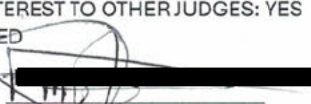




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2025/088498

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED
12/11/2025	
DATE	SIGNATURE

In the matter between:

PLATMIN SOUTH AFRICA

1st Applicant

SOUTHERN SPHERE PLATMIN (PTY) LTD

2nd Applicant

And

SAMANCOR CHROME (PTY) LTD

1st Respondent

SYLVANIA METALS PROPRIETARY LIMITED

2nd Respondent

MINISTER OF MINERAL AND PETROLEUM RESOURCES

3rd Respondent

**DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL
AND PETROLEUM RESOURCES**

4th Respondent

**DEPUTY DIRECTOR -GENERAL OF THE DEPARTMENT
OF MINERAL AND PETROLEUM**

5th Respondent

JUDGMENT

MOTHA J

Introduction

- (1) The vast mineral deposits in the belly of our continent (Alkebulan or Africa) have proven to be a bane of our existence rather than a boon. Millions have perished at the hands of these gemstones; some still have their loved ones' bodies buried deep inside the bowels of our continent without a funeral, while others continue to spill their precious blood in endless wars over our natural resources. Amongst the plethora of reasons implicated in the advent of slavery, colonialism and apartheid, the role played by these precious stones is not negligible.
- (2) At the heart of the dispute between South Africa Proprietary Limited (Platmin) and Samancor Chrome Limited (Samancor) is the skirmish over Platinum Group Metals (PGMs), which include platinum, palladium, rhodium, ruthenium, iridium, and osmium, located on Farm Grootboom 336 in the KT Magisterial District of Lydenburg, Limpopo Province. Stripped of surplusage, the dispute emanates from a decision of the Minister of Mineral Resources and Energy, Mr. Mantashe.
- (3) On 27 March 2025, Minister Mantashe upheld Platmin's appeal, whilst dismissing Samancor's. The *fons et origo* of these two appeals was the enactment of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). Following the commencement of the MPRDA on 1 May 2004, the old order of mineral rights, as encapsulated under the Minerals Act, 1991, came to an end.

- (4) Samancor held the old order minerals right to mine chromite – including associated minerals, under s 5 (3) of the Mineral Act. This section permitted the holder of a Mining Authorisation to also mine and dispose of other minerals not forming part of its mining right, but which occur by association with the minerals forming part of the mining right¹. Essentially, in terms of its old order mineral right and subject to section 5 (3) of the Minerals Act, Samancor could, while mining Chromite, also mine and dispose of any mineral, including PGMs and other minerals.²
- (5) Under the new regime, however, Samancor's old order was valid for five years, from 1 May 2004 to 1 May 2009, call it a sunset clause. On 20 July 2007, Samancor applied for the conversion of its old order right and became a holder of the converted mining right for chrome, lodged in terms of Item 7 of Schedule II of the MPRDA³, on 31 July 2009.
- (6) In terms of MPRDA, Samancor had to apply for its mining rights to include associated minerals, unlike during the old order under s 5 (3) of the Mineral Act. Only on 18 March 2020 did Samancor apply for the amendment of its mineral right to include associated minerals in accordance with section 102.
- (7) On 24 July 2020, the amendment to include associated minerals (other than chrome) was granted and issued to Samancor's mining right on 19 August 2020.⁴
- (8) All the while, Platmin, erstwhile Boyton Investments (Pty) Ltd, was the holder of an unused old order right for PGMs Gold, Nickel, Copper, Cobalt.⁵ Under Item 8 of the MPRDA, Platmin's old order right was valid for one (1) year from the date of the MPRDA's inception. Since Platmin did not apply to convert this unused old order right, it lapsed on 1 May 2005.

¹ Mantashe ruling para 3.3.

² Supra para 1.2.

³ Supra para 1.1

⁴ Supra para 1.7.

⁵ Supra para 1.8

- (9) Pursuant to the lapse of this right, in February 2006, Platmin applied for a prospecting right to prospect for PGMs, Gold, Nickel, Copper, and Cobalt on the Farm Grootboom, and was granted it on 23 November 2006. Having received Platmin's application for a mining right on 7 November 2007, the Director General approved Platmin's application on 21 October 2008.
- (10) On 14 March 2024, Platmin's mining right was further renewed until 2053. Consequently, between August 2020 and 27 March 2025, both Platmin and Samancor shared the right to extract PGMs from the same area, Farm Grootboom.
- (11) This situation brought into sharp focus the wisdom found in the African proverb that two bulls cannot stay in the same kraal. The constitutional court might as well have been reciting this old adage when in *Minister of Mineral Resources and Others v Sishen Iron Ore Company (Pty) Ltd and Another*⁶ held:

"Where a right already exists in relation to the same mineral on the land in question, the state may not grant a right to anyone other than the existing right holder. In other words, there is only one applicant for rights in the Sishen mine who would not be hit by the prohibition contained in sections 16(2)(b) and 22(2)(b)."⁷

- (12) In his ruling, the Minister remarked that: "The granting and issuing of amendment in terms of section 102 to include mineral subject to Platmin mining right resulted in two mining companies having rights for the same area for the same mineral, which is contrary to the Act."
- (13) The African proverb that when elephants fight, it is the grass that suffers aptly describes the situation before this court. Ultimately, the poor workers and their families will bear the brunt of all these missteps.

⁶ (CCT 51/13) [2013] ZACC 45; 2014 (2) BCLR 212 (CC); 2014 (2) SA 603 (CC) (12 December 2013)

⁷ Supra para 115.

(14) Unsurprisingly, both Samancor and Platmin appealed the decisions of the Director Generals, namely:

(a) The Director General's decision issued on 24 July 2020, approving Samancor's application under s 102 of MPRDA to amend its mining right to include additional minerals (other than Chrome), was appealed by Platmin.

(b) Samancor appealed the Director General's decision, issued on 21 October 2008, renewing Platmin's mining right on 14 March 2024.

(15) Aggrieved by the Minister's ruling on these appeals, Samancor launched an application to review his decision. Pending the final determination of the review proceedings, Platmin instituted an application for an interim interdict to prevent the first and second respondents from exploiting, taking, or selling PGMs for their own benefit in, on, or under Grootboom.

(16) Samancor responded with a counter-application seeking to interdict Platmin, the second respondent ("Southern Sphere"), the Minister, the Director-General, the fifth respondent, and the sixth respondent from taking any steps to implement or enforce the Minister's decisions pending the final determination of the review Application.

