



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2025-178337

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
09/03/2026	
DATE	SIGNATURE

In the matter between:

**BAHURUTSHE BOO MANYANA
TRADITIONAL COMMUNITY**

First Applicant

BOO MANYANA CHROME (PTY) LTD

Second Applicant

and

MNTK ENTERPRISE (PTY) LTD

First Respondent

SYMPHONY OF LIGHT (PTY) LTD

Second Respondent

INSPIRED TRADE AND INVEST (PTY) LTD

Third Respondent

BEHIND THE GOLD DOOR (PTY) LTD

Fourth Respondent

MR MOSHOESHOE

Fifth Respondent

**MINISTER: THE DEPARTMENT OF MINERAL
RESOURCES AND ENERGY N.O.**

Sixth Respondent

MINISTER OF POLICE

Seventh Respondent

NATIONAL POLICE COMMISSIONER

Eighth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The judgment is deemed to have been handed down on 9 March 2026.

JUDGMENT: APPLICATION IN TERMS OF SECTION 18(3)

MENTZ AJ

Introduction

- [1] This is an application in terms of section 18(3) of the Superior Courts Act 10 of 2013 for an order that the judgment granted in the urgent court on 19 November 2025 in favour of the applicants (*'the November 2025 order'*) shall operate and be given effect pending the finalisation of the respondents' application for leave to appeal and any further appeal processes.
- [2] The matter pertains to unlawful mining of chrome ore on land where members of the first applicant, the Bahurutshe Boo Manyana Traditional Community (*'the Community'*) has resided for several generations.
- [3] The applicants seek, in substance, leave to execute the final interdict which restrains the respondents from mining commercially at, or removing ore from, an open-pit mining site situated on the Farm Strydfontein 12 JP, Zeerust, North West Province. The Farm Strydfontein consists of Portion 1 and the Remaining Extent (*'the Farm'*).
- [4] The first to fourth respondents share the same two directors and the fifth respondent is responsible for operations of the first to fourth respondents. The first to fifth respondents oppose the application and are collectively referred to as *'the respondents'*. The respondents have also launched an application for leave to appeal the November 2025 order, which was heard simultaneously with this section 18(3) application.

- [5] Although there is some dispute on the papers exactly on which portion of the Farm Strydfontein the pit mine is situated, the site in question to which the interdict pertains is well known to all the parties. It was established by the respondents, bears the signage of the first respondent, and is readily identified. To quote from the respondents' supplementary affidavit deposed to on 29 January 2026:

"...the MNTK site has clear signage and is clearly cordoned off and fenced, so it is quite easy, with respect, to identify its location."

I shall accordingly refer to the mining site in question as '*the MNTK site*'.

- [6] It is common cause on the papers in the urgent application that the first respondent only has a prospecting right in respect of the Farm. The second to fourth respondents have mining rights that relate to a demarcated area of approximately 4.5 hectares which does not include the MNTK site. None of the respondents has a right to mine at the MNTK site.
- [7] Mining without a valid mining right or permit is prohibited in terms of the provisions of the Mineral and Petroleum Resources Development Act 28 of 2002 (as amended) ('MPRDA').² The November 2025 order therefore gives effect to a prohibition already imposed by the MPRDA.

Condonation and application to strike out

- [8] The respondents' answering affidavit was filed outside the time periods provided for in the notice of motion. The explanation proffered centres on senior counsel's involvement in other matters, late availability of documents, and the December recess.

² Section 5A inserted by the Mineral and Petroleum Resources Development Amendment Act 49 of 2008

- [9] I am satisfied that a sufficient explanation for the late filing has been provided and that the delay has not caused prejudice to the applicants. Condonation for the late filing is therefore granted.
- [10] The respondents also brought an application to strike out certain paragraphs and photographs contained in the applicants' replying affidavit shortly before the matter was heard on 16 February 2026. The point was not pursued with much vigour during argument and, in any event, bears little relevance to the central issues in the section 18(3) enquiry.

