**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

| DELETE WHICHEVER IS NOT APPLICABLE |
|---|
| (1) REPORTABLE: ~~YES/~~NO |
| (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO |
| (3) REVISED |
| DATE: 28 May 2026 |
| SIGNATURE:.... |

**Case No. 2026-068596**

In the matter between:

| | |
|---|---|
| **BAHURUTSE BOO MANYANA TRADITIONAL COMMUNITY** | **APPLICANT** |
| And | |
| **MARICO CHROME CORPORATION (PTY) LTD** | **FIRST RESPONDENT** |
| **THEODORE WILHELM VAN DEN HEEVER N.O. (IN HIS PURPORTED CAPACITY AS A RECEIVER OF MARICO CHROME)** | **SECOND RESPONDENT** |
| **KGASHANE CHRISTOPHER MONYELA N.O. (IN HIS PURPORTED CAPACITY AS A RECEIVER OF MARICO CHROME)** | **THIRD RESPONDENT** |
| **OLCKERS CHOPOLOGE KOIKANYANG N.O.** | **FOURTH RESPONDENT** |

**(IN HIS PURPORTED CAPACITY AS A RECEIVER OF MARICO CHROME)**

**SAMANCOR CHROME LIMITED** **FIFTH RESPONDENT**

**VEREENIGING REFRACTORIES (PTY) LTD** **SIXTH RESPONDENT**

**COMPANIES AND INTELLECTUAL PROPERTY OFFICE** **SEVENTH RESPONDENT**

**MASTER OF THE HIGH COURT** **EIGHTH RESPONDENT**

**DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES** **NINTH RESPONDENT**

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*Coram:* Millar J

*Heard on:* 12 May 2026

*Delivered:* 28 May 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H30 on 28 May 2026.

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## JUDGMENT

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**MILLAR J**

[1] This is an urgent application for both declaratory and ancillary mandatory relief brought by the Bahurutse Boo Manyana Traditional Community (the Applicant) against the Second to Fourth Respondents (the Receivers), who assert that they

are the Receivers of the First Respondent, Marico Chrome Corporation (Pty) Ltd (Marico Chrome).

[2] The facts in this case and upon which it is to be decided, are common cause and are not contentious. Besides the substantive issue upon which this case is to be decided, the Receivers raised several challenges to the *locus standi* of the Applicant and in particular the deponent to the founding affidavit on the Applicant's behalf as well as to urgency.

[3] The substantive issue is this – whether the scheme of arrangement which was made an order of court, conferred upon the Receivers the authority to retain custody and control and management of the affairs of Marico Chrome, in that capacity even after they had sought their own discharge as provisional liquidators?

[4] It is the case for the Applicant that the scheme did not survive and that as soon as the Receivers sought their discharge as provisional liquidators, their role in any capacity ceased. The Receivers for their part contend that the scheme of arrangement by virtue of its terms and having been made an order of court conferred both rights and obligations which survived the discharge of the provisional liquidation order.

[5] A useful starting point in this matter is setting out the timeline of the relevant facts which are germaine to the determination of this application. These are:

[5.1] On 10 May 2016, a provisional winding up order was granted in respect of Marico Chrome. The Receivers were appointed as provisional liquidators.

[5.2] On 9 June 2020, and pursuant to a Scheme of Arrangement (the Scheme) between the provisional liquidators and the creditors, an order was sought and granted in terms of s 155 of the Company's Act[1] in terms of which the Scheme was made an order of Court.[2]

[5.3] The order of 9 June 2020 provided that:

> *"1. The application is enrolled and heard as an urgent application and compliance with the forms and service provided for in the Rules of Court is dispensed with.*
>
> 2. *The Scheme of Arrangement and Compromise ("the Arrangement") entered into by the concurrent creditors of Marico Chrome Corporation (Pty) Ltd ("Marico") on 28 May 2020 is approved and sanctioned in accordance with section 155(7) of the Companies Act 71 of 2008; and*
>
> 3. *The costs of this application are treated as a cost in the winding-up of Marico."*

[5.4] On 22 September 2023 an order was granted by this Court in the following terms:

> *"1. The Rule that the rule nisi, granted in this matter, for the provisional liquidation of the Respondent, is hereby discharged and the provisional liquidation order is set aside;*

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[1] 71 of 2008.
[2] The order was granted under case no 23881/2020.