Interim interdict

(17) The requirements for an interim interdict are trite and can be summarised as follows:

(a) prima facie right, albeit open to some doubt;

(b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted;

- (c) the balance of convenience must favour the granting of the interdict and
- (d) the applicant must have no alternative satisfactory remedy⁸.

Prima facie right, albeit open to some doubt;

(18) It is trite that “the ‘*prima facie*’ establishment of a right calls for less than a balance of probabilities, that the temporary interdict can be granted where less is shown than the proof which would entitle the applicant to judgment at the trial...”⁹ The test is so low that it is enough, “If it is *prima facie* established though open to some doubt.”¹⁰

(19) Examining this concept, the court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*¹¹ held:

“Under the Setlogelo test, the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a *prima facie* right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation *pendente lite*.”¹²

(20) Pursuant to the minister's decision, I am of the view that the applicants (Platmin and Southern Sphere) have more than a *prima facie* right to PGMs in Grootboom. However, the matter is not as open and shut as that. Samancor too has a right to dig for metalliferous ore and extract chrome in Grootboom. This presents a

⁸National Treasury and Others v Opposition to Urban Tolling Alliance and Others [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (National Treasury v OUTA) at para 41.

⁹Webster v Mitchell (WLD) para 1188.

¹⁰Webster v Mitchell 1186 (WLD) para 1189.

¹¹(CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012).

¹²Supra para 50.

conundrum confronting this court, because Platmin and Samancor are entitled to minerals in the same ore. To complicate matters, chrome and PGMs are bounteously intermingled when extracted from under or on Grootboom. Perhaps, it is much easier to address the distribution of rights than to interdict their use.

(21) Despite numerous engagements, counsel could not assist the court to reach the well-established principles relating to the exercise *civiliter modo* of conflicting mining rights. This concept of *civiliter modo* is akin to *Ubuntu* in that it requires a holder of rights to act with reasonableness, due care and cause the least possible harm or inconvenience to the other party involved.

(22) As expected, counsel faced difficulties due to the absence of a Roman-Dutch footprint in this area of law, as referenced in the *Trojan Exploration Company Proprietary Ltd. and Another v Rustenburg Platinum Mines Ltd. and Others*¹³:

"Indeed an entire structure of mineral and mining law had been evolved in South Africa both by the courts and various legislatures. The need for such development arose out of the lack of such laws in the Roman-Dutch system."¹⁴

(23) Addressing the paucity of precedents on these matters, the court continued and held:

"The nature of rights to minerals which had been separated from the ownership of the land, as they had developed in South Africa, was described by Innes CJ in *Van Vuren and Others v Registrar of Deeds* 1907 TS 289 at 294 as being the entitlement "to go upon the property to which they relate to search for minerals, and, if he [the holder] finds any, to sever them and carry them away." As these rights could not be fitted into the traditional classification of servitudes with exactness - they were not praedial as they were in favour of a person, not a dominant property - they were not personal as they were freely transferable - they had to be given another name, and the Chief Justice dubbed them quasi-servitudes, a label that has stuck...but the relationship between two holders of

¹³(609/94) [1996] ZASCA 74; 1996 (4) SA 499 (SCA); [1996] 4 All SA 121 (A); (31 May 1996)

¹⁴ Supra para 6.

different mineral rights where their rights compete, and where the one in severing minerals to which he is entitled perforce severs those also of the other, without his consent. This is uncharted water. There are no South African decisions directly in point. It must be added that although much of the common law has survived, statutes dealing with the right to mine have in many"¹⁵

- (24) Given these hazy legal precepts on how to deal with competing mineral rights, it does not help that the process of extracting Chrome from the ore is complex because it involves removing PGMs as well. When can one say that enough chrome has been harvested and only PGMs remain? It seems to me that such a stage does not exist, since in Chrome, PGMs are always present, no matter how tiny. This is at the core of the issues in this case. If that is true, a blunt legal tool such as an interdict may do more harm than good.
- (25) However, it is the only instrument at our disposal at this stage of legal development. Indeed, our law has not fully developed to address such predicaments. Therefore, the law must evolve to address competing mineral rights. Essentially, the question is, if A has the right to the flower that makes up a cake and B has the right to the sugar that sweetens the exact cake, can A be prevented from selling the cake to protect B's right?

Both Platmin and Samancor have mining rights to the ore.

- (26) The applicant has made it abundantly clear that it recognizes the right of Samancor to mine the ore; otherwise, it would be tantamount to killing the goose that laid the golden eggs. Yet, if the *status quo* is allowed to persist, as if Samancor has *jus abudenti*, chrome will continue to be sold with PGMs to the detriment of PGMs' rights holders, Platmin. As the respondents (referring to the first and second respondents) suggested, there is a risk of mine closure and attendant job losses if a blanket order is issued that interdicts the sale of the ore. Based on the applicants' submissions, it is patent that this is not what they seek either. Therefore, it is of paramount importance that this court determine the

¹⁵ Supra paras 7,8 and 9.

parameters within which the respondents exercise their right, *civilter modo* or with *Ubuntu*.

- (27) This requires the court to determine the stage(s) at which sufficient chromite is separated from the ore for Samancor to sell with the least harm visited on Platmin's rights to PGMs. Focusing on this, the court in *Trojan* held:

"It seems to me to flow inevitably from the circumstances in which the competing rights originated that each must be exercised *civilter modo*, broadly in the sense that the phrase is understood in the law of servitudes. Each party should exercise his rights in a civil fashion. His object should be to use his own rights so as to obtain a profit, but in manner least likely to harm his "neighbour." This does not mean, however, that he must always choose the least injurious course."¹⁶

- (28) Indeed, the interdict might be: "That course may be impractical or too costly, so costly even as to render exploitation unprofitable. He should never act so as simply to harm or spite his neighbour. He, on his part, should be prepared to suffer those disruptions of his rights, even damage to or the destruction of them, which it is reasonable that the other party should impose."¹⁷

Supplementary Affidavits from the experts in the field

- (29) In an effort to minimise the harm and avoid untold mayhem, and in view of the co-ownership of rights on the ore at Grooboom, the court requested elucidation from experts in the mining field. Without the guidance from the torchbearers, such as geologists and metallurgists, it soon became clear that the court was left in the dark.

- (30) Subsequently, the court received additional affidavits from geologists and metallurgists. The applicants' supplemental affidavits were from Kenneth

¹⁶ Supra 67.

¹⁷ Supra 68.

Graham Lomborg, an adult male geologist employed as a director at Pivot Mining Consultants, and Jacques Raymond Barkley, a metallurgist employed by the second applicant.

