgage bond of

R118 067. She is thus able to pay to the respondent the amount which the court deems just and equitable without having to sell the property.

[25] The applicant denied that the respondent held discussions with her about the basis upon which they would purchase the property, and in particular that he had not been prepared simply to bind himself as surety for her obligations under the mortgage bond *'because he would then not get the benefit of the property'.* She was consistent in her testimony that *'his name was only on the papers to enable me to qualify for a bond'.* She denied that the parties agreed that by paying the respondent's 50% share of the monthly bond instalment, the applicant would effectively be renting his half share of the property. She maintained that the first occasion on which the respondent mentioned receiving any financial benefit from the property was after he vacated it in March 2008.

[26] The applicant was candid that in an effort to resolve the dispute during 2011 she accepted the value of R250 000 placed on the property by the respondent at the time *'but maybe he was not aware that the costs involved and payments involved would need to come off'.* She explained that her understanding of splitting of profits and losses was that the bond instalments paid and the cost of improvements to the property would have to be deducted from its value (net of the amount owing under the mortgage bond) before the remaining *'profit'* would be divided equally.

[27] The respondent testified that he holds a B.Com degree and is employed as an assistant financial manager at the University of Cape Town. He confirmed that when the parties became romantically involved the applicant expressed the wish to purchase a home for herself and her children. He was aware that the second respondent was not prepared to grant her a home loan on her own income and *'we talked about options available to her. One I mentioned is that if she had enough savings she could pay the difference as a larger deposit, but she had no savings. She mentioned that the bank had told her that if she could come up with another person to apply with, she might qualify. I asked her in what capacity would she bring this person – as owner or as surety – she was not clear on which it was to be.'*

[28] His testimony was further that:

> *'I said if a person stood surety the bank would be able to recover the loan if the other person didn't pay and yet the surety had no benefit at all. When it came to co-ownership the bank could claim the full amount from either of the parties and the co-owner would then at least have a claim to the asset for payment of the proceeds of the loan. And in my case I would prefer it to be in the latter position and I would never put someone into suretyship. We left it at that.*
> *At some time much later in another conversation I discovered she was looking to buy a property together with her friend Ms Ntshongwana. I was still curious to know what their respective capacities would be if they were to buy together. She answered that both were desperate to move out of their respective places so were prepared to apply jointly and stay together, although I was still not clear on whether Ms Ntshongwana would be co-owner or surety.*

Some time passed and in another conversation she asked me if I could buy a property with her. I was surprised because I thought she was buying it with Ms Ntshongwana. I asked her why she was approaching me and she said that she was more comfortable with me, she trusted me more.

I referred her to our previous discussions and said I personally would not stand surety or place myself in a position which amounted to me standing surety. She understood that and agreed, she had no objection to what I had said. Because we were romantically involved I said to her that if we are to do co-ownership it would be at arm's length, i.e. independent of and not influenced by our relationship. We agreed on that.

The next issue was that she was keen on moving into the property and I wasn't. I would be staying in a different place where I paid to stay – a flat in Claremont – so she was going to take occupation of the property. In order for me to take co-ownership of a property where I was not staying, as co-owner I would be entitled to rental from whoever would be staying there. So we agreed that rent would be determined by one half of the bond instalments and one half of municipal charges such as rates. And I took it that we would each be liable for 50% of the expenses which she would then have to pay. So she would pay 100% but 50% of that would be regarded as payment on my behalf or allocated to me as rental.'

[29] The respondent maintained that the parties reached this agreement during August or September 2004 and that it formed the basis of their subsequent joint application for a home loan and co-ownership of the property. It was for this reason that he had given the applicant the option to sell or rent out one of the rooms at the property after he vacated it.

[30] He admitted that he had accepted a proposal to pay him R36 000 during 2011 (via the applicant's attorney, Mr Van der Merwe). His vague and unsatisfactory

evidence about why he had thereafter changed his mind merely served to show that he had simply gotten cold feet, and not that there was any rational or logical basis for him to have rejected it.

