

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 036057-2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

26/08/2026

In the matter between:

ROGERIO ALBERTO SILVA THOMAZ

Applicant

and

PAULO ALBERTO SILVA THOMAZ

First Respondent

SERRA HOLDINGS (PTY) LTD

Second Respondent

(Registration Number: 2017/665382/07)

SERRA SERVICES (PTY) LTD

Third Respondent

(Registration Number: 1994/004872/07)

SERRA MANUFACTURING (PTY) LTD

Fourth Respondent

(Registration Number: 2000/020594/07)

SERRA FLOOR COVERING SOLUTIONS (PTY) LTD (Registration Number: 2016/303920/07)	Fifth Respondent
SERRA EMPOWERMENT NPC (Registration Number: 2017/535136/08)	Sixth Respondent
SERRA EMPOWERMENT HOLDINGS (PTY) LTD (Registration Number: 2017/535204/07)	Seventh Respondent
ALBERTO DOS SANTOS THOMAZ N.O. (cited in his capacity as a trustee of the Thomaz Family Trust, IT Number: IT 216/06)	Eighth Respondent
CLARA MARILIA NEVES SILVA THOMAZ N.O. (cited in her capacity as a trustee of the Thomaz Family Trust, IT Number: IT 216/06)	Ninth Respondent
PAULO ALBERTO SILVA THOMAZ N.O. (cited in his capacity as a trustee of the Thomaz Family Trust, IT Number: IT 216/06)	Tenth Respondent
RUSSELL MURRAY JAMES N.O. (cited in his capacity as a trustee of the Thomaz Family Trust, IT Number: IT 216/06)	Eleventh Respondent
BRIAN FRANK N.O. (cited in his capacity as a trustee of the Thomaz Family Trust, IT Number: IT 216/06)	Twelfth Respondent
ALBERTO DOS SANTOS THOMAZ N.O. (cited in his capacity as a trustee of the	Thirteenth Respondent

Thomaz Business Trust, IT Number: IT000632/2021(G))

PAULO ALBERTO SILVA THOMAZ N.O.

Fourteenth Respondent

(cited in his capacity as a trustee of the

Thomaz Business Trust, IT Number: IT000632/2021(G))

BRIAN JOHANN WILKEN N.O.

Fifteenth Respondent

(cited in his capacity as a trustee of the

Thomaz Business Trust, IT Number: IT000632/2021(G))

JUDGMENT

MIA, J

Introduction

[1] This is an urgent application for interim interdictory relief pending the determination of the applicant's pending application under s 163 of the Companies Act 71 of 2008. The immediate event is a shareholders' meeting of the seventh respondent, Serra Empowerment Holdings (Pty) Ltd (SE Holdings), convened for 10h00 on 26 August 2026 to consider an ordinary resolution removing the applicant as a director.

[2] The applicant and the first respondent are brothers. Their dispute concerning the governance and control of a group of family entities is already before the Commercial Court under this case number. The principal issue now is not whether the applicant has an indefensible right to remain a director. He does not. It is whether, in the present context, of the pending oppression proceedings, the proposed removal should be restrained temporarily so that the court hearing those proceedings is not presented with an altered governance position and a fait accompli resulting in the removal of the applicant.

[3] For the reasons that follow, I am satisfied that the matter is sufficiently urgent and that that the substantive relief be considered

Background

[4] The sixth respondent, Serra Empowerment NPC (the NPC), is the sole shareholder of SE Holdings. The applicant is presently a director of both entities. The first respondent is also a director of the NPC and, according to the papers, has been authorised to exercise the NPC's shareholder rights in SE Holdings. The extent and proper use of that authority are disputed.

[5] The applicant instituted the s 163 proceedings during March 2025. Broadly stated, he alleges a sustained pattern of exclusion from management, information and decision-making in the family enterprise. The respondents deny oppression and contend that the present application concerns an ordinary and lawful exercise of the sole shareholder's statutory power under s 71(1).

[6] On 11 August 2026 the applicant received notice of the SE Holdings shareholders' meeting and the proposed removal resolution. The notice affords him an opportunity to make representations before the vote. The first respondent says that the statutory and procedural requirements have been observed and that the application is an impermissible attempt to entrench the applicant in office.

[7] The applicant's attorneys wrote a detailed request for information on 14 August 2026. They challenged, among other things, the authority to procure and vote for the removal, requested identified corporate records, and sought undertakings that the meeting and removal would not proceed. A deadline of 18 August was stipulated. A follow-up was sent on 19 August. At 15h01 that day the requested undertakings were unequivocally refused. Once it was evident that the first respondent refused to furnish information requested, the application to approach the urgent court was prepared.