- (31) The first respondent relied on the supplementary affidavit from Resemate Lethabo Maluleke, an adult male geologist employed at Samancor as Mineral Resource Manager at the company's Eastern Chrome Mine ("ECM") in Steelpoort, Limpopo Province. The second respondent's supplementary affidavit was provided by Samkelwa Galela, an adult male metallurgist employed by Sylvania as the plant manager of Sylvania's Lannex Plant.
- (32) In a nutshell, the geologists, Lomborg and Maluleka, supported by Mailula, a metallurgist, gave an explanation of the different seams at Grootboom. Aside from a few issues that are of no moment, the geologists agreed on essential topics. The metallurgists, Barkley and Galela, unpacked the beneficiation of Run of Mine ore (ROM) into saleable Chromite concentrate and PGM concentrate. Although the metallurgists recorded numerous points of divergence, Barkley's definition of some essential words brooked no dispute, and these words are:¹⁸

"ROM or Run of Mine is the blasted raw, unprocessed mineral material, a mixture of valuable ore and host waste rock, directly extracted from a mine after it has been blasted into chunks and before any crushing, milling, screening, or other technical processing steps are applied. It represents the original, in-situ geological material and waste host rock as it is delivered from the mine, for the initial feed into a crushing or processing plant. Thereafter, for practical purposes, one could refer to crushed ROM or processed ROM.

Beneficiation refers to the series of steps that liberate and upgrade run-of-mine (ROM) ore into saleable products such as chromite concentrate and PGM concentrate. There are common processes to both such as crushing, milling and screening and there are unique processes such as gravity separation for chromite, Dense Media Separation (DMS) for chromite chip and lumpy and flotation for PGMs.

¹⁸ Supplementary affidavit para 8.

Chromitite is the rock mined from the various seams on Grootboom. Chromitite contains chromite, PGMs and various other minerals such as silicates which are all diffusely dispersed in the seams.

Chromite is the commercial name for iron chromium oxide (FeCr_2O_4), a mineral containing chromium (a transition metal with multiple oxidation states) and iron oxide.

Chromite concentrate refers to the product produced from chromitite ore that has been processed to remove impurities such as minerals called silicates with which the PGMs are associated. "Saleable chrome concentrate" or "metallurgical grade concentrate" is typically where the chromium oxide content is between 40.7% and 44% and where a significant amount of the impurities has been removed, making it suitable for sale on the market. Beneficiation, significantly increases the chromite content, making the concentrate a more suitable and economically viable raw material for industrial uses like stainless steel production and ferrochrome smelting.

PGMs, as stated, is an abbreviation for platinum group metals. PGMs comprise platinum, palladium, osmium, iridium, rhodium, and ruthenium. These are extremely valuable precious metals which, although occurring in very small quantities in the mined ore, are more abundant in the Bushveld Complex where Grootboom is situated than elsewhere on earth.

PGM concentrate is a refined product containing a high concentration of Platinum Group Metals (PGMs) that has been separated from the initial ore. This concentrate is created through what is called the flotation process that concentrates the valuable PGM-bearing sulphide minerals from the waste rock and other materials such as the silicates with which it was associated."¹⁹

- (33) It bears mentioning that South Africa is the world's largest producer of chrome, and that the experts agree that PGMs and Chromite are vital to the economy of

¹⁹ Platmin and Southern Sphere Platinum's clarification affidavit by Raymond Barkley, para 13.

South Africa, because they are used for various industrial and consumer products.

The geologists

Mr. Lomborg

- (34) **Kenneth Graham Lomborg** narrates that there are 13 different chromitite layers grouped as Lower Group (LG), Middle Group (MG) and Upper Group (UG) Chromitite Layers. The various chromitite layers are, in turn, separated by layers of host rock of other lithologies²⁰.
- (35) PGMs are found in the MG and LG layers of the Bushveld Complex in relatively minute quantities. However, Lomborg maintains that the minute amounts of PGMs present in these layers represent significant economic value, despite their lower concentration compared to the chrome content of the same layers.²¹
- (36) Still on this issue, he adds that despite the massive difference in physical abundance, the economic value distribution is much more balanced due to the high price differentials between PGMs and chromite. While chromite might be present at levels of hundreds of kilograms per tonne, it is similar in value to a few grams of PGMs. At just a few grams per tonne, PGMs contribute substantially to the co-owned ore's total value. PGMs generally trade at prices that are several orders of magnitude higher than chromite.²²
- (37) To emphasize how PGMs and chromite are intertwined, he writes that the nature of PGM particles and grains is finely disseminated throughout each of the chromitite layers and thus in the ROM mined. Chromite grains and particles are also disseminated throughout each of the chromitite layers and thus in the ROM mined.²³ Since the PGM-bearing minerals are disseminated, the PGM mineral

²⁰ K.G. Lomborg's affidavit para 18

²¹ Supra para 20.

²² Supra para 22.

²³ Supra para 23.

grains are spread throughout the chromitite layers rather than occurring in discrete veins, nuggets, layers or pockets.²⁴

- (38) He explains that the MG and LG layers have a distinctive dark colouration typical of chromite-bearing rock or chromitites. Each of these chromitite layers contains both chrome and PGMs bearing minerals, but in different proportions.²⁵
- (39) The LG and MG layers are rich in chrome and are accordingly the focus of Samancor's mining operations. In addition to their chromite content, the LG and MG layers also contain valuable PGMs.²⁶
- (40) In brief, his argument is that what PGMs lack in weight, they make up for in value.
- (41) Due to the global scarcity of PGMs and the tiny quantities it takes up per tonne, holders of PGM rights generally process all mined material in order to win as many PGMs as the mined ROM renders, he concludes. This is so because every gram counts when it comes to the valuable PGMs and other metals with which they are associated.

Mr. Maluleke

- (42) **RESEMATE LETHABO MALULEKE** writes that while he is familiar with the processes at Samancor's plant at the Lannex Mine, a qualified metallurgist, Ms. Nhlamulo Mailula, has also confirmed the facts relating to the processing undertaken at Samancor's plant.
- (43) Having agreed with Mr. Lomborg on the stratigraphy of the Bushveld Complex, Maluleke explains that Samancor has two mining operations at Grootboom, which it calls Lannex Extension and East of Dyke. The Lannex Extension operation consists of two sites, referred to as the Lannex Extension (North) and Lannex Extension (South)²⁷

²⁴ Supra para 24.

²⁵ Supra para 32.

²⁶ Supra para 33.