Background

- [11] The first applicant is a traditional community which has resided on the Farm for several generations. Although the respondents have placed in dispute whether the first applicant is actually the same tribe as the one that is described in the title deed, there is no real dispute on the papers that the Community relies on the land for subsistence farming and cattle rearing and has, over many years, maintained the Farm and its resources for the collective benefit of its members.
- [12] The MNTK site contains an open pit mine which the respondents established and maintain without lawful authority. According to the respondents, the second to fourth respondents previously incorrectly mined from this site under the *bona fide* but mistaken belief that their permits allowed them to do so, which is the reason why the pit mine was established.
- [13] The exact area where the second to fourth respondents are allowed to mine has since been clearly identified and demarcated, following an urgent application in the Mahikeng High Court and a settlement reached on 12 September 2025. This area, measuring approximately 4.5 hectares, does not include the MNTK site. According to these respondents, they no longer mine at the MNTK site and are in the process of establishing a mining operation at the designated area.
- [14] On 18 September 2025, prior to the launching of the urgent application, the applicants' attorney requested a formal undertaking from the respondents that no further transport, removal, or conveyance of ore would occur. The letter was

attached to the applicants' founding affidavit. No such undertaking was provided, which resulted in the urgent application that was launched on 30 September 2025.

- [15] In support of the section 18(3) application, the applicants attached an affidavit from one Mr Madesi, with drone footage attached which, according to the applicants, depicts ongoing commercial mining activity at the MNTK site after the 19 November 2025 order. The photographs are time-stamped and georeferenced.
- [16] The respondents advanced several defences to the application, directed at technical and factual aspects of the applicants' case. In particular, they challenged the qualifications of the drone operator who captured footage of activities at the site and disputed whether the footage relates to the MNTK site. The respondents further blamed the unlawful mining activities on illegal miners, colloquially referred to as Zama Zamas, and denied that the trucks captured in photographs belong to them.
- [17] In the section 18(3) application, the respondents introduced new information relating to an application lodged by the first respondent in January 2025 for a mining right, coupled with an assertion that the granting of such right is "imminent". No substantiated evidence was provided to support this assertion. Moreover, even though this information was available to it at the time, the first respondent failed to introduce it when the urgent application was heard. It is accordingly not a relevant consideration in determining this application.
- [18] I briefly deal below with the requirements for an application in terms of section 18(3), as well as the prospects of success on appeal, which bear a degree of relevance to the section 18(3) inquiry.

Legal Framework: Section 18(3) of the Superior Courts Act 10 of 2013

- [19] Section 18(1) of the Superior Courts Act provides that the operation and execution of a decision of the High Court is suspended pending an appeal or application for leave to appeal against such decision.

[20] Section 18(3) creates an exception to the general rule set out in section 18(1). It allows a court to order that its decision remains operative and capable of execution pending the outcome of an appeal, provided specific requirements are satisfied. In ***Knoop NO and Another v Gupta (Execution)***³ the requirements were defined as follows:

- (i) exceptional circumstances must be present;
- (ii) the applicant must show that it will suffer irreparable harm if leave to execute is not granted; and
- (iii) the granting of leave to execute will not cause the respondent to suffer irreparable harm.

[21] The SCA stressed in ***Knoop*** that, unlike the common-law position, the irreparable harm test does not involve a balancing exercise, but such harm must independently be established for each party on a balance of probabilities.⁴

[22] In ***Autumn Skies Resources and Logistics (Pty) Ltd v Genet Manganese (Pty) Ltd***⁵ the full court held that an applicant in a section 18(3) application must first satisfy the two requirements relating to irreparable harm independently, and only once these have been satisfied, can the question of 'exceptional circumstances' be addressed.

First leg of inquiry: Irreparable Harm

The first applicant

[23] The applicants' papers depict ongoing commercial activity at and around the MNTK site on dates after the November 2025 order. Trucks, excavators, and other machinery are clearly visible in the photographs which were attached to the affidavits filed.

³ 2021 (3) SA 135 (SCA) at para 2

⁴ *Supra* at para 48

⁵ 2019 JDR 2419 (GP) at paras 24 and 25

- [24] The applicants allege that the mining operations have not ceased, that rehabilitation has not commenced, and that the respondents have continued or intensified their field operations on the ground since the granting of the November 2025 order. This, according to the applicants, leads to the continued damaging of the land, the destruction of arable soils, and water and drainage sources being impacted.
- [25] The respondents' papers consist largely of general denials and an attack on the drone evidence, but provide no plans, logs, rehabilitation schedules or other corroboration to demonstrate the first respondent's *bona fides* that it engages solely in prospecting. Nor do they provide any evidence to contradict the time-stamped and georeferenced drone footage to support their contention that the drone footage does not depict the MNTK site.
- [26] The section 18(3) inquiry is concerned with the nature and consequences of the harm, rather than a re-hearing of the merits of the underlying dispute. The respondents do not meaningfully contest the harmful effects of illegal mining, the finite character of mineral resources, or the lack of rehabilitation. Their stance is confined to a denial that they are themselves mining at the MNTK site.
- [27] I am satisfied that the first applicant has established on a balance of probabilities that it, as a community, will suffer irreparable harm if the November 2025 order is not executed pending the outcome of the appeal processes.