2. *That the costs of the application for liquidation, be costs in the Scheme of Arrangement and Compromise, which was made an order of Court on 9th of June 2020."*

[5.5] On the same day, the Receivers duly represented by Mr. van den Heever, the Second Respondent, notified the Master of the High Court that *"the Company has been revested with its assets and that all administration costs have been paid."*

[6] In circumstances where provisional liquidators and the provisional liquidation order have been discharged, the management of the company (together with custody and control of its assets and its obligations) reverts or revests in its board of directors. This is specifically provided for in section 66(1) of the Company's Act.[3] In addition, the Act prescribes standards for the conduct of directors as well as liability setting out their liability if they fail to meet those standards.[4]

[7] Section 155 of the Act, applicable to the present matter provides:

*"155(1) This section applies to a company, irrespective of whether or not it is financially distressed as defined in section 128(1)(f), unless it is engaged in business rescue proceedings in terms of this Chapter.*

*155(2) The board of a company, or the liquidator of such a company if it is being wound up, may propose an arrangement or a compromise of its financial obligations to all of its creditors. . .*

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[3] The section provides *"(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise."*

[4] See ss 76 and 77 respectively.

155(7) *If a proposal is adopted as contemplated in subsection (6) – (a) the company may apply to the court for an order approving the proposal; and (b) the court, on an application in terms of paragraph (a), may sanction the compromise as set out in the adopted proposal, if it considers it just and equitable to do so . . .*

155(8)(c) *[A copy of an order of the court sanctioning a compromise] is final and binding on all of the company's creditors or all of the members of the relevant class of creditors, as the case may be, as of the date on which it is filed."*

[8] Turning now to the Scheme in the present matter. The Scheme says that the Receivers *"means the Liquidators who undertake to act as Receivers under the Arrangement. Mr. Theodor van den Heever will also act as Chairman at all Meetings in connection therewith."*

[9] The Scheme goes on to provide that:

"3.1.8 *There are no secured creditors and the preferent creditors (being the preferent employee claims) have been settled and this Arrangement is only applicable to Concurrent Creditors. The Concurrent Creditors currently amount to approximately R74 700 249,61."* (own emphasis).

And

"3.1.10 *The intention of the Arrangement is to provide a mechanism to ensure the continued operation of the mine and a mechanism through which Creditors and subordinate creditors can be paid dividends whilst the Company is in provisional liquidation, as soon as possible, as and when possible (pursuant to income being derived from the mining operations). The Receivers (once appointed) will accordingly trade the mine to the benefit of Creditors post sanctioning the scheme. In this regard, and as will be indicated below, the Arrangement allows for the Receivers to draw up interim and regular liquidation and distribution*

*accounts as the Resource is mined and sold, in order to pay Creditors what is available at any given point in time."* (own emphasis added).

And

*"3.1.11 The Receivers (once appointed) only anticipate taking the Company out of Liquidation, in the event that the rehabilitation liability and subordinated loans are fully dealt with."* (own emphasis added).

And

*"4.1 The proposed debt moratorium for the Company is that dividends will be paid to Creditors as and when the funds become available, and there is not set date when Creditors will receive the 60 Cents in the Rand (and thereafter payments in accordance with the Distribution Waterfall). The intention of the Receivers is to however pay Creditors at least 60 Cents in the Rand (and thereafter in accordance with the Distribution Waterfall), over a period of time, however long that may take (pursuant to interim and regular liquidation and distribution accounts being drawn up). The provisional liquidation order will remain in place."* (Own emphasis added).