²⁷ Affidavit by RESEMATE LETHABO MALULEKE at Para 17

- (44) The exposed hillside of Grootboom reveals that the UG seams sit approximately 50m above the MG seams. This means that the UG seams are only present in limited areas on Grootboom, at the top of hillsides and, in the Northwest corner of the property, at surface level. The UG1 seam at East of Dyke sits approximately 50m - 100m above the MG seams, and the UG2 seam sits approximately 100m above the UG1 seam (therefore 150m - 200m above the MG seams).²⁸
- (45) The bone of contention between Maluleke and Lomborg seems to be on “the 2008 MWP” (the mining work programme submitted by Platmin as part of its application for a mining right). Lomborg insists that the mining right granted to Platmin is to “all minerals excluding chrome” in, on and under Grootboom (the Grootboom PGM Right). Therefore, no layer of seam is excluded from the scope of the right.
- (46) Focusing on the uncrushed rock of various sizes, he mentions that PGMs occur in this material in tiny grains, measurable only in microns (a micron being 0.001mm, or 1/1000th of a mm), and are entrained in the material. (meaning that these tiny grains are spread through the rock in between the rest of the material).²⁹ They can only be liberated from the material if the material is milled so fine (to less than 630 microns, 0.63mm) that the rock is effectively broken up sufficiently so that the individual PGM grains can then be separated.
- (47) Explaining the overview of the saleable chrome ore produced at Grootboom, Maluleke refers to Samancor’s answering affidavit, which details the different stages of selling chrome ore mined at Grootboom, namely:

A. Some of the chrome ore is sold directly from the ROM stockpiles;

- In paragraph 30 of the answering affidavit, Samancor explained that it stores the ROM material mined from Grootboom on a stockpile at

²⁸ Supra para 19,2

²⁹ Supra para 26.

Grootboom and that it crushes and sorts some of this ROM material at the stockpile, which it sells to third parties.

- Material is sampled before it is removed from the mine area. Where it appears that the material is of sufficient quality to sell without further processing (which is generally 36 - 40% chrome), the material is fed through the screen and crusher to obtain material with particles of 15mm - 80mm diameter (referred to as "lumpy" ore). That ore is then sampled again to verify its chrome content, then placed in stockpiles for sale.

B. Some are processed at Samancor's processing plant to improve the grade and then sold;

- All the material that is transferred to Samancor's processing plant is first crushed at the ROM stockpile area, generally until it is 200mm or smaller. It is then transported by truck to the processing plant, where it is placed onto a conveyor belt and transported to a crusher (as stated in paragraph 33 of Samancor's answering affidavit), which crushes the material to 80mm or smaller. The result is a mix of materials ranging from less than 1mm to up to 80mm.
- In paragraph 32 of the answering affidavit, Samancor explained that it delivers some of the ROM material from the Grootboom stockpile to its processing plant. This material has an estimated 30- 36% chrome, and the purpose of sending it to the Samancor processing plant is to improve the grade of the ore to 38% chrome (in the case of large particles) or 42% chrome (in the case of fine material). This is mainly achieved by removing material that has no or very low chrome content from the ore. It is also achieved by mixing ore from different sources. Ms. Mailula confirms that Samancor mixes ore received from Grootboom, Annex Grootboom and Spitskop to produce saleable chrome ore at the correct grade.

- "In this regard, I confirm that Samancor sends material from each of its operations on Grootboom, Annex Grootboom and Spitskop to Samancor's processing plant. I confirm that Samancor has, in the year-to-date, processed approximately 67,800 tons per month of such material;

34.1. approximately 20,900 tons per month from Grootboom,

34.2. approximately 16,300 tons per month from Annex Grootboom; and

34.3. approximately 30,600 tons per month from Spitskop.

- Material from Grootboom therefore comprises approximately 31% of the total material processed at Samancor's processing plant."
- After the material has been crushed, it is moved from the crusher by conveyor belt to a sizing screen where it is divided into different sizes. Then, depending on its size, the material undergoes the following further processes.
- Large particles are those greater than 1mm, as stated in paragraph 34.1 of the answering affidavit. Samancor explained that large particles are subjected to a dense media separation process (DMS).
- They are classified in three sizes:
 - Lumpy (15- 80mm);
 - Small lumpy (6 - 15mm);
 - Chip (1 - 6mm)
- All the material from the crusher is passed through a screen. This divides the material into two feed bins of lumpy material, and small lumpy material with chip.
- These are subjected to different streams, drum circuit for lumpy material and cyclone circuit for small lumpy material and chip.

(48) Water is added to the material, and it is passed through a suspension of water and ferro-silicon reagent. The high density chrome material sinks to the bottom

of the suspension, while the remainder of the material floats at the top of the suspension. The chromite has a density of $\sim 4.1\text{g/cm}^3$ and the silicates have a density of $\sim 3.5\text{g/cm}^3$.

(49) Through this process, Samancor obtains:

Saleable chrome ore with a concentration of 38%;

Waste material. (This is de-watered and stored on a separate stockpile. It is resold by the Phabema community.

(50) Samancor has, in the year to date, produced an average of 28,500 tons per month of saleable chrome ore from this process:

12,400 tons per month of lumpy ore;

12,800 tons per month of small lumpy ore;

3,300 tons per month of chips.

(51) Mr. Maluleke and Ms. Mailula confirm that the proportion of this material that can be considered to be derived from material obtained from Grootboom can be determined by applying the percentage figure for that source material - in other words, 31% of this saleable chrome ore can be attributed to material sourced from Grootboom.

(52) The saleable chrome ore is retrieved from the bottom of each container. The lumpy product is then, as explained in paragraph 34.2 of the answering affidavit, de-watered and placed on stockpiles. The small lumpy material and chips are passed through a further screen to separate them from each other and then also de-watered and placed on stockpiles.

(53) Explaining the process at Samancor, once the material has been crushed, it is moved from the crusher by conveyor belt to a sizing screen where it is divided into different sizes. Depending on its size, the material undergoes the following processes.

C. Some are processed at Sylvania's processing plant to improve the grade and then sold. (Mr. Galela deals with this *infra*)

The metallurgists

Mr. Barkley

- (54) As already mentioned, PGMs are found in relatively small quantities in the Middle Group and Lower Group seams; however, like Lombard, he adds that the minute quantities of PGMs present in these seams hold significant economic value despite the differences in proportions compared to the chromite content of the same seams.³⁰
- (55) PGMs are disseminated throughout each of the seams, making it impossible to mine chromite or PGMs without also mining the other. Chromite and PGMs are therefore mined together out of necessity because they are found in the same chromitite rock and co-exist in the same ROM material.³¹
- (56) Since the PGMs are disseminated throughout the mined chromitite ore, the PGM particles are not visible by merely looking at the chromitite ore with the naked eye. It is only once it has been processed into PGM concentrate that it can be recognised.³²
- (57) Reiterating what Lombard said, he narrates that due to the scarcity of PGMs and the small quantities it takes up per tonne, holders of PGM rights generally process all mined material to win as many PGMs as the mined ROM renders. This is so because every gram counts when it comes to valuable PGMs and the valuable precious metals such as platinum it contains."³³
- (58) Further, he expounds that chromite is separated and recovered first. After crushing and milling, chromite is recovered using gravitational separation methods to separate it from gangue material. Significantly, he emphasizes that

³⁰ Supra para 17.

