




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: 

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.
(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 10h00 on 2 July 2026.

JUDGMENT – SECTION 18(3) APPLICATION

MILLAR J

Introduction

- [1] On 29 June 2026, I heard an application for leave to appeal against a judgment and order handed down on 28 May 2026 together with an application in terms of section 18(3) of the Superior Courts Act¹ (the Act). I also heard an application for intervention.

¹ 10 of 2013.

- [2] At the conclusion of the hearing, I indicated that separate judgments would be handed down in respect of each of the three separate applications.
- [3] Today, on 2 July 2026, all three judgments are being handed down. The sequence of the handing down of the judgments is firstly, in respect of the application for intervention. Secondly, in the application for leave to appeal and lastly, the present section 18(3) judgment. Both the application for intervention and the application for leave to appeal have been dismissed with costs as set out in the respective judgments.
- [4] In this judgment, the Applicant is referred to as the Community and the Second, Third and Fourth Respondents as the Receivers.
- [5] The order granted on 28 May 2026, was as follows:

[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”.*

Present application

- [6] In the present application brought in terms of section 18(3)², the Community is required to demonstrate firstly, exceptional circumstances which justify the execution of the order pending any appeal, secondly that they will suffer irreparable harm if it is not executed, and thirdly that the Receivers will not be irreparably harmed if the order is executed.³
- [7] The consideration of these three factors is through the lens of the prospects of success of the prospective pending appeal.⁴ Furthermore, in considering each of the factors, these are not to be considered in isolation but holistically having regard to the entirety of the case.⁵

² **“18 Suspension of decision pending appeal**

- (1) *Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.*
- (2) *Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.*
- (3) *A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.*
- (4) *If a court orders otherwise, as contemplated in subsection (1)*
- (i) the court must immediately record its reasons for doing so*
 - (ii) the aggrieved party has an automatic right of appeal to the next highest court*
 - (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency and (iv) such order will be automatically suspended, pending the outcome of such appeal.*

For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.”

³ *Incubeta Holdings (Pty) Ltd v Ellis* 2014 (3) SA 189 (GJ) at para [16].

⁴ See *Democratic Alliance and Others v Premier for the Province of Gauteng and Others* (18577/20) [2020] ZAGPPHC 330 (10 June 2020) paragraphs [11] – [13].

⁵ *Tyte Security Services CC v Western Cape Provincial Government and Others* 2024 (6) SA 175 (SCA) at paras [10] and [14].

Are there exceptional circumstances?

- [8] The first stage of the enquiry, whether “exceptional circumstances” are present depends on the peculiar facts of each case.⁶ The exceptional circumstances must be derived from the actual predicaments in which the litigants find themselves.
- [9] This matter is concerned with the governance of a company, Marico Chrome, in which the Community is a shareholder. It holds 15% of the shares. Since 2016, when Marico Chrome was first placed in provisional liquidation, the Community has had no say whatsoever in the management or affairs of Marico Chrome.
- [10] While under provisional liquidation, these were attended to by the Receivers in their capacity as provisional liquidators and after their discharge as provisional liquidators, by them. The purported capacity from that date was as “Receivers”.
- [11] What is at stake in the present matter is the proper and lawful governance of Marico Chrome. The right to this is self-evident and does not arise or reside in either the order granted in the main application or through a “shareholder of a shareholder” as the Receivers contend. The Community is the shareholder, and this is apparent from the shareholders agreement. In this regard, repeating what was stated in the judgment refusing leave to appeal:

“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.”

⁶ *University of the Free State v Afriforum* 2018 (3) SA 428 (SCA).

“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.”