[10] The Scheme specifically provides that it does not affect the rights of the shareholders in Marico Chrome. The Scheme lists the shareholders as Samancor Chrome holding 42,5%, Vereeniging Refractories holding 42,5% and the Applicant as holding 15%. It specifically records in para 3.7 that *"The Arrangement, if implemented, will not have any effect on the shareholders and they will remain the shareholders of the Company."*

[11] Of the concurrent creditors of approximately R74 700 249,61 reflected in Schedule A to the Scheme, a claim of R11 682 871,40 was included in favour of Vereeniging Refractories, no claim in favour of Samancor Chrome and a claim of R519 815,95 in favour of the Applicant. These were the claims, together with the

other creditors in respect of whom the Scheme was entered as a compromise and arrangement.

[12] Do the terms of the Scheme contemplate a role for the Receivers after the discharge of the provisional liquidation order?

[13] The principles governing receivership and the receiver's powers are comprehensively described in the United Kingdom's Insolvency Law.[5] However, in South Africa, the terms "receiver" and "receivership" are not explicitly defined in the Insolvency Act nor the Companies Act. What can be established from case law is that receivership is established in terms of an agreement (compromise), and the receivers derive their powers from such an agreement/court order.[6] All their rights and duties are contained therein, and they are bound by the terms of the compromise.

[14] In *Ex parte Ensor NO: re Cape Natal Litho*,[7] the court held that:

> *"I have no doubt that, unless the compromise itself equips him with it, a receiver has no authority whatsoever to permit a claim to be lodged late or to recognise one which is. He is a creature of contract, appointed by the compromise with the term of reference prescribed therein, and his only powers are those which it confers on him, either expressly or by necessary implication. The compromise, once sanctioned, binds all concerned, including him. His sole function is to interpret and implement it, within its four corners. If its true effect is to disqualify a particular creditor from its benefits because of circumstances hitting him for which such is the stipulated result, that is the end of the matter. (Cf Olbrich KG v Cohen NO 1975 (4) SA 621 (W) at 624D-625C.) Nor, in my opinion, has the Court any power to relieve the creditor from that consequence. Although this compromise*

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5 Fletcher The law of Insolvency 2 ed (Sweet and Maxwell Limited, London 1996) at chapter 14.

6 *Airlink Proprietary Limited v South African Airways SOC Limited* [2023] ZAGPJHC 832 at para 6; *Nu harvest (Pty) Ltd v Mcquarrie NO* [2025] ZAGPJHC 790 at paras [32] and [41] the court (despite the different context of the appointment of the receiver) remarked that the nature of the receiver's appointment is akin to that of a curator. Also see: *Bekker NO v Nel NO* 1999 JDR 0039 (T) at paras 11 and 13 and *Ex parte Kaplan and Others NNO: In re: Robin Consolidated Industries Ltd* 1987 (3) SA 413 (W) at 432.

7 (3) SA 908 (D) at 911A-D. Also see: *Morris NO v Airomatic (Pty) Ltd t/a Barlows Airconditioning Co* 1990 (4) SA 376 (A).

*gets its force from the Court's imprimatur, this does not mean that its intrinsic character is any the less contractual. After sanctioning it and thus bringing it into operation, the Court has no greater control over it than any other sort of contract. A default in its performance cannot be judicially 'condoned'. Nor at that stage at any rate, can the Court vary it. (CF Steel v Shanta Construction (Pty) Ltd and Others 1973 (2) SA 537 (T) at 543A.)"* (Own emphasis added).