³¹ Supra para 18.

³² Supra para 19.

³³ Supra para 20

Samancor and Sylvania have the capabilities to produce chromite concentrate through crushing, screening, milling, and gravity separation in a processing plant.

- (59) PGMs, he continues, are not chemically bonded to chromite but locked in base-metal sulphides like pentlandite, chalcopyrite and pyrrhotite present in chromitite as discrete grains trapped between chromite crystals and thus associated such that the process to extract chromite before the PGMs does not sacrifice later PGM recovery.³⁴
- (60) To quote him: "...PGM recovery and concentration occurs in tanks and entails the addition of water, reagents and air to the slurry. PGMs are hydrophobic (which means it does not want to remain in water) and tend to attach to the air bubbles rising to the top of the tank. A PGM-rich froth forms on the surface which is skimmed from the remaining material in the process to produce what is known as a PGM concentrate. The PGM recovery process is thus materially different to that used in the chromite removal process. PGM recovery after liberation is neither necessary nor relevant to the beneficiation (recovery) of chromite."³⁵
- (61) Regarding the gravitational process used to extract chrome and PGMs, experts are in agreement. Mr. Galela's description of the process provides much more detail than Barkley's. Be that as it may, Barkley describes the process as follows:
- "The gravity separation process (also referred to as a gravitational process or spiral concentrator process) is a more advanced process for further separating and sorting granular material relying on the density differences between gangue and chromite, as well as the size and shape of the particles. Chromite has a density of ~4.5 g/cm³ which is heavy compared to silicates with a density of: ~2.7 g/cm³. The spiral uses water and centrifugal forces to force lighter and finer particles, usually gangue and waste to the outside of the spiral. Heavier and coarser particles such as chromite accumulate on the inner side of the spiral. As the material gravitates or slides down the gravity spiral in a circular motion, those of a higher density are separated along one path i.e. the inner part of the spiral

³⁴ Supra para 29

³⁵ Supra para 30

close to the centre, and those of a lower density are forced to the outside of the spiral by the centrifugal forces exerted on the lighter particles until they are ultimately sufficiently separated by a splitting device, and removed from, the operation of the process. In these proceedings, the gravity separation processes applied by Samancor and Sylvania separate Samancor's chromite (as chromite concentrate) from the remaining material."³⁶

- (62) After chromite liberation and beneficiation through a gravity or even magnetic separation process, the rest of the material containing the PGMs must be left to allow the rights holder to exploit all remaining minerals in accordance with its rights,³⁷he reminds the court.
- (63) He concludes that Sylvania liberates chromite from the crushed, screened, and milled ROM material, to produce an upgraded saleable product, namely chromite concentrate, and a remaining tailing, referred to as current arisings tailings. The tailings produced by these chromite beneficiation processes (such as gravity separation) are usually chromite-barren but PGM-rich.³⁸
- (64) One of the areas of disagreement between Barkley and Galela concerns Barkley's assertion that since ROM from different mining sites is kept separate, the stock of ROM from Grootboom can be built up and can be processed separately in batches to avoid materials from different mines unnecessarily mixing with Grootboom material³⁹.
- (65) He writes that ROM ore contains significant amounts of gangue (or, in other words, the residual minerals and material associated with, but other than, chromite, and in respect of which Samancor has no right) material including silicates (which harbours the PGMs), which dilute the chromite content and need to be removed before metallurgical chrome products, or ferrochrome can be produced.

³⁶ Supra para 71

³⁷ Supra para 41

³⁸ Supra para 43

³⁹ Supra para 44.

- (66) He insists that with reference to the respective rights held by Samancor and Platmin, neither Samancor nor its contractor, Sylvania, has any right or need to process the post-chrome material, to extract PGMs. The post-chrome material produced by Sylvania must be diverted to the TSF.⁴⁰
- (67) PGMs occur as very small inclusions and intergrowths within base-metal sulphides, along silicate-chromite grain boundaries. To contextualize the minute size of PGM particles/grains, he asserts that they are only measurable in microns - appreciating that 1um (a micron) is a 1000th of a millimetre. A typical particle is between 6 and 30 microns which is smaller than the eye can see.⁴¹
- (68) A TSF is a specially designed and constructed facility, often including one or more tailings dams, used to contain and manage the slurried tailings from the mineral separation processes, such as those in the Lannex or Sylvania mineral.

Mr. Galela

- (69) **Samkelwa Galela** writes that he provides a first-hand account of Sylvania's processes at its Lannex Plant, unlike Barkley, who has a theoretical knowledge based on the general industry standards and methodologies.⁴²
- (70) Acknowledging the presence of some mistakes, he recounts that:

"On the basis of the "Grootboom" figures, Mr. Prinsloo [the Managing Director of Sylvania] made the calculation and estimated that during the period January to May 2025 (being the relevant period at the time of the calculation) 45% of the ROM processed by Sylvania and 15 to 20% of the current arisings tailings originated from Grootboom. This was incorrect."⁴³

- (71) Further, he narrates that Mr. Prinsloo has re-calculated the portion of ROM material processed by Sylvania that originates from the farm Grootboom based

⁴⁰ Supra para 31.

⁴¹ Supra para 35.

⁴² Galela's affidavit para 12

⁴³ Supra para 19.

on the figures in "Extension 1" and confirms that, for the same period (i.e. January 2025 to May 2025), approximately 20% of the ROM material processed by Sylvania and approximately 24% of the current arisings tailings processed by Sylvania, originate from the farm Grootboom.⁴⁴

- (72) He states that Mr. Prinsloo added that these figures are now outdated and that, at present, for the year to date (i.e., January 2025 to August 2025), approximately 16.2% of the ROM material processed by Sylvania and approximately 31% to 35% of the current arisings tailings processed by Sylvania originate from the farm Grootboom.
- (73) Save as corrected above, Mr. Prinsloo confirms that the harm to Sylvania if the interdict is granted as described in paragraphs 135-141 of Samancor's answering affidavit remains correct, even with the amended figures set out above. This is because the volumes remain significant to Sylvania's operations and Sylvania's concerns regarding sourcing alternative material and the costs of doing so, as well as the dilution of the PGMs on the TSF,⁴⁵ he asserts.
- (74) Revealing his hand, Mr. Galela recounts that Samancor, and therefore Sylvania, can trace the origin of the ROM delivered to Sylvania (as set out above). However, the current arising tailings are delivered to the Sylvania Lannex plant by pipeline. They are comprised of material from Grootboom, Annex Grootboom, and Spitskop, and it is not possible to determine or trace back the origin of the current arising tailings as they enter the Sylvania plant.
- (75) Accordingly, he concludes, once the ROM material enters the Sylvania plant, it is all combined; it is, thereafter, impossible to determine which material comes from Grootboom and which does not.
- (76) Disagreeing with paragraph 44 of Barkley's affidavit, which states that the stock of ROM from Grootboom can be built up and processed separately in batches to

⁴⁴ Supra para 21.

