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: **2 July 2026**

SIGNATURE:... [redacted]

Case No. 2026-068596

In the matter between:

MARICO CHROME CORPORATION (PTY) LTD	**FIRST APPLICANT**
THEODORE WILHELM VAN DEN HEEVER N.O. (IN HIS PURPORTED CAPACITY AS A RECEIVER OF MARICO CHROME)	**SECOND APPLICANT**
KGASHANE CHRISTOPHER MONYELA N.O. (IN HIS PURPORTED CAPACITY AS A RECEIVER OF MARICO CHROME)	**THIRD APPLICANT**
OLCKERS CHOPOLOGE KOIKANYANG N.O. (IN HIS PURPORTED CAPACITY AS A RECEIVER OF MARICO CHROME)	**FOURTH APPLICANT**

and

BAHURUTSE BOO MANYANA TRADITIONAL COMMUNITY	**RESPONDENT**

In re:

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

Coram: Millar J

Heard on: 29 June 2026

Delivered: 2 July 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 2 July 2026.

JUDGMENT – LEAVE TO APPEAL

MILLAR J

[1] On 28 May 2026, this Court granted various orders in favour of the Bahurutse Boo Manyana Traditional Community against Marico Chrome and the second to fourth respondents. The parties will be referred to as the Community (the respondent in the application for leave to appeal) and Marico Chrome and the second to fourth respondents as the Receivers (the applicants in the present application).

[2] The application for leave to appeal has been brought on two broad grounds. I do not intend to deal with each specific ground but rather thematically. The first that a receivership can outlive the compromise that created it and the second that the Community and Mr. Mangope (as a member of that Community) were not the Tribal Council and had no locus to bring the application.

THE FIRST GROUND - THAT A RECEIVERSHIP CAN OUTLIVE THE COMPROMISE THAT CREATED IT.

[3] The first ground was that the Court order sanctioning the scheme of arrangement conferred authority upon the Receivers, quite aside from the operation of the law, to maintain control of Marico Chrome until the scheme had been realized in full. In the judgment, this argument was dealt with. The notification by the Receivers to the Master of the High Court that Marico Chrome was solvent and had been revested with all its assets and all costs of the provisional liquidation had been paid, resulted in their discharge as provisional liquidators.

[4] While it may have been arguable that *qua* provisional liquidators, they were obligated and entitled to see through the compromise to its end, this obligation does not survive their release as provisional liquidators. Companies may find themselves in three states – solvent (where they are controlled by a board of directors), insolvent (where they are controlled by liquidators) and in business rescue (*de facto* insolvent but controlled by a business rescue practitioner in the hope that they can be restored to solvency). There is no state of receivership for South African companies. The law simply does not recognise this.

[5] Marico Chrome was placed into provisional liquidation. While in provisional liquidation, the Receivers, as provisional liquidators controlled it. In this capacity, they entered the scheme of arrangement – an arrangement which pre-supposed the continuation of the provisional liquidation until such time as it became solvent. This occurred. There is no provision in the Companies Act which recognises the office of "Receiver" and a Court endorsed scheme of arrangement (entered for the sole benefit of the creditors and shareholders of the company) could now create a new regulatory regime which excluded certain shareholders and operated for the benefit of others.

[6] In the present matter, the basis for remaining *in situ,* on the part of the Receivers, is their obligation to satisfy the shareholder loans of the shareholders other than the Community. Once the Receivers represented to

the Master that the company was solvent, their role ended. It is a matter of common sense that if the company was solvent, it was able to pay all its liabilities which would have included shareholder loans or other obligations that had not yet been discharged. The representation to the Master would have been reckless and in breach of their duties as provisional liquidators were it otherwise.

[7] There are elements of this case which are disquieting. The continuation of the provisional liquidators as Receivers, remunerating themselves as though they were provisional liquidators is one of the elements.

[8] The second is that the financial statements, which have been produced, do not accurately represent that Marico Chrome is in fact a solvent and trading entity.

[9] The third is that the auditors, who prepared the financial statements, seem unaware of the basis upon which Marico Chrome exists – still reflecting it in the financial statements that they have prepared as being *"in liquidation"*. This is years after the provisional liquidation order was discharged. These are all matters which a properly constituted board of directors would no doubt apply their minds to.

THE SECOND GROUND - THAT THE COMMUNITY AND MR. MANGOPE (AS A MEMBER OF THAT COMMUNITY) WERE NOT THE TRIBAL COUNCIL AND HAD NO LOCUS TO BRING THE APPLICATION.

[10] The second ground was that the Court had found that the Community was the shareholder in Marico Chrome and that Mr. Mangope had *locus* to bring the application. The Receivers seek to draw a distinction between the Tribal Council and the Community and contend that it is the Tribal Council who have *locus*.

[11] One need look no further than the original shareholders agreement relating to Marico Chrome to dispose of the submission that the Community is not a shareholder.

[12] In the shareholders agreement, the shareholders are defined as *"Samancor, Verref and the Ba-Hurutshe"*. It also defines "Ba-Hurutshe" as *"the Ba-Hurutshe Boo Manyana Tribe, the owner of the property, represented herein by the Traditional Council."* Lastly, "Ba-Hurutshe Shares" are defined as *"the shares issued to the Ba-Hurutshe constituting 15% of the shares in the issued share capital of the Company."*

[13] There can be no doubt that the shareholding in Marico Chrome is held by the Community. While it may have been represented by the Tribal Council in the conclusion of the agreement and subsequently, this does not elevate the Tribal Council to ownership in the shares or the status of shareholder.

[14] The Community was and remains the shareholder and it is on this basis that it was found that Mr. Mangope *qua* member of the Community (even though he was authorised to the litigation by the Resolution of 24 May 2022) had locus to bring the proceedings.

[15] The test to be applied in considering whether leave to appeal should be granted is set out in s 17(1)[1] of the Superior Courts Act. It is trite that the test is whether the appeal "*would have a reasonable prospect of success*" or that there is *"some other compelling reason"*.

[16] I have considered the grounds upon which this application for leave to appeal has been brought against the judgment granted on 28 May 2026, together with the heads of argument filed by the parties and the submissions made on their behalf in Court.

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[1] *"Leave to appeal may only be given where the judge or judges concerned are of the opinion that –*
(a) (i) the appeal would have a reasonable prospect of success; or
(ii) there is some other compelling reason why the appeal should be heard; including conflicting judgments on the matter under consideration;"

[17] I am not persuaded that another Court would come to a different conclusion or that there is a compelling reason for leave to appeal to be granted. In the circumstances, leave to appeal will be refused.

[18] Costs will follow the result. There is no reason that the costs order should not be in the same terms as granted in the main application.

[19] In the circumstances, it is ordered that:

[19.1] The application for leave to appeal is dismissed.

[19.2] The Second, Third and Fourth Applicants 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

HEARD ON: 29 JUNE 2026

JUDGMENT DELIVERED ON: 2 JULY 2026

APPLICANTS FOR LEAVE TO APPEAL

COUNSEL FOR APPLICANTS:	ADV. E THERON SC
INSTRUCTED BY:	DE VRIES INCORPORATED
REFERENCE:	MR. A BONNET

RESPONDENT IN LEAVE TO APPEAL

COUNSEL:	ADV. G ROME SC ADV. R MAKOANYANA
INSTRUCTED BY:	THOMSON WILKS INC
REFERENCE:	MR. T KGAOBOESELE