IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

1. REPORTABLE: NO. 2. OF INTEREST TO OTHER JUDGES: NO. SIGNATURE: [redacted]

Case number: 2026-039448

In the matter between:

MAMOKEBE INVESTMENTS (PTY) LTD	Applicant
and	
SOKHELA, PROTUS FRANCIS MHAWUKELWA	First respondent
BEY, INAYAT ALI	Second respondent
JORDAAN, JOHANNES PETRUS	Third respondent
ADAM, MOHAMED	Fourth respondent
COMPANIES AND IP COMMISSION	Fifth respondent

Delivered: *This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 22 April 2026.*

JUDGMENT: SECTION 18 APPLICATION

<u>F.J. LABUSCHAGNE, AJ</u>

[1] This application concerns the execution of the order granted on 26 March 2026 pending the outcome of the application for leave to appeal and any subsequent appeal.

[2] The respondents contend that the operation and execution of the order are suspended in terms of section 18(1) of the Superior Courts Act 10 of 2013.

[3] The applicant disputes that the order is suspended and, in the alternative, seeks relief in terms of section 18(3).

[4] Section 18(1) provides that, subject to subsections (2) and (3), the operation and execution of a decision which is the subject of an application for leave to appeal is suspended pending the outcome of such application or appeal.

[5] Section 18(3) empowers a court to order otherwise only if exceptional circumstances exist and the party seeking execution proves on a balance of probabilities that it will suffer irreparable harm if the order is not put into operation and that the other party will not suffer irreparable harm if it is.

[6] The requirements are cumulative. The onus rests squarely on the applicant. The threshold is intentionally high. Section 18 represents a departure from the common-law position and is designed to ensure that execution pending appeal is granted only in circumstances that are truly out of the ordinary.

[7] The first enquiry is whether the order of 26 March 2026 is one whose operation is automatically suspended under section 18(1).

[8] In my judgment refusing leave to appeal, I held that the order is expressly interim in character. It does not finally determine the validity of the respondents' appointments as directors; it operates pending the institution and finalisation of proceedings to determine that issue; and it preserves the *status quo* and does not dispose of the substantive dispute between the parties. On that basis, the order is interlocutory and not final in effect.

[9] Section 18(1) presupposes a decision whose execution would ordinarily be suspended upon the noting of an appeal.

[10] Where an order is purely interlocutory and does not have final effect, its operation is not automatically suspended unless it is appealable.

[11] The respondents' characterisation of the order as final was rejected in the leave to appeal judgment.

[12] The order does not preclude them from accessing the courts in their personal capacities. It regulates who may represent the company pending determination of a disputed directorship. It does not determine rights finally.

[13] Even if I am incorrect in that characterisation, and even if the order is suspended by operation of section 18(1), the applicant has established the requirements for execution pending appeal in terms of section 18(3).

[14] Exceptional circumstances are those which take the matter out of the ordinary and justify deviation from the default rule of suspension. They must be assessed cumulatively and contextually. In this matter, several features distinguish the case from an ordinary commercial dispute.

[15] First, the respondents' authority to act on behalf of the applicant was found *prima facie* unlawful. That finding was grounded in common-cause facts, including the admitted non-vesting of shares in Alcucento and the irregularities surrounding the appointment process.

[16] Second, it is common cause that a Form CoR39 lodged with the CIPC bore forged signatures. That fact is not peripheral. It goes to the integrity of the corporate governance process and the reliability of statutory filings.

[17] Third, the respondents have made clear, both in correspondence and in their answering papers, that they intend to persist in acting on behalf of the applicant notwithstanding the interim order.

[18] Fourth, mining operations continue at the mine under authority purportedly derived from the respondents. The extraction of coal is not reversible. It involves the depletion of a finite natural resource.

[19] Fifth, a section 54 notice in terms of the Mine Health and Safety Act 29 of 1996 has been issued to Mamokebe Investments. That notice exposes the applicant to regulatory consequences and potential sanction. The notice arose in circumstances where the respondents, purporting to act for the applicant, were associated with ongoing mining activities.

[20] Sixth, the mining right has been ceded and registered in favour of Mamokebe Colliery. The continued assertion by the respondents that they may authorise mining operations creates legal and regulatory instability.

[21] These factors, considered together, render the matter exceptional. It is not a case of mere inconvenience or commercial rivalry. It concerns disputed corporate authority, forged statutory filings, regulatory exposure, and ongoing depletion of a mineral resource. The cumulative effect places the matter outside the ordinary run of cases.

[22] The next enquiry is whether the applicant has established irreparable harm. Irreparable harm is harm that cannot be adequately remedied by damages or subsequent relief.

[23] If the operation of the order is suspended, the respondents would be free to continue acting on behalf of the applicant pending appeal. On the evidence, that would permit continued mining operations under disputed authority. Coal extracted and sold cannot be restored. The depletion of a finite resource is irreversible.

[24] The section 54 notice demonstrates that the applicant faces regulatory risk. Continued representation by persons found prima facie to lack authority may expose the company to further statutory consequences. Reputational harm and regulatory intervention cannot readily be undone.

[25] There is also a real risk that third parties contracting with the respondents may seek to bind the applicant. The proliferation of agreements concluded under disputed authority may generate further litigation and legal uncertainty.

[26] These forms of harm are ongoing and cumulative. They are not adequately compensable by a damages claim.

[27] By contrast, the respondents will not suffer irreparable harm if the order remains operative pending appeal.

[28] They are restrained only from acting or purporting to act on behalf of the applicant, they are not prevented from instituting substantive proceedings to vindicate their alleged rights or to oppose such proceedings, nor are they deprived of personal property or liberty.