⁴⁵ Supra para 23.

avoid materials from different mines unnecessarily mixing with Grootboom material, he writes that this statement is incorrect and impractical.

- (77) He points out that the Sylvania Lannex plant operates 24 hours per day, seven days per week, and only shuts down for necessary maintenance or safety emergencies. As such, any ROM material from Grootboom that is fed into the plant will be mixed with the current arising tailings from the Samancor plant.⁴⁶
- (78) Notwithstanding this, the material from the farms (Grootboom, Annex Grootboom and Spitskop) is mixed and crushed by Zizwe and thereafter delivered to Sylvania as fine material. It is not possible for Sylvania to distinguish which material comes from Grootboom alone or to separate such material from the others.
- (79) He mentions that Sylvania receives input in three forms: Current arising tailings from Samancor, external feed source being material received from Samancor's other mines and third parties, and ROM received from Samancor as crushed by Zizwe.⁴⁷ This narration aligned with what Mr. Maluleke wrote in his affidavit.
- (80) He insists that ROM from Samancor originates not only from Grootboom, Annex Grootboom, and Spitskop, but also from other mines that Samancor operates in the area. Before being delivered to Sylvania, the ROM is crushed by Zizwe at a site adjacent to Sylvania's plant to a diameter of less than 15mm.
- (81) All the material Sylvania receives is subjected to an initial process to separate fine material from coarser material (which must be processed further before it can proceed in the plant)⁴⁸.
- (82) Describing the process carried out at Sylvania, he provides the following details:
- “The current arising tailings, received from Samancor in the form of a slurry, are passed through a cyclone, where they are subjected to a hydrometallurgical process which separates the material based on its velocity and density. The

⁴⁶ Supra para 26

⁴⁷ Supra para 31

⁴⁸ Supra para 32.

cyclone separates the material into ultrafine material called overflow ..., which is sent straight to the Chrome Thickener..., and coarser material, called underflow..., which requires further processing before it can be sent to the Thickener and is delivered in a pipeline to a small linear vibrating screen to undergo further processing.”⁴⁹

- (83) He, furthermore, elucidates that the vibrating screen is a physical barrier which separates ultrafine material based on size. Material that is below 630 microns, called undersize material..., passes through the screen and is delivered directly to a structure that Sylvania calls its "Broken Hill circuit", where,... it is subjected to a gravitational separation process that is similar to that carried out in Samancor's wash plant. A micron is a unit of measurement which denotes a size of one-thousandth of a millimetre. Accordingly, 630 microns is equal to 0.63mm. Finding fault with Barkley's statement in paragraph 79.1, he records that 80% of the material is smaller than 630 microns, not 212 microns.
- (84) Moreover, he reports that all the oversize material is also sent directly to the ball mill by way of a chute and feed spout for further milling. All the material that passes through the ball mill is returned to the same linear vibrating screen, where it is separated into oversize and undersize material. The oversize material is reprocessed in the ball mill.
- (85) All the undersized material separated through this screening and milling process is conveyed to a structure that Sylvania calls "ROM circuit", where it is also subjected to the same gravitational separation process as material sent to the Broken Hill Circuit.⁵⁰
- (86) He adds that: "The undersized product from the linear vibrating screens is processed through a cyclone stage ahead of the chrome spirals. The cyclone separates the material into overflow ..., which is again sent straight to the Chrome Thickener...and underflow..., the processes undertaken in each circuit

⁴⁹ Supra para 33.

⁵⁰ Supra para 39

are exactly the same spiral gravitational process undertaken at the Samancor wash plant and described in paragraphs 52 and 53 of Mr. Maluleke's affidavit. The undersize material is transferred as a slurry by pipeline to the top of the structure. The slurry then flows down the spirals visible in the photograph. Centrifugal forces and gravity result in the high-density chrome particles separating from the rest of the material and gathering on one side of each spiral. At the bottom of the spirals, the material then passes through a cutter, which separates the high-density chrome particles from the waste material."⁵¹

- (87) For the sake of completeness, he recites the process as follows: "Through this process, Sylvania produces saleable chrome ore with a concentration of 42% (shown in the flow diagram as "Met concentrate"). As explained in paragraph 39 of the answering affidavit, that material is dewatered and stockpiled and then delivered back to Samancor. Sylvania has, in the year to date, produced an average of 11,956 tons per month of chrome concentrate from this process. This material still contains insignificant quantities of PGMs (approximately 0.49 grams per ton on average for the year to date). The waste material produced through this process, which Sylvania refers to as "spiral tailings", is delivered to a contractor by the name of Minprotech. This process results in the production of PGM Concentrate and waste, referred to by Sylvania as "flotation tailings".⁵²

- (88) Disputing Barkley's assertion that after the chromite beneficiation, the tailings are chromite barren, he chronicles what transpires after the extraction of the PGM concentrate:

"Following the extraction of the PGM Concentrate, the spiral tailings and the flotation tailings are pumped to Minprotech, as reflected at the bottom of the flow diagram. At Minprotech, chrome is extracted from the spiral tailings and the flotation tailings using magnets and spirals, referred to as a Wet High Intensity Magnetic Separation or "WHIMS" process. The WHIMS extraction technique passes the tailings (still in the form of a slurry) through a magnetized matrix containing paramagnetic and diamagnetic particles, leveraging high magnetic

⁵¹ Supra para 41 and 42.