[8] The development and trigger for the present application is the notice on 11 August 2026 of the meeting scheduled for 26 August 2026. Papers were prepared and issued on the afternoon of 21 August. The matter was enrolled for 25 August, one day before the meeting.

[9] The answering affidavit accepts that the first respondent's authority is broad, but relies upon a written resolution¹ as confirming it. The applicant points out in reply that the resolution had been requested before litigation but was produced only with the answering affidavit. His mother's presence on the SE Holdings board does not preserve his own ability to participate, obtain information and exercise oversight. The minute of the meeting where the resolution was taken was not furnished. The applicant is unable to ascertain what was discussed and how the resolution came to be finalised.

Issues

[10] The questions for decision are: first, whether the departure from the ordinary forms, service and time periods should be condoned; and secondly, whether the applicant has established the requirements for interim interdictory relief: a prima facie right, though open to some doubt; a reasonable apprehension of harm; a balance of convenience favouring protection; and the absence of another satisfactory remedy.

Urgency

[11] The application was not enrolled by the Thursday cut-off ordinarily applicable to the following Tuesday's urgent roll. It therefore required a case of extreme urgency and a full explanation for every material period of delay. The applicant has supplied that explanation.

[12] The trigger was the notice received late on 11 August. The applicant did not immediately launch proceedings. His attorneys analysed the corporate material, set out the challenge comprehensively, requested the documents said to support the first respondent's authority, and sought undertakings that could have avoided litigation. Those were reasonable steps, not supine inaction. Once the position was finally known on 19 August, the remaining timetable was necessarily compressed.

¹ Answering Affidavit, Annexure PT1

[13] The approximately one-day interval between the refusal and preparation of the application is adequately explained. The mistaken procedural approach to the case-managing judge caused no material prejudice and was corrected promptly. The respondents filed a substantial answer; the applicant replied; and the issues were fully argued. The curtailed periods, while severe, were dictated principally by the date selected for the meeting.

[14] If the applicant is removed before the matter can be heard in the ordinary course, a later order or damages award cannot recreate the board meetings at which he was absent, the information not contemporaneously received, the questions not asked, or the oversight not exercised. Reinstatement, if eventually competent and justified, would operate prospectively. That is why relief in due course may not be substantial in relation to the period of exclusion.

[15] This conclusion does not depend upon the applicant's more expansive prediction that removals from other boards will follow. The first respondent states that no such processes are presently under way. I proceed on that basis. The imminent and concrete event is removal from the SE Holdings board, and that event is sufficient for present purposes.

[16] Nor is the urgency self-created. The causa of the immediate urgency is the convening of the meeting and the refusal to preserve the position pending judicial consideration. The applicant acted with the expedition reasonably possible after that refusal. The departure from the rules will accordingly be condoned.

The relevance of Gelderblom and Lebra

[17] Both sides referred to *Gelderblom and Others v Sandown Bay Fishing Company (Pty) Ltd and Others*². It is persuasive rather than binding authority in this Division. Its value lies in the close functional analogy, not in treating its result as a rule that any pending s 163 applicant is immune from removal.

² (19605/2024) [2025] ZAWCHC 210 (19 May 2025)

[18] In *Gelderblom* the court held that proposed board removals were inextricably linked to pending s 163 relief; that an asserted absence of an absolute right to remain a director did not answer a prima facie right not to be treated oppressively or unfairly prejudicially; and that removal before adjudication risked a *fait accompli* not readily undone. The applicants' efforts to resolve the dispute before approaching court were also relevant to urgency.

[19] There are material differences. The present applicant remains a director of the NPC, and the evidence does not establish an active process to remove him elsewhere in the group. Those facts narrow the apprehended harm. Conversely, the proposed resolution concerns the board of SE Holdings itself; the NPC is its sole shareholder; and the person said to have initiated the process will exercise that shareholder's vote. On the respondents' own version, adoption is therefore highly probable rather than conjectural. The submission on behalf of the first respondent underscored that the removal in terms of section 71(1) was the shareholders prerogative and no reasons need be furnished.

[20] *Gelderblom* supports the principled proposition that the statutory existence of a removal power does not end the enquiry. A court must examine the context, purpose and practical effect of its exercise while oppression proceedings bearing directly on governance are pending. That approach is consistent with, and does not displace, the ordinary interim-interdict test.

[21] *Lebra Development (Pty) Ltd and Others v Bester and Others*³ is directly relevant authority from this Division. It confirms that management under s 66 is collective; a director must be included in management to discharge the office's fiduciary responsibilities; and exclusion at the time of decision-making is not cured merely by providing selected information or explanations afterwards. The court held that exclusion from management, followed by inadequate explanations, was prejudicial and unfair.