- [12] Additionally, the time for which the suspension of the order is likely to occur is of necessity a factor to be considered.⁷ In the present instance, although the original debts for which Marico Chrome was placed in provisional liquidation amounted to some R74million, within two years of the sanctioning of the scheme, those debts were paid in full together with all the costs of the provisional liquidation. Since then, although the Receivers contend that the last tranche of the scheme, the shareholder loans for certain shareholders are outstanding, the Receivers have been paid some R68million in fees in circumstances where they are neither directors nor liquidators.
- [13] It was argued for the Community that the conduct of the Receivers in the way they have run the affairs of Marico Chrome is also an exceptional circumstance. They point to specific operational aspects. I need not go into those – the fact that they are not lawfully entitled to deal with the affairs of Marico Chrome is enough.
- [14] Furthermore, the continued misstatement of the financial statements of Marico Chrome as being in respect of a company in liquidation is to my mind sufficiently exceptional on its own to warrant finding the existence of exceptional circumstances.
- [15] The default position in this matter is the suspension of the order granted. It was argued for the Receivers that the finding of the court cannot on its own be an exceptional circumstance. I agree. It is not the order but the facts which were before the court, and which underpin the order that give rise to the exceptional circumstances. By way of example – if an interdict is granted to prevent harm to a person, it does not follow that if leave to appeal the interdict

⁷ *Car Find (Pty) Ltd v Car Trader (Pty) Ltd* 2016 JDR 0314 (GJ).

is granted that the person is obliged to submit to further harm while the appeal is pending.

[16] If the default is an illegality which would continue then that militates in favour of a finding that there are exceptional circumstances to consider granting the execution order in this matter.⁸

[17] In *Incubeta Holdings (Pty) Ltd v Ellis*,⁹ it was stated that:

[27] *In my view the predicament of being left with no relief, regardless of the outcome of an appeal, constitutes exceptional circumstances which warrant 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.'*

[28] *The plight of the victor alone is probably all that is required to pass muster. Nonetheless, I am not unconscious of the undesirable outcome that relief granted by the court becomes a vacuous gesture. A court order ought not to be lightly allowed to evaporate, a fate, which seems to me, would tend to undermine the role of courts in the ordering of social relations."*

[18] The Community is a shareholder. It is entitled to appoint directors to the board and to be represented in decisions affecting Marico Chrome. The Community has a judgment in its favour for the enforcement of the rights that accrue by virtue of its shareholding. If the judgment is not put into operation, then it will be nothing more than the "*vacuous gesture*" posited in *Incubeta*.

[19] For the reasons set out above, I find that there are exceptional circumstances.

Is there irreparable harm to the Community?

⁸ *Colgate-Palmolive (Pty) Ltd v Glaxosmithkline Consumer Healthcare South Africa (Pty) Ltd* 2019 JDR 1062 (GP) at paras [49]-[53]. *Bahurutshe Boo Manyana Traditional Community and Another v MNTK Enterprise (Pty) Ltd and Others* 2026 JDR 1169 (GP).

⁹ *Incubeta* supra at paras [27] - [28].

- [20] The second stage of the enquiry is regarding whether there is irreparable harm to the Community. In this regard, the Community points to the conduct of the Receivers over the period since the discharge of the provisional liquidation order.
- [21] It was argued on behalf of the Community that there are two separate basis that it will be irreparably harmed if execution of the order granted in the main case is suspended.
- [22] The first is what was described as the “*harm of continued unlawful governance.*” If execution is refused and the order in the main case suspended pending an appeal, Marico Chrome will continue to be run for the duration of the appeal process by persons who are neither directors nor liquidators. Furthermore, the very state of Marico Chrome will remain obfuscated through the lack of a statutory framework peculiar to the rights and obligations of Receivers together with financial statements that materially mis-state that Marico Chrome is in liquidation when it is in fact not. The Community is a shareholder and is entitled to be represented on the board and to take part in the management of Marico Chrome.
- [23] The second, is that it cannot be lost on the Receivers or the other shareholders for that matter, that almost the entirety of the underlying reason for the existence and viability of Marico Chrome is the very asset which belongs to the Community. Its interest is not limited simply to the royalty payments which have indeed been paid. These are a very small part of the total value of Marico Chrome.
- [24] The Receivers have operated the business since their discharge as provisional liquidators for the sole benefit of the shareholders who still have outstanding loans to the exclusion of the Community. The chrome is a finite resource, and it does not assist the Community to be excluded from a say and benefit from the entire value chain for so long as the Receivers remain *in situ*, acting for the benefit of only certain shareholders.

[25] I am, for the reasons set out above, persuaded that the Community has established that it would suffer irreparable harm.