The respondents

- [28] The appeals process, regardless of the outcome, will not alter the fact that the respondents are prohibited by law from mining at the MNTK site without a mining right or permit.
- [29] The November 2025 order does not interfere with any lawful entitlement of the respondents. It merely compels compliance with the existing statutory prohibition on unlawful mining. The respondents have also not identified any specific lawful activities at the MNTK site that would be impermissibly curtailed by compliance with the court order, or any rights that will be infringed.

- [30] An execution order will therefore not cause the respondents any harm whatsoever, whether of a general or irreparable nature.

Second leg of inquiry: Exceptional Circumstances

- [31] In ***Incubeta Holdings (Pty) Ltd and Another v Ellis and Another***⁶, Sutherland J stated:

"In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant a consideration of putting the order into operation. The forfeiture of substantive relief because of procedural delays, even if not protracted in bad faith by a litigant, ought to be sufficient to cross the threshold of 'exceptional circumstances'."

- [32] In ***Knoop***⁷ the SCA stated the following in respect of what constitutes exceptional circumstances:

"Courts have always eschewed any attempt to lay down a general rule as to what constitutes exceptional circumstances. The reason is that the enquiry is a factual one. There is a helpful summary in MV Ais Mamas that has been endorsed both by this court and by the Constitutional Court. In the context of s 18(3) the exceptional circumstances must be something that is sufficiently out of the ordinary and of an unusual nature to warrant a departure from the ordinary rule that the effect of an application for leave to appeal or an appeal is to suspend the operation of the judgment appealed from. It is a deviation from the norm. The exceptional circumstances must arise from the facts and circumstances of the particular case."

- [33] The establishment of the pit mine and its continued existence at the MNTK site is unlawful. In the urgent application the applicants produced photographs of commercial activity at the MNTK site, and it is common cause that the second to fourth respondents mined there unlawfully before September 2025. As stated above, in the present application the applicants rely on later time-stamped,

⁶ 2014 (3) SA 189 (GJ) at para 27

⁷ *Supra* at para 46

georeferenced drone footage of the signposted MNTK site to show ongoing commercial mining activity.

- [34] The respondents deny that they are conducting commercial mining activities at the MNTK site but they are keeping the pit mine open. When confronted with the absence of rehabilitation of the site they state:

"With respect, talk of rehabilitation is premature. The grant of the first respondent's mining right is imminent. If it is granted, the first respondent will be entitled to mine in accordance with the Act and the right granted to it."

- [35] It is therefore clear from the aforementioned that the respondents intend to keep the pit mine at the MNTK site open, although it was unlawfully established and remains unlawful, pending an indeterminate future event. This stance reflects an assumption of entitlement inconsistent with the statutory duty of care and remediation imposed by the National Environmental Management Act 107 of 1998 ('NEMA'),⁹ and the recognition in *Autumn Skies*¹⁰ that a failure to comply with rehabilitation obligations is unlawful. In my view, this underscores the need for the interdictory relief to remain operative pending the appeal processes.

- [36] The respondents further contend that there is no evidence that any of the trucks, vehicles, excavators, or related machinery belong to them or are used by them. However, the respondents, and particularly the first respondent, have control over the MNTK site and are therefore uniquely placed to explain how unidentified trucks, heavy machinery and personnel - whom they say are not their own - gain access to this cordoned-off and fenced site, and what measures are taken to prevent such access.

- [37] The respondents annex photographs to their supplementary affidavit, asserting that these show a different state of mining operations from that depicted by the applicants. They give no particulars of the alleged difference and, on one of the photographs¹¹, excavators and a truck are visible in the background. Without an

⁹ Section 28 of NEMA

¹⁰ *Supra* at para 40

¹¹ Attached as "TMK7" to the supplementary affidavit of Mr Konela deposed to on 29 January 2026

explanation of where this photograph was taken or exactly what it depicts, the imagery does little to address the concerns raised.