[29] Their asserted prejudice is that they are prevented from participating in litigation on behalf of the company. That consequence flows from the finding that their authority has not been established *prima facie*. It is not irreparable harm.

[30] If an appellate court or a court in the envisaged proceedings ultimately finds that they were lawfully appointed, the interim restraint will fall away.

[31] The balancing exercise required by section 18(3) therefore favours the applicant. The harm to the applicant if execution is withheld is immediate and irreparable. The harm to the respondents if execution is granted is procedural and reversible.

[32] The respondents further contend that the order has final effect because it precludes them from participating in litigation. That submission misconceives the nature of corporate personality.

[33] Litigation instituted in the name of a company belongs to the company. Directors do not have a personal proprietary interest in company litigation. Authority to represent the company derives from lawful appointment.

[34] An interim restraint on corporate representation pending determination of a dispute does not amount to a denial of access to court in terms of section 34 of the Constitution of the Republic of South Africa, 1996 (the “Constitution”). It regulates who may speak for the juristic person.

[35] The urgency of the matter is apparent. Mining operations are continuous. Regulatory processes have already been initiated. Delay pending appeal would allow the very conduct the interim order was designed to prevent. Justice would not be served by permitting the continuation of contested authority and potentially unlawful operations during the pendency of an appeal.

[36] The enquiry cannot be divorced from the broader constitutional and statutory framework within which company law operates. Section 1(c) of the Constitution establishes the supremacy of the Constitution and the rule of law as founding values of the Republic. Section 2 affirms that the Constitution is the supreme law and that conduct inconsistent with it is invalid, and further that the obligations imposed by law must be fulfilled.

[37] These provisions are not abstract ideals, they demand legality, accountability, and fidelity to statutory processes. Corporate authority exercised in the name of a juristic person must therefore derive from lawful appointment and compliance with the Companies Act 71 of 2008 (the "Companies Act").

[38] The continued assertion of directorial authority in the absence of legal validity at foundational level, implicates not merely private commercial interests but the constitutional principle of legality itself.

[39] Section 5(1) of the Companies Act requires that the Act be interpreted in a manner that gives effect to the purposes set out in section 7. Those purposes include promoting compliance with the Bill of Rights in the application of company law; encouraging transparency and high standards of corporate governance; creating optimal conditions for the aggregation and investment of capital; encouraging the efficient and responsible management of companies; and providing a predictable and effective environment for their regulation.

[40] The integrity of directorial appointment lies at the heart of those objectives. To permit persons whose authority is disputed and *prima facie* defective to continue exercising the powers of directors pending appeal would undermine transparency, corporate governance, regulatory certainty, and responsible management.

[41] In these circumstances, the constitutional commitment to legality and the statutory purposes of the Companies Act reinforce the conclusion that execution pending appeal is justified. The interim order does not create new rights; it safeguards the rule-based framework within which corporate power must lawfully operate.

[42] In my judgment refusing leave to appeal, I concluded that the constitutional and statutory framework, in particular sections 1(c) and 2 of the Constitution, read with sections 5 and 7 of the Companies Act, negate any reasonable prospect that another court would interpret the Raubenheimer order as creating lawful directorship where none existed in law. That conclusion is relevant not only to prospects of success but also to the irreparable harm enquiry under section 18(3).

[43] If the legal position is that no valid directorship existed, then the respondents cannot suffer irreparable harm by being restrained from exercising powers they did not lawfully possess. Section 18(3) does not protect an asserted entitlement that is inconsistent with the rule of law or the statutory scheme governing corporate authority. The restraint imposed by the interim order therefore does not deprive the respondents of a lawful right; it prevents the continued exercise of corporate power in circumstances where its legal foundation has not been established. Any prejudice they assert is accordingly not irreparable harm in the legal sense contemplated by the statute.

[44] By contrast, to permit the continued exercise of disputed directorial authority pending appeal would risk normalising conduct that the constitutional principle of legality and the Companies Act are designed to prevent. The irreparable harm in this matter lies not in temporarily restraining unlawful authority, but in allowing it to persist.

[45] In the result, whether the order of 26 March 2026 is regarded as interlocutory and not suspended, or whether it is regarded as suspended but subject to section 18(3), the applicant is entitled to the relief sought.

[46] In relation to costs, I make the same costs order I made in the leave to appeal judgment. The first, second and fourth respondents are cited before this Court in their personal capacities, and the conduct giving rise to the present proceedings is conduct allegedly undertaken by them personally and without lawful authority. In those circumstances, there is no basis upon which the company should bear the financial burden of this litigation, and no reason why the costs order should not properly reflect that the first, second and fourth respondents are liable for the costs in their personal capacities.

Order

1. The order of 26 March 2026 is interlocutory and not suspended for the reasons dealt with in the judgment refusing leave to appeal.

2. Insofar as it may be contended that the order of 26 March 2026 is not interlocutory and not suspended, it is ordered that the operation and execution of the order of 26 March 2026 shall not be suspended pending the final determination of any application for leave to appeal and/or appeal.

3. The first, second and fourth respondents are to pay the costs of the section 18 application jointly and severally in their personal capacities, the one paying the other to be absolved, on scale C, inclusive of the costs of senior counsel.

[redacted]

F.J. LABUSCHAGNE

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Electronically delivered and signed.

Date heard:	17 April 2026
Date of rule *nisi*:	22 April 2026
For the applicant:	Adv. BC Stoop SC
Instructed by:	Hajibey Bhyat Mayet & Stein Inc.
For the 1^{st}, 2^{nd} and 4^{th} respondents:	Adv. JG Naudé SC
	Adv. FC Lamprecht
Instructed by:	Jaffer Inc.