[31] The respondent contended that he had been at pains to protect his interest in the property from the outset, but admitted that he had not taken any steps to reduce the parties' agreement to writing. In his view, the fact of his registration as co-owner afforded him enough protection, and their oral agreement relating to the payment of rental was sufficient because they had trusted each other. He claimed that he had not wanted to *'rush'* the applicant to sell after he vacated, but admitted that her attempts over the years to settle the issue had all been fruitless and that he himself had not initiated any steps to resolve it other than to insist upon payment of 50% of its net value.

[32] In his words he was *'in no hurry, I would not have wanted to impose on her to extricate myself from the situation'.* However the impression which I gained was rather that the respondent had known that the longer he could draw out the dispute the more he might benefit financially as the value of the property increased and the balance owing under the mortgage bond reduced. He eventually conceded that his monthly contributions of R2 000 during the period when he resided at the property would have been wholly inadequate to cover his share of the household expenditure plus L's maintenance and half of the monthly bond instalments. He also conceded that, despite the increase in the cost of

living, he had not voluntarily increased L's maintenance of R1 000 per month since March 2008; had not independently contributed to the municipal charges of the property; and apart from assisting the applicant to qualify for the home loan and erecting the vibacrete wall, he had made no contributions whatsoever to its maintenance, the increase in its value or the reduction of the amount owing under the mortgage bond.

[33] The applicant impressed as a patently honest witness who was consistent in her evidence, was unshaken in cross-examination and was not evasive. Where necessary she made concessions in the respondent's favour. When she could not remember something she was candid. She admitted that at times since 2008 she had felt vengeful towards the respondent but the clear impression that I gained was that this was a thing of the past and that at least since 2011 she was *bona fide* in her wish to resolve the co-ownership issue with him. I found her to be a reliable and credible witness.

[34] On the other hand, the respondent did not impress. He came across as arrogant, evasive and condescending towards the applicant. He struck me as opportunistic in his dealings with her and despite being obviously intelligent, he was often unable to give straight answers to simple questions.

[35] In addition, the inherent probabilities favour the applicant's version. Her understanding of the arrangement with the respondent was the same as that which she had reached with Ms Ntshongwana and of which he was aware. Her

selection of a dwelling which fell within her budget and not the parties' joint budget, her consistent payment over the years of the mortgage bond instalments and municipal charges and the respondent's distinct lack of interest in the property and its maintenance, lend credence to her version. So too do the respondent's failure to initiate steps for years to resolve the issue as well as his acceptance of R36 000 during 2011. If he was *bona fide* about the terms of their agreement, it begs belief that he would, even reluctantly, have accepted this amount.

[36] The applicant bore the onus to prove the agreement on which she relied. Having regard to the above I find that wherever the applicant's version differs from the respondent's, hers is to be accepted and that she has thus discharged the onus resting on her.

Prescription

[37] Before dealing with a just and equitable method of terminating the parties' co-ownership, it is necessary to consider the respondent's contention that much of the applicant's *'claim'* for the amounts expended by her on the property has prescribed.

[38] In support hereof the respondent relies on the decision in *Claassen v Quenstedt and Others* 1199/2011 [2014] ZAECPEHC 18 (25 March 2014). There the court held that the *actio communi dividundo* distinguishes between a claim for

termination of co-ownership flowing from a partnership and one which does not; and that accordingly only claims flowing from a partnership are protected against the running of prescription until after dissolution thereof in terms of s 13(d) of the Prescription Act 68 of 1969. The respondent thus argues that any amounts expended by the applicant on the property more than three years ago have prescribed in terms of s 11(d) of that Act.