[15] Like a liquidator, a receiver's duty towards the creditors is a position of trust,[8] but a receiver does not axiomatically acquire the same powers as a liquidator.[9] In fact, as stated in *Ex parte Kaplan and Others NNO: In re Robin Consolidated Industries Ltd*,[10] *"[t]he receiver is simply the administrative manager of the composition. His function is to distribute properly, in terms of the scheme, the available funds according to its tenor."*

[16] On 22 September 2023, the order in terms of which Marico Chrome was placed under provisional liquidation was discharged and on the same day, Mr. van den Heever, a provisional liquidator and Receiver notified the Master of the High Court that Marico Chrome had been revested with its assets and that all administration costs had been paid.

[17] A necessary precondition to this having occurred was that the Scheme had been implemented and all the concurrent creditors paid. In *Scania Finance Southern Africa (Pty) Ltd v Mathafeng Investment Holdings (Pty) Ltd*,[11] the Court held:

*"The winding up jurisdiction of this Court is a statutory remedy. It is invoked upon proof of established grounds for liquidation. It is not a general investigative jurisdiction, nor a mechanism to preserve a provisional order in the abstract while investigations are undertaken, absent a proper legal foundation for the*

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[8] *Ex Parte Reynolds and Another NNO in re: Waterhouse Group (Pty) Ltd* [1997] JOL 480 (W) at 4.

[9] *Morar NO v Akoo and Another* 2011 (6) SA 311 (SCA) at para 22-23 and *Morris NO v Airomatic (Pty) Ltd t/a Barlows Airconditioning Co* 1990 (4) SA 376 (A) at 401F – G and *Ex parte Kaplan and Others NNO: In re Robin Consolidated Industries Ltd* 1987 (3) SA 413 (W) at 432B-E and *Gunn and Another, NNO v Victory Upholsterers (Pty) Ltd* 1976 (1) SA 127 (D) at 135B-D.

[10] 1987 (3) SA 413 (W) at 432B-E.

[11] (65023/2020) [2026] ZAGPPHC 227 at paras [77]-[82].

*continuation of liquidation . . . Once the applicant's claim was satisfied, the foundation upon which the application as brought ceased to exist."*

[18] The Scheme's existence was tied to the status[12] of Marico Chrome as being a company in provisional liquidation and remaining so as provided for in para 4.1 of the Scheme.

[19] The scope of the receiver's function, as set out in *Ex parte Ensor*,[13] is contained in the arrangement as sanctioned by the court. The arrangement defines "Receiver" as set out in para [8] above. The concurrent creditors having been paid, the provisional liquidation order discharged, and the Master notified Marico Chrome had been revested with its assets, the implementation of the Scheme in the hands of the Receivers came to an end.

[20] On that day, 22 September 2023, control of Marico Chrome vested in its directors, and the Receivers from then had no lawful authority to continue to act as they did. In *AMS Marketing Holzman and Another*,[14] it was held:

> "When a company is discharged from liquidation there is a complete reversal of the position described above. The liquidator is immediately divested of his powers and the directors are restored to their former position. Nothing in the Act gives the liquidator power to extend his activities beyond the moment when the discharge takes place. Up to that moment all activities performed and all work done by him in the continuation of the company's business operations will have been performed and done by him in his capacity as a primary organ of the company. Such activities are the activities of the company itself. There are no grounds upon which he may retain any of the assets of the company and any books, records

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12 *Nel NO and Others v Master of the High Court and Others* 2002 (3) SA 354 (SCA) at para [6].

13 1978 (3) SA 908 (D) at 911A-D. Also see: *Morris NO v Airomatic (Pty) Ltd t/a Barlows Airconditioning Co* 1990 (4) SA 376 (A).

14 1983 (3) SA 263 (W) at 269H-270C. Cited with approval by the Supreme Court of Appeal in *Moodliar and Others v Recycling and Economic Development Initiative of South Africa NPC and Others* 2020 (6) SA 386 (SCA) at para 28. See also *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA).

and documents which came into existence must remain with the company when he vacates his office."

[21] It is for the reasons I have set out above that I intend to grant the order that I do.