⁵² Supra para 43 to 47.

field gradients within the matrix to capture weakly to moderately magnetic particles. The matrix, typically a rotating ring with high-surface-area wedge wire or expanded metal, creates localised magnetic field points. As the ring rotates out of the field, a flushing action with water dislodges the captured magnetic particles, separating them from the diamagnetic materials that are washed away.”⁵³

- (89) He writes that, in total, the Sylvania Lannex plant produces approximately 11,596 tons of saleable chrome ore per month (approximately 42% grade and excluding the chrome extracted by Minprotech) and 514 tons of PGM Concentrate per month.⁵⁴
- (90) Importantly, he maintains that there remain significant quantities of chromite in the waste material after both the chromite and PGM beneficiation processes, and Barkley’s suggestion that Sylvania should send the overflow it currently sends to the Chrome Thickener to the TSF and store it there along with the waste material is not economically viable. If the PGM Concentrate were to be pumped directly to the TSF rather than sold, as Mr. Barkley suggests should be done, the PGM Concentrate would be mixed with and diluted by the TSF waste material, and the whole process would have to be undertaken, which would be costly.
- (91) In his parting shot, Mr. Galela “confirms that Sylvania’s Lannex Plant is an inter-related system and that from the feed material, whether it be ROM or current arisings tailings, it is thereafter impossible to determine what of this material originated from Grootboom or to otherwise distinguish the Grootboom material.”⁵⁵

Analysis and conclusion.

- (92) Based on the supplementary affidavits from the experts, it is evident that the crisp issues are:

⁵³ Supra para 52.

⁵⁴ Supra para 56.

⁵⁵ Supra para 59.

- Are applicants entitled to all the PGMs at Grootboom?
- Sylviana's main issue is that it is impossible to isolate Grootboom's ROM and current arising tailings from other Samancor mines.
- Samancor's problem is that even if it could crush all of its material to less than 1mm, it could not process that material in its current wash plant. Ms. Mailula confirms that the wash plant is operating at full capacity. Therefore, Samancor lacks the capacity to process the additional fine material that Platmin insists Samancor should produce.
- Ultimately, the applicants seek the ore to be milled to less than 1 mm before respondents sell the chromite concentrate.
- Applicants seek to interdict the sale of Lumpy, small lumpy and chip, pending the review proceedings.

(93) Having accepted that the applicants have a *prima facie* right, I now examine the balance of the elements of an interim interdict.

Reasonable apprehension of irreparable and imminent harm

(94) Examining the question of a reasonable apprehension of harm, the court in *Minister of Law and Order v Nordin*⁵⁶ indicated that the test is an objective one, and further held:

"The applicant for an interdict is not required to establish that, on a balance of probabilities flowing from the undisputed facts, injury will follow: he has only to show that it is reasonable to apprehend that injury will result."⁵⁷

(95) Pending the outcome of the review proceedings, if the first and second respondents are not interdicted, the applicants face irreparable and imminent harm to their right to PGMs. Hence, an interim interdict is warranted against the first and second respondents from selling unprocessed ROM material, ROM ore, Lumpy ore, small lumpy ore and chip. Lumpy, small lumpy and chip are products

⁵⁶ 1987 (2) SA 894 (A).

⁵⁷ Supra at 896G-I.

of crushing, sizing, sorting and DMS processing, and, however, remain chromitite rock, which contains PGMs and chromite, just as ROM material does. Consequently, they constitute co-owned chromitite sold in violation of Platmin and Southern Sphere's rights to the PGMs entrained therein.

- (96) From the outlined beneficiation process in the experts' affidavits, it is vivid that the Samancor plant in Grootboom produces ROM, Lumpy, small lumpy, and chip, all of which contain PGMs. Samancor sends the current arising tailings, which contain both chromite and PGMs, to Sylvania. Indeed, Samancor, together with Sylvania, can break down or mill the Lumpy, small lumpy and chip to the level of sub-1 millimeter material.
- (97) The processing of Grootboom ROM material is done at Samancor's and Sylvania's Plants on Grootboom. Sylvania cannot be permitted to sell PGMs mined from Grootboom's ROM or Lumpy and chip, pending the outcome of the review proceedings. Sylvania should place the post chrome tailings from Grootboom on the TSF.
- (98) Lest there be any doubt, the Phabema community is entitled to take the host rock from crushed chromite ore. Additionally, it is beyond question that the first and second respondents are well within their rights to sell the chromite concentrate produced during milling, not the PGMs.
- (99) When Mr. Maluleke mentioned that the UG seams do not contain significant quantities of chrome and that Samancor does not currently intend to mine UG seams, as well as when he said at Grootboom that PGMs are found in relatively small quantities in the MG and LG seams, I understood him to be stating facts. Any suggestion that the applicants' right to mine PGMs is limited to a particular seam is unmeritorious and harms their right to PGMs, because applicants are entitled to all the PGMs found in, on, and under the full extent of Grootboom.

The balance of convenience

(100) Under this rubric, the court in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* ⁵⁸ held that:

"A court must be satisfied that the balance of convenience favours the granting of a temporary interdict. It must first weigh the harm to be endured by an applicant if interim relief is not granted as against the harm a respondent will bear, if the interdict is granted. Thus a court must assess all relevant factors carefully in order to decide where the balance of convenience rests."⁵⁹

(101) In weighing the harm the applicants would endure vis-à-vis the harm the respondents would bear if an interim interdict is granted, an assessment of Sylvania's submission that it cannot determine the origin of current arising tailings or ROM. The current arising tailings are delivered to the Sylvania Lannex plant via a pipeline comprising material from Grootboom, Annex Grootboom, and Spitskop, which makes it impossible to determine or trace back the origin of the current arising tailings as they enter the Sylvania plant, so the argument goes.

(102) This submission came unstuck when no less a person than Maluleke of Samancor wrote: "In this regard, I confirm that Samancor sends material from each of its operations on Grootboom, Annex Grootboom and Spitskop to Samancor's processing plant. I confirm that Samancor has, in the year to date, processed approximately 67,800 tons per month of such material;

34.1. approximately 20,900 tons per month from Grootboom,

34.2. approximately 16,300 tons per month from Annex Grootboom; and 34.3. approximately 30,600 tons per month from Spitskop.

⁵⁸ (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012)

⁵⁹ Supra para 55.

- Material from Grootboom therefore comprises approximately 31% of the total material processed at Samancor's processing plant."

(103) To me, it would be strange in the extreme for Samancor not to know the total material produced by its mine. How would it know whether Grootboom is profitable? Without knowing how much production emanates from Grootboom, Sylvania asserts that if the order is granted, Grootboom would be so unprofitable as to justify its closure. To me, this is quite curious.

(104) As if that was not enough, Sylvania pointed out Mr. Prinsloo's numerical errors. The degree of the figures' inaccuracies is not only significant but also intriguing.