³ 2024 JDR 4710 (GP)

[22] Of particular importance, the court in *Lebra* rejected the argument that removing the director after he had instituted s 163 proceedings caused any oppression toward the director to cease and brought that litigation to an end. It held that, the timing of, and persistence with, removal after the application had been instituted and served, cast a cloud on the removers' bona fides. The present case is at an earlier point in the same sequence: the Court is asked to intervene before the proposed resolution produces the very consequence considered in *Lebra*.

[23] The applicant's removal during a live s 163 controversy is therefore not a neutral procedural event for the applicant. The meeting scheduled for 26 August is called to remove him. The first respondent called the meeting and will cast the majority vote. This pending removal changes him from a current participant in SE Holdings' collective management into an excluded litigant seeking retrospective restoration; deprives him, meanwhile, of the ability and responsibility to deliberate, obtain board information and exercise oversight; alters the factual terrain on which the pending case must be decided; and risks perpetuating the very exclusion that the main proceedings allege. It does not, by itself, prove oppression or bad faith, but its timing and persistence materially reinforce the prima facie case for preserving the position until the s 163 court can decide the issue.

Interim interdict

Prima facie right

[24] The applicant does not establish his case by asserting ownership of a directorship. Section 71(1) permits shareholders, subject to its terms, to remove a director by ordinary resolution. A pending s 163 application does not suspend that power. The relevant prima facie right is narrower: the right to seek effective protection against conduct alleged, in the main proceedings, to be oppressive or unfairly prejudicial, and to have that controversy adjudicated before a closely connected alteration of governance renders part of the claimed protection hollow. *Lebra* makes clear that a post-institution removal does not extinguish the live s 163 controversy.

[25] The main proceedings are neither fanciful nor dormant. They have been placed in the Commercial Court, are case-managed, and concern the parties' governance relationship. The proposed removal would intensify the very exclusion from board participation and information of which the applicant complains. It is therefore inextricably connected to the pending dispute, even though it gives rise to an immediate statutory event not identified when the main papers were launched.

[26] The first respondent's reliance on a valid legal compliance with s 71(1) is weighty but not dispositive. Procedural compliance may establish the machinery by which a shareholder can act; it does not finally determine whether the exercise of that power, in this context and for this purpose, is oppressive or unfairly prejudicial under s 163. That is a matter for the court hearing the main proceedings.

[27] There is also a genuine dispute over the authority under which the first respondent acts. The annexure attached, Annexure PT1, may ultimately answer that dispute. At this stage, however, its breadth, the contest concerning the 27 July 2026 process, and its late production reinforce the need to preserve rather than finally determine the governance position. I make no finding that the first respondent acted in bad faith or that PT1 is invalid.

[28] The timing, persistence and structure of the proposed process nevertheless raise a prima facie concern. The first respondent is said to be the NPC's representative, the person advancing the removal, the recipient of the applicant's representations and the person who will cast the sole shareholder's vote. The proposal was initiated and persisted with while the s 163 allegations concerning exclusion remain alive and case-managed. Although those circumstances are not, without more, unlawful and I make no final finding on motive, *Lebra* requires the Court to treat them as material. They make the outcome practically foreseeable and link the process closely to the pending control dispute.

[29] The applicant has accordingly established a prima facie right, although open to doubt, sufficient for interim protection. The strength of that right must be assessed together with the remaining requirements and the limited nature of the order.

Apprehension of harm

[30] The threatened removal is imminent. If the sole shareholder adopts the proposed resolution, the applicant's office terminates and the practical incidents of that office cease. The harm relied upon is not merely the loss of title, remuneration or prestige. It is the loss, during the pendency of the main case, of contemporaneous participation in decisions, access to board information in that capacity, and the opportunity to question and oversee management.

[31] These incidents are time-sensitive. *Lebra* illustrates why after-the-fact disclosure is not equivalent to inclusion at the time decisions are made. Minutes or documents supplied later cannot reproduce deliberation as it occurred or the influence that a director might lawfully have exercised before a decision was taken. A damages claim cannot value or restore that lost participation with any confidence. A later challenge may yield reinstatement, but cannot fully reverse intervening governance.

[32] The fact that the applicant remains a director of the NPC is relevant but not a complete answer. The two entities have distinct boards, duties, records and decisions. Participation in the shareholder does not confer the same statutory access to, or deliberative role on, the board of its subsidiary. As in *Gelderblom*, continued involvement elsewhere is of limited comfort when the threatened exclusion concerns the particular company central to the dispute.

[33] I therefore find a reasonable apprehension of harm if interim relief is refused. I do so on the concrete loss associated with SE Holdings alone, not on speculation about a cascading removal from other entities.

Balance of convenience

[34] If relief is refused, the applicant will immediately lose the governance incidents described above and the court hearing the main case may confront an accomplished alteration. If relief is granted, the respondents' prejudice is a temporary postponement of the sole shareholder's proposed exercise of its power, not its extinction.