[22] There is no proper explanation before this Court as to why the discharge of the provisional liquidation order was not brought to the attention of the Applicant. It is a shareholder and the failure to do so does not reflect well on the Receivers.

[23] Before dealing with costs, I wish to say something about Receivers contention that the application was not urgent as well as the objections to the standing of the deponent and representation of Marico Chrome.

[24] Regarding urgency, it was argued for the Receivers that the application was not urgent and that there was no reason why the Applicant could not obtain substantial redress in due course. I am of the view that the application is urgent because, the Applicant has a direct and substantial interest in Marico Chrome being managed and operated lawfully.

[25] The urgency arises from the fact that for almost 3 years the discharge of Marico Chrome from provisional liquidation was not communicated to the Applicant – it had to ascertain this. It does not lie in the mouth of a party that is acting without lawful authority in the running of a corporate entity to contend that it should be allowed to continue to do so simply because it has failed to disclose the true situation over such a protracted period.

[26] It is not in dispute that the Applicant is the holder of the Mining Right or that it is a shareholder in Marico Chrome. Whether or not the deponent to the affidavit was authorised to depose to it or not is to my mind irrelevant to the present proceedings.

[27] The deponent is a member of the Applicant and has placed facts before the Court that are incontrovertible. Furthermore, the attempt by the Receivers to draw a distinction between the Applicant and the "Traditional Council" insofar as *locus standi* to bring an unlawful situation to the attention of the Court is misplaced. Any party is within their rights to bring an unlawful situation which directly affects their rights (or their communities rights) to the attention of the Court[15].

[28] The legal position has been determined from those incontrovertible facts which are common cause between the parties – the terms of the scheme, the date it was made an order of Court, the date the provisional liquidation order was discharged and the failure of the Receivers to notify the Applicant.

[29] It suffices to state that I do not regard the rule 7 challenge to the authority of the deponent or the Applicant itself, as having any merit. I hold the same view with regards to the argument that because the Traditional Council holds the 15% shareholding in Marico Chrome, that it is separate and distinct from the community that it is elected to represent and that therefore the Applicant has no *locus standi*. The rights of a community to complain about an unlawful situation ought not to be thwarted by the weaponization of the community's own representative structures against it.

[30] The Applicant argued that the Receivers over the approximately 3-year period in question had received approximately R68 600 000.00 in cumulative fees generated after 22 November 2023. Considering that this amount is almost the same amount of the concurrent creditors' claims that were compromised in the

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[15] *Mangope and Another v Mangope and Another* (1814/2024) [2024] ZANWHC 126 (14 May 2024) and *Bahurutshe Boo Manyana Traditional Community and Another v MNTK Enterprise (Pty) Ltd and Others* (2025–178337) [2025] ZAGPPHC 1217 (19 November 2025).

Scheme of Arrangement, it is not unreasonable that the Applicants are concerned at the fact that there is no lawful basis upon which the Receivers have continued to conduct the affairs of Marico Chrome.

[31] The Applicants have a clear right to ensure the proper governance of Marico Chrome, have been excluded from its governance in terms of the Act, for almost 16 years and only happened to ascertain the true position, not having been informed by the Receivers but by chance. There is no alternative remedy to the unlawful conduct of a company other than to restore lawful conduct. The Applicant is entitled, in my mind, to all the orders sought.

[32] Turning now to costs, since the Applicant has an interest in Marico Chrome, it is a matter of concern that it was not notified when the provisional liquidation order was discharged. There is no allegation that the Traditional Council was notified either. No member of the Applicant or of the Traditional Council appear to have been notified. This is not an oversight of weeks or even months but a failure of years.

[33] I am of the view that the Receivers having exercised the control they did over Marico Chrome for some 13 years were aware of their duty to keep the Applicant and their representatives, which include the Traditional Council, properly informed. Their failure to do so warrants censure and hence the costs order that I intend to make.