[39] Apart from *Claassen*, I have been unable to find any decision in which one of the parties to an *actio communi dividundo* raised the issue of prescription in a dispute concerning co-ownership where they were neither married nor had a partnership. Most of the decisions are distinguishable on their facts.[1]

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[1] 1.1 *Moosa and Others v Akoo and Others* [2008] 1 All SA 585 (N): Liquidation of assets following upon dissolution of partnership.
1.2 *Botha NO v Deetlefs and Another* 2008 (3) SA 419 (N): Application for ejectment of co-habitee who relied on existence of tacit universal partnership.
1.3 *Falcke v Smith* [2008] ZAGPHC 482 (23 September 2008): Division of jointly owned immovable property where parties had neither married nor had a partnership but issue of prescription did not arise because proceedings instituted within approximately one year of amounts having been expended by plaintiff.
1.4 *Els v Smit and Another* [2009] 1 All SA 339 (SCA): Liquidation of assets of dissolved partnership.
1.5 *Mills v Mills* [2008] ZAWCHC 121 (11 December 2008): Division of co-ownership of immovable property acquired during marriage but overlooked in consent paper on divorce.
1.6 *Schrepfer v Ponelat* [2010] ZAWCHC 193 (26 August 2010): Claim based on universal partnership.
1.7 *Van Niekerk v Van Niekerk and Others* [2011] ZAWCHC 233 (23 May 2011): One co-owner sought partition of the jointly owned inherited property on a particular basis. No dispute about expenses incurred in respect thereof.
1.8 *Morar NO v Akoo and Another* 2011 (6) SA 311 (SCA): Liquidation of assets following upon dissolution of partnership.
1.9 *Vorster and Others v Vorster and Others* [2013] ZAECGHC 1 (10 January 2013): Held not necessary to obtain co-owners' consent to alienation of undivided half share in immovable property.
1.10 *J NO v M NO* [2014] ZAGPPHC 264 (12 February 2014): Two executors locked in dispute about co-ownership of immovable property owned by two deceased who were married to each other.
1.11 *Baloyi v Baloyi* [2014] ZAGPPHC 312 (3 June 2014): Application to enforce the terms of a divorce order which included a deed of settlement including immovable property.
1.12 *A v Commissioner for the South African Revenue Service* [2014] ZATC3 (8 December 2014): Tax matter dealing with mingling and mixing of *Merx*.
1.13 *E v E and Others* [2015] ZAGPPHC 245 (26 February 2015): Exception: parties previously married and unable to agree on manner of division of joint matrimonial property.

[40] In *Matadin v Parma and Others* [2010] ZAKZPHC 18 (7 May 2010) at para [2] the court, in dealing with the *actio communi dividundo*, confirmed that *'*[it] *may make any equitable adjustment if one of the co-owners has, for example, benefited financially from the property or incurred expenses in respect of the property'* without imposing any limitation in respect of prescription.

[41] In *Dube v Hlako* [2013] ZAGPJHC 324 (28 November 2013) the applicant sought an order terminating the parties' co-ownership of their immovable property pursuant to the breakdown of their relationship. They had not entered into a civil marriage and the court rejected the respondent's version that they had concluded a customary marriage in terms of the Recognition of Customary Marriages Act 120 of 1998. The applicant also sought orders that the property be sold and that the net proceeds be applied, first towards refunding the amount which he had paid during 2010 to settle the balance owing under the mortgage bond from the proceeds of his pension, and thereafter that the balance be divided equally. The court had no difficulty in granting the relief sought, although it must be stated that prescription had not been raised and this was thus not an issue before it.

[42] In my view the respondent has misconceived the applicant's case. Her evidence concerning her contributions to the property was not advanced in support of a

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1.14 *T v T and Another* [2015] ZAGPJHC 87 (13 March 2015): Parties engaged in divorce proceedings – dispute regarding joint ownership.

1.15 *R v D* [2015] ZAECPEHC 35 (22 May 2015): Exception: parties previously married and unable to reach agreement on manner of division of jointly owned matrimonial property.

monetary claim against the respondent, but to contextualise the terms of the agreement on which she relied in claiming transfer of his undivided net half share for no consideration. This approach is consistent with her acceptance that he might well be entitled to payment of some form of compensation for his contributions thereto on the basis of the *actio communi dividundo* which was explained in *Robson v Theron* 1978 (1) SA 841 (A) at 856G-857D as follows:

> *'(B) The principles of the common law applicable to the* actio communi dividundo *may be briefly summarised 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 corporales*) 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 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. This would obviously cover the position where, after dissolution of a partnership, a continuing partner as a co-owner retains possession of an undivided partnership asset. A retiring partner as a co-owner would accordingly be entitled to institute this action against the continuing partner as co-owner to compel a division of the partnership asset in question.*
>
> *4. It is for purposes of this action immaterial whether the co-owners possess the joint property jointly or neither of them possesses 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*.'*

[43] To my mind, rather than restricting a claim for expenses incurred in respect of joint property by making it subject to prescription in all instances other than marriage and partnership, *Robson* indicates that such a claim is not limited, irrespective of whether it arises from partnership, marriage or otherwise. If this were not the case, the court would have stated that such a claim is subject to the provisions of ss 11 and 13 of the Prescription Act. It would have made clear that the *'wide equitable discretion'* of a court would be fettered by these statutory provisions in such instances. It would also not have held that the discretion is *'substantially identical'* to the similar discretion conferred on a court in distributing partnership assets.

[44] There is an additional and important consideration, namely the equality principle enshrined in s 9 of the Bill of Rights, that everyone is equal before the law and has the right to equal protection and benefit of the law. S 13 of the Prescription Act protects, with good reason, the rights of creditors and debtors who are married to each other and/or those who have claims arising out of a partnership, by delaying the completion of prescription. Having regard to the limitation clause in s 36 of the Bill of Rights it would in my view amount to unfair discrimination to find that where parties are co-owners but are not married to each other and do

not have a partnership agreement, they do not enjoy the same protection under s 13. It is not difficult to envisage a situation where, as in *Claassen*, parties cohabit in a romantic relationship for years, and only once that relationship ends do they give any consideration to how their respective contributions to their joint property should be taken into account. If individuals in a partnership, whether it be universal or a commercial enterprise, and spouses are protected, so too should persons in far more vulnerable situations such as the applicant.

[45] I am accordingly in respectful disagreement with the decision in *Claassen.* Accordingly, if I am wrong in my understanding of the applicant's case, it is in any event my view that the prescription point raised by the respondent does not assist him.

Just and equitable division

[46] Having regard to all of the facts and circumstances it would not be just and equitable to order the applicant to sell the property, nor compel her to pay the respondent 50% of its net value, being R123 466.50.

[47] I shall assume in the respondent's favour that each party effectively contributed 50% towards the monthly bond instalments during the period when he resided at the property, i.e. 50% of the agreed total payments during that period of R65 237. The respondent's only other contribution was the cost of the vibacrete wall of R5 000 of which R2 500 was thus paid on the applicant's behalf.

[48] The applicant's contributions on the respondent's behalf are calculated at 50% of the total amount paid on the bond since inception of R226 044 less R65 237, i.e. 50% of R160 807, being R80 403.50 to which must be added 50% of the cost of improvements of R19 800, i.e. R9 900 arriving at a total of R90 303.50.

[49] The net amount which the applicant has thus paid on behalf of the respondent is R90 303.50 less R2 500, being R87 803.50.

[50] The sum to be paid by the applicant to the respondent is therefore R35 663 calculated as follows:

Agreed market value:	365 000
Less: agreed bond balance	118 067
=	246 933
Less: respondent's 50% share	123 466
=	123 467
Less: amount paid by applicant on behalf of respondent	87 804
=	**35 665**

Costs

[51] Given that the applicant has been substantially successful, there is no reason why costs should not follow the result.

Conclusion

[52] **In the result I make the following order:**

1. **The joint ownership of the applicant and first respondent of the immovable property, being Erf 4……. U…… C……, L…... Western Cape is terminated.**
2. **The first respondent is ordered to do all things and to sign all documents as may be necessary to effect transfer into the applicant's name of his undivided half share in the said property against payment to him by the applicant of the sum of R35 663.**
3. **The costs of effecting the aforesaid transfer shall be borne by the applicant and first respondent equally.**
4. **The first respondent shall pay the applicant's costs on the scale as between party and party including all reserved costs orders.**

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J I CLOETE