- [38] The respondents further lay the blame for the ongoing operations on illegal miners but give no information on how these illegal miners gain access to the MNTK site or what is being done to prevent this conduct. Even the affidavit filed by the respondents' mine security officer is silent on this aspect.
- [39] Instead, the respondents attacked the qualifications of the drone operator and deny that the pictures of trucks, excavators and other mining equipment are proof of commercial mining activities. The obvious question then becomes: *What are those trucks and excavators doing at or near the MNTK site?* This is not addressed anywhere by the respondents.
- [40] Mineral resources cannot be replaced once extracted from the earth. This is recognised in the preamble of the MPRDA where the first sentence reads:
- "RECOGNISING that minerals and petroleum are non-renewable resources"*
- [41] This makes the present matter distinguishable from cases where monetary compensation can make up for losses suffered during an appeals process. No record has been provided by the respondents of the mineral resources removed during the period when they, on their own version, unlawfully mined at the MNTK site. Nor is there any means of determining what would be removed were such mining to continue. In these circumstances, damages will not be an adequate remedy, as the permanent depletion of finite natural resources cannot be quantified.
- [42] It was highlighted in the urgent application that unlawful mining operations at the Farm have caused significant environmental damage to the Community's property and impacted on the community's livelihoods. As was stated in the founding affidavit: *"This has directly impacted the livelihoods of the Bahurutshe Boo Manyana Traditional Community, which relies on the land for subsistence farming and cattle rearing."*
- [43] The respondents declined to give any enforceable undertaking prior to the urgent application that they would not mine at the MNTK site without a permit. Given

their knowledge of the statutory prohibition, there appears to be no apparent reason why such an undertaking could not have been furnished, which would have rendered the urgent application unnecessary.

- [44] As indicated, the first respondent has produced no sample test reports or other documentation to substantiate its assertion that it is engaged solely in prospecting activities. In circumstances where it maintains a cordoned-off open-pit mine of a scale far exceeding what is ordinarily required for prospecting, such evidence would reasonably be expected to demonstrate the first respondent's *bona fides*.
- [45] The harm that the Community stands to suffer if the unlawful extraction of finite resources continues during a potentially protracted appeals process is irreparable and cannot be remedied by an award of damages. This distinguishes the present case from matters where interdictory relief is granted in relation to harm that can later be compensated in money, and in my view presents a clear instance where the Community will be left with no meaningful relief, regardless of the outcome of an appeal, if the November 2025 order is suspended.
- [46] In these circumstances, where delays inherent in the appeal process will render the judgment hollow and leave the applicants without any effective relief even if they ultimately succeed on appeal, the requirements for exceptional circumstances as contemplated in section 18(3) are satisfied.

Prospects of success on appeal

- [47] The application for leave to appeal and the application in terms of section 18(3) were heard simultaneously by me on 16 February 2026.
- [48] In ***University of the Free State v Afriforum and Another***¹² the Supreme Court of Appeal suggested that the prospects of success on appeal are a relevant

¹² 2018 (3) SA 428 (SCA) at paras 14 and 15

factor in the analysis of whether the exceptional relief under section 18(3) should be granted and referred to the following:¹³

"It follows that the less sanguine a court seized of an application in terms of s 18(3) is about the prospects of the judgment at first instance being upheld on appeal, the less inclined it will be to grant the exceptional remedy of execution of that judgment pending the appeal. The same quite obviously applies in respect of a court dealing with an appeal against an order granted in terms of s 18(3). The position is very much akin to that which pertains when interim interdictory relief pending a judicial review is being considered.

- [49] In terms of section 16(2)(a) of the Superior Courts Act, where the issues on appeal are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
- [50] In my view, any appeal in this matter would constitute such an instance where the outcome will have no tangible practical effect, as it will neither alter any substantive rights held by the respondents nor change their legal position.
- [51] The remaining grounds of appeal pertain to issues that were argued before me and were dealt with in the judgment *a quo*, and they raise no new legal points. The grounds advanced do not in my view establish reasonable prospects that another court would come to a different conclusion.

Conclusion

- [52] I am satisfied that the applicants have made out a case for execution of the November 2025 order pending any appeal processes.
- [53] In the circumstances, the application in terms of section 18(3) of the Superior Courts Act must succeed.

¹³ *Minister of Social Development Western Cape v Justice Alliance of South Africa* 2016 JDR 0606 (WCC) at para 27

ORDER

Accordingly, I make the following order:

1. Condonation for the late filing of the first to fifth respondents' answering affidavit is granted.
2. The suspension of the order granted on 19 November 2025 is uplifted, and the applicants are granted leave to execute prayers 2, 3, 4 and 5 of the November 2025 order pending the final determination of any appeal processes.
3. The first to fifth respondents are to pay the costs of this application jointly and severally, the one paying the others to be absolved, including the cost of two counsel on Scale C.


S MENTZ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the Applicants:

G Rome SC
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Heard on 16 February 2026