[34] In the circumstances, it is ordered:

[34.1] The forms and service provided for in the Uniform Rules of Court (Rules) are dispensed with and the matter is permitted to be heard as one of urgency in terms of Rule 6(12). The Applicant's non-compliance with the rules is condoned.

[34.2] The authority of the Second, Third and Fourth Respondents to act as receivers of the First Respondent has been terminated.

[34.3] The order of this Court dated 9 June 2020, under case number 23881/2020 has been terminated by virtue of the discharge of the provisional liquidation order of the First Respondent.

[34.4] The control and management of the First Respondent has reverted to its lawful corporate organs subject to and in accordance with the provisions of the Companies Act 71 of 2008.

[34.5] The Applicant and the Fifth and Sixth Respondents, as the shareholders of the First Respondent, forthwith and in accordance with the shareholders agreement of July 2011, in the First Respondent, duly nominate and procure the appointment of their respective directors of the First Respondent and undertake to take all reasonably necessary steps to restore lawful corporate governance in respect of the First Respondent.

[34.6] The Second, Third and Fourth Respondents, within 7 (seven) days of this order, are to deliver to the shareholders and directors of the First Respondent all books, records, accounting documents, contracts, operational information, bank records, keys, access credentials, statutory records, and assets of the First Respondent in their possession or under their control.

[34.7] The Second, Third and Fourth Respondents are interdicted and restrained from holding themselves out as authorised to act on behalf of

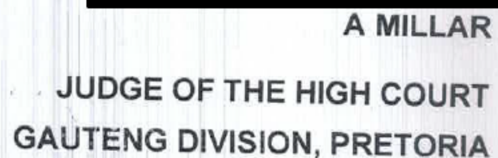
the First Respondent, save insofar as may be strictly necessary to give effect to this order.

[34.8] The Second, Third and Fourth Respondents will render a full written account, within 14 (fourteen) days of this order, of all actions taken by them in relation to the business, assets, affairs and finances of the First Respondent from 22 September 2023 to date.

[34.9] It is declared that any person acting through or under the authority of the Second, Third and Fourth Respondents in purported continuation of the receivership of the First Respondent after 22 September 2023 being the discharge of the winding up of the First Respondent, has acted without lawful authority.

[34.10] The Seventh Respondent, only to the extent necessary, gives effect to this order, to correct and/or update the public records relating to the First Respondent to reflect the legal consequences of the relief granted by this Court.

[34.11] The Second, Third and Fourth Respondents will pay the costs of this application, jointly and severally, one paying the others to be absolved on the scale as between attorney and client which costs are to include the costs consequent upon the engagement of two counsel, one of whom is senior counsel (where so engaged) on scale C.



**A MILLAR**

**JUDGE OF THE HIGH COURT**
**GAUTENG DIVISION, PRETORIA**

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|---|---|
| HEARD ON: | 12 MAY 2026 |
| JUDGMENT DELIVERED ON: | 28 MAY 2026 |
| COUNSEL FOR THE APPLICANT: | ADV. G ROME SC<br>ADV. R MAKOANYANA |
| INSTRUCTED BY: | THOMSON WILKS INC |
| REFERENCE: | MR. T KGAOBOESELE |
| COUNSEL FOR THE FIRST TO FOURTH RESPONDENTS: | ADV. E THERON SC |
| INSTRUCTED BY: | DE VRIES INCORPORATED |
| REFERENCE: | MR. A BONNET |
| COUNSEL FOR THE SIXTH RESPONDENT: | ADV. A BOOYSEN |
| INSTRUCTED BY: | SHEPSTONE & WYLIE ATTORNEYS |
| REFERENCE: | MR. A DONELLY |

NO APPEARANCE FOR THE FIFTH RESPONDENT.

THE SEVENTH, EIGHTH AND NINTH RESPONDENTS FILED NOTICES TO ABIDE THE DECISION OF THE COURT.