Is there irreparable harm to the Receivers?

[26] The third stage of the enquiry is whether there is irreparable harm to the Receivers if the order granted on 28 May 2026 is implemented. The harm must arise out of the implementation of the order.¹⁰

[27] On this score, the Receivers assert disruption to operations were the order to be implemented. Accepting that the Receivers are professional persons, who if ordered to do so would act in good faith to ensure an orderly handover in the best interests of Marico Chrome, it is unfathomable that there could be any irreparable harm to Marico Chrome.

[28] The Receivers are not Marico Chrome. They are not its shareholders, nor its directors or its liquidators. They are performing a function for which they are remunerated. If their advice to the Master is accepted that Marico Chrome is solvent, then they like any creditor, insofar as there may be any outstanding costs which are lawfully due to them, can claim those costs. Even on their own version, their claimed status prefers no preference on them in respect of any payment.

[29] If the Receivers are granted leave to appeal and succeed with that appeal, the only harm that they may have suffered would be the loss of remuneration in respect of services (which they would not have rendered). Insofar as it may possibly ultimately be found that they were entitled to act as they were, any loss which they could demonstrate could be compensable.

¹⁰ *Ntlemeza v Helen Suzman Foundation* 2017 (5) SA 402 (SCA) at para [28].

[30] For the reasons set above, I am not persuaded that the Receivers would suffer irreparable harm.

[31] I find that the Community have established exceptional circumstances and that they would suffer irreparable harm if the order sought in terms of section 18(3) is not granted. I also find that the Receivers have failed to establish that they will suffer irreparable harm if the order is granted. For these reasons, I intend to grant the order below.

Costs

[32] Costs will follow the result. Both parties engaged two counsel and were *ad idem* that if costs were to be awarded in respect of counsels' costs, these were to be on scale C.

Order

[33] In the circumstances, it is ordered:

[33.1] Pending the final determination of any application for leave to appeal, and of any appeal or further appeal that may be prosecuted by the second to fourth respondents, the operation and execution of the order granted by this Court on 28 May 2026 shall not be suspended.

[33.2] The applicant is granted leave, in terms of s 18 of the Superior Courts Act 10 of 2013, to execute and enforce the following operative parts of the order granted on 28 May 2026 pending the final determination of any application for leave to appeal, appeal or further appeal:

- [33.2.1] paragraph 34.2, declaring that the authority of the Second, Third and Fourth Respondents to act as receivers of the First Respondent has been terminated;
- [33.2.2] paragraph 34.3, declaring that 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;
- [33.2.3] paragraph 34.4, declaring that 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;
- [33.2.4] paragraph 34.5, directing the Applicant and Fifth and Sixth Respondents, as shareholders of the First Respondent, forthwith and in accordance with the shareholders agreement of July 2011, to nominate and procure the appointment of their respective directors of the First Respondent and to take all reasonably necessary steps to restore lawful corporate governance in respect of the First Respondent.
- [33.2.5] paragraph 34.6, directing the Second, Third and Fourth Respondents, within 7 days of the order, 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;

- [33.2.6] paragraph 34.7, interdicting and restraining the Second, Third and Fourth Respondents 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 the order;
- [33.2.7] paragraph 34.8, directing the Second, Third and Fourth Respondents to render a full written account, within 14 days of the 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;
- [33.2.8] paragraph 34.9, declaring 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 has acted without lawful authority;
- [33.2.9] paragraph 34.10, directing the Seventh Respondent, to extent necessary, to give effect to the order and to correct and/or update the public records relating to the First Respondent to reflect the legal consequences of the orders granted by this Court.
- [33.3] The Second, Third and Fourth Respondents, are directed to pay the costs of this application jointly and severally, the one paying the others to be absolved on the scale as between party and party which costs are to include the costs consequent upon the engagement of two counsel, one of whom is senior counsel, where so employed, on scale C.


A MILLAR
JUDGE OF THE HIGH COURT

HEARD ON: 29 JUNE 2026

JUDGMENT DELIVERED ON: 2 JULY 2026

APPLICANT IN THE S 18(3) APPLICATION

COUNSEL: ADV. G ROME SC
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