(105) The current arisings tailings figures changed from an average of 17.5% to an average of 33% - almost double; and the ROM material said to be received changed from 45% to 16.2% - nearly a third of what was said. My incredulity at these figures stems from the statement that: "Save as corrected above, Mr. Prinsloo confirms that the harm to Sylvania if the interdict is granted as described in paragraphs 135-141 of Samancor's answering affidavit, remains correct, even with the amended figures set out above."⁶⁰

(106) In its answering affidavit, Samancor said that: "At its Lannex Mine, Samancor extracts chrome-bearing material from the various MG seams as they intersect the surface at each of its open cast sites on Grootboom, Annex Grootboom and Spitskop. Samancor stores that material on stockpiles in the vicinity of each mining area. The material is referred to as its Run-of-Mine ("ROM") material. This material also contains entrained PGMs, which are found in relatively consistent proportions to the chrome in each seam. Currently, approximately 28% of the total material mined monthly at the Lannex Mine is from Grootboom."⁶¹

(107) In my view, it is sound that ROM from each mine was kept separate. It is unconvincing to read in Sylvania's affidavit that ROM is mixed. Further

⁶⁰ Galela's affidavit para 23

⁶¹ Answering affidavit of Samancor para 30.

exacerbating the issue is that Maluleke confirms Sylvania's version. This comedy of errors runs counter to what one would expect from businesslike behavior, especially with millions of rands at stake.

(108)Sylvania's proposal at paragraphs 60 and 61 of its supplementary affidavit is a remarkable volte-face. Sylvania suggests that: "...the only practical point in the process to determine the amount of material from Grootboom that enters the system is based on the respective Grootboom ROM material delivered to Samancor's plant and to Sylvania (via Zizwe). On this basis, Samancor can provide an account to Platmin based on the feed tons of ROM from the Grootboom property and the quantity of PGMs in the ore.."

(109)As with any esoteric field, words and their meanings are of paramount importance. Hence, this court sought further illumination from experts in the field. It is tantamount to obfuscation for the respondents to refer to the DMS process as leaving saleable chrome concentrate⁶², and later refer to them as lumpy ore and small lumpy ore. Chromitite ore contains both the chromite and PGMs and is a co-owned rock. In the same way, it is not a picture of clarity to refer to metallurgical concentrate, which could mean either PGM concentrate, which Platmin is entitled to, or chromite concentrate, which Samancor is entitled to sell.

(110)On a proper perusal of the facts, the balance of convenience favors the granting of an interim interdict. The respondents are insistent that if the order is granted, closure of the Grootboom production is likely to ensue. This argument is counterintuitive because the more milling is undertaken, the more chromite concentrate Samancor would liberate. In the first place, that is the reason Samancor sends Lumpy small lumpy and chip to Sylvania. Otherwise, there would not be any crushing or beneficiation of the ROM ore.

No satisfactory alternative remedy

(111)With the miscalculation and admitted inability to provide accounting to sample for the ROM material for PGMs, it is cold comfort to say later the applicants can sue

⁶² Supra para 34.1

the respondents. Suppose there is any further need for proof that there is no satisfactory alternative remedy, paragraph 50 of Samancor's supplementary affidavit reads: "Samancor does not know what quantities of PGMs are contained in either the saleable chrome ore or the waste material, because it does not sample these."

(112) Indeed, it is telling that neither Samancor nor Sylvania has attempted to provide any accounting as to what it truly asserts the costs of extraction, value of PGMs, and economic viability of the extraction of PGMs at Grootboom are. Without sampling, no accounting is possible, and Samancor has conceded that it does not sample ROM material or waste material for its PGM content. Hence the assertion: "Samancor does not know what quantiles of PGMs are contained in the Melconc material or the current arisings tailings."⁶³ Other than the interim interdict, I can conceive of no satisfactory alternative remedy.

(113) In *National Gambling Board v Premier of KwaZulu-Natal and Others*,⁶⁴ the court held:

"An interim interdict is by definition:

"a court order preserving or restoring the status quo pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination."⁶⁵

(114) After establishing that an interim interdict is appropriate under the circumstances, in co-owned minerals, a court must specify the parameters within which the respondent exercises its right *civiliter modo* or with *Ubuntu* to obtain a profit, but in a manner least likely to harm its neighbour. The respondents should be prepared to suffer those disruptions of their rights, even to the extent of their damage or destruction, which is reasonable for the other party to impose. In *casu*, the respondents must exercise their rights with *Ubuntu*, or *civiliter modo*, and not

⁶³ Galela's affidavit para 58.

⁶⁴ (CCT32/01) [2001] ZACC 8; 2002 (2) BCLR 156; 2002 (2) SA 715 (21 December 2001)

⁶⁵ *Supra* para 49.

sell ROM, lumpy, small lumpy and chip that is not sub-1 mm. Instead, Samancor and Sylvania should further process the ROM, lumpy, small lumpy and chip to sub-1mm, which also benefits them.

(115) In view of the essential elements of a final interdict, a clear right, an injury that has occurred or is reasonably apprehended, and the absence of any other satisfactory remedy, Samancor's counterapplication is unsustainable. South Africa's Constitutional democracy is rooted in the rule of law. Hence, the first principle established in *Oudekraal* is "that until an act is set aside by a court, it exists in fact and is capable of having legal effects."⁶⁶

(116) Samancor falters at the very first requirement, because it does not have a clear right to PGMs. There should not be any doubt that a mining right is worth its weight in gold. As a result, Samancor's counter-application stands to be dismissed.

Costs

(117) It is trite that the costs follow the results. I do not see any reason to depart from that well-trodden path. In the result, the first and second respondents will bear the costs on a party and party scale C.

ORDER

1. The first and second respondents are interdicted from exploiting, taking or selling PGMs in, on, or under the Property Grootboom 336KT for their own benefit pending the final determination of the Review Proceedings instituted by the first respondent in the Gauteng Division, Pretoria, under case number 094394/2025.

- 1.2 The order in 1 above does not apply to:

⁶⁶ Administrative Law in South Africa by Cora Hoexter, Glenn Penfold third edition page 760.

- 1.2.1 Chrome concentrate produced by the first and second respondents from sub-1 millimeter material; and
 - 1.2.2 Waste material consisting of host rock made available free of charge to the beneficiaries of the Phabema community project for purposes of their rendering it into aggregate."
2. The first and second respondents' conditional counter-application is dismissed.
3. The first and second respondents shall pay the first and second applicants' costs in the application and counter-application as taxed or agreed, which costs shall include the costs of senior and junior counsel, where so employed, on scale C.


MP MOTH
JUDGE OF THE COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

APPEARANCES:

Date of Hearing:	25 August 2025
Date of Judgment:	12 November 2025
For Applicant:	ADV VAN VUUREN SC
With	ADV B MKHIZE
Instructed by	WHITE & CASE LLP
For 1 st to 4 th Respondents:	ADV WESLEY SC
Instructed by:	MALAN SCHOLES INC.