

Battle looms over KWV sale

By [Ann Crotty](#)

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A battle royal is looming over the proposed payout to dissenting KWV minority shareholders following the sale of the company's operational assets to Vasari Global, a company controlled by Vivian Imerman.



Picture: [Trevor Samson](#)

Activist shareholder Albie Cilliers says the R13.47 per share he is being offered is nowhere close to representing the real value of KWV. Cilliers says the shares are worth at least R20-R21 each.

After being batted off by KWV's former CEO Andre van der Veen, he is now preparing to apply to court for a determination of the "fair value".

Cilliers has resorted to a little-used section of the Companies Act to secure a "fair value" payment for his KWV shares. Section 164 of the act gives minority shareholders an appraisal right to force the company to buy back shares at fair value when the majority of shareholders have approved a fundamental transaction. Shareholders have approved the sale of operating assets to Vasari for R1.2bn.

Due to that transaction, the assets of the company, renamed La Concorde Holdings, are now property, art and R575m in cash. The cash represents the first portion of the R1.2bn, which will be paid over three years.

Ahead of the sale to Vasari, KWV's major shareholder was Niveus Holding, majority owned by Hosken Consolidated Investments (HCI). Niveus, whose CEO is Van der Veen, is the controlling shareholder in La Concorde, against whom Cilliers's claim is being made.

Cilliers's situation as a minority shareholder in an unlisted company where there is a majority shareholder is just the sort of case Section 164 was designed to address. Corporate lawyer Carl Stein says the section's intent is to avoid locking minority shareholders into a company.

"Government has recognised the economic necessity to create and foster investor confidence in South African companies by introducing some significant new rights and remedies for minority shareholders, most of which already exist in similar or modified forms in the company laws of most first-world nations," Stein wrote in *The New Companies Act Unlocked*.

Van der Veen's R13.47 per share offer to Cilliers is the value determined by KPMG in the independent expert report it undertook for the KWV board ahead of the Vasari transaction.

In a letter to Cilliers, Van der Veen said the KWV board believed "the fair value price determined by the independent expert in its report is the most appropriate amount to utilise in determining the fair value price ... to be offered to shareholders".

Cilliers said Van der Veen's offer was ridiculous, not least because the R13.47 per share excluded consideration of the art and property assets. Vasari paid almost R17 a share for the operating assets and the art and property was worth at least an additional R3-R4 per share, he said.

Van der Veen noted the act obliged them to offer the value determined before the transaction was approved.

He said although KPMG determined the value after the transaction was higher, the company was obliged only to offer the value as it stood before the transaction.

But Cilliers questioned the aptness of KPMG's valuation method and of using the report's valuation as a basis for paying out shareholders.

Source: Business Day

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