[35] The respondents correctly submit that an open-ended restraint could interfere materially with corporate autonomy and bind the sole shareholder for an uncertain period. That risk is addressed by confining the order to the notified removal process, requiring diligent prosecution and permitting reconsideration by the court managing the s 163 case on good cause. The order does not prohibit all future corporate action or confer permanent tenure.

[36] There is no evidence that retaining the applicant as a director for this limited period will expose SE Holdings to immediate operational danger. The respondents' complaints about his conduct may be placed before the Commercial Court and may support an application to vary or discharge the restraint. On the present papers, the reversible inconvenience of delay is outweighed by the irreversible quality of the applicant's exclusion in the interim.

[37] The balance of convenience therefore favours preservation of the status quo, subject to the safeguards contained in the order.

No satisfactory alternative remedy

[38] The applicant could make representations at the meeting and, after removal, attack the resolution or supplement his s 163 case. Those are legal remedies, but the question is whether they are satisfactory in the circumstances. They would operate only after the loss of office and would not preserve participation in the meantime.

[39] A damages claim is still less adequate. The essential prejudice is not readily reducible to money. Nor does the opportunity to make representations provide effective protection where the first respondent, the proposed remover, controls the sole shareholder vote and has declined to defer the process pending adjudication.

[40] The proposed supplementation of the existing s 163 proceedings is the appropriate forum for final relief. Interim preservation enables that remedy to remain effective; it does not supplant it. The applicant has shown the absence of a satisfactory alternative to temporary interdictory relief.

Discretion

[41] An interim interdict remains discretionary. The order need go no further than is necessary to meet the demonstrated risk. I shall restrain the respondents from proceeding with, implementing or registering the applicant's removal under the notice of 11 August 2026, or any replacement process substantially directed to the same removal, pending determination of the s 163 proceedings or further order.

[42] Because the main matter is already case-managed, any reconsideration should ordinarily be sought there. The applicant must promptly take the procedural steps necessary to place the new event before that court and seek directions for its expeditious determination. This guards against interim relief becoming an indefinite substitute for final adjudication.

Costs

[43] The applicant has succeeded in obtaining the protection substantially sought. The urgency was not self-created and the opposition required determination of the merits of interim relief. Following the ordinary rule the first respondent should pay the costs, including the costs of one counsel, on Scale B. There is no basis on the present papers for a punitive order.

Order

[44] In the result, the following order is made:

1. The forms, service and time periods prescribed by the Uniform Rules are dispensed with to the extent necessary, and the application is heard as one of urgency under rule 6(12).
2. Pending the final determination of the applicant's application under s 163 of the Companies Act 71 of 2008 in case number 2025-036057, or further order of the court:

2.1 the first, sixth and seventh respondents are interdicted and restrained from proceeding with the shareholders' meeting of the seventh respondent scheduled for 10h00 on 26 August 2026 insofar as it concerns the proposed removal of the applicant as a director;

2.2 the first, sixth and seventh respondents are interdicted and restrained from proposing, voting upon, procuring, adopting or giving effect to a resolution removing the applicant as a director pursuant to the notice delivered on 11 August 2026, or pursuant to a replacement process substantially directed to the same removal;

2.3 the first respondent is interdicted and restrained from exercising or purporting to exercise the sixth respondent's shareholder rights in the seventh respondent for the purpose identified in paragraph 2.2; and

2.4 the respondents are interdicted and restrained from implementing, recording or registering such removal, including by lodging a CoR39 or other notice with the Companies and Intellectual Property Commission.

3. If, before service or communication of this order, a resolution contemplated in paragraph 2 has been adopted, its operation and implementation are suspended on the same terms pending the event stated in paragraph 2.
4. The applicant shall, within five court days of this order, deliver any application to supplement the pending s 163 proceedings and request the case-managing court to issue directions for the expeditious determination of that relief.
5. Any party may, on reasonable notice and on good cause shown, approach the case-managing court for the variation or discharge of paragraphs 2 to 4 of this order.
6. The first respondent shall pay the costs of this application, including the costs of one counsel, on Scale B.



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JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION:JOHANNESBURG

Appearances:

On behalf of the Applicant	:	Adv. E. Larney <u>larney@advocatesa.co.za</u>
instructed by:	:	___Finnegan & Burger Inc <u>fallon@finneganburger.com</u> <u>daniella@finneganburger.com</u>
 On behalf of the Respondent	:	 Adv. Kuvashkir Naidoo <u>knaidoo@advnaidoo.co.za</u>
instructed by	:	Brian Frank Inc. <u>bfrank@brianfrank.co.za</u> <u>dmoodley@brianfrank.co.za</u>
 Dates of hearing	:	 25 August 2026
Date of judgment	:	26 August 2026