

**IN THE WATER TRIBUNAL**

**HELD AT PRETORIA**

**CASE NO: WT 18/01/2010**

In the matter between:-

**A M MARAIS BOERDERY TRUST**

**APPELLANT**

and

**DEPARTMENT OF WATER AFFAIRS**

**RESPONDENT**

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**APPEAL DECISION : 2011-11-23**

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**APPEARANCES:**

Coram : LJ Lekale (Mr) – Chairperson  
Dr W Singo – Deputy Chairperson  
Mr H Thompson – Member

For Appellants : **Adv. D H de la Harpe** – from  
Grahamstown Bar instructed by  
Messrs. Coetzee & Venter –  
Attorneys of Cradock.

For the Second Respondent : **Mr. T Sedibe** from its Legal  
Services Directorate – Pretoria

**DETAILS OF HEARING AND REPRESENTATION:**

- [1] The appeal hearing was held at Grahamstown on the 18<sup>th</sup> November 2011.
- [2] The appellant was represented by **Adv. D H de la Harpe** from the Grahamstown Bar instructed by Messrs. Coetzee & Venter – Attorneys of Cradock.
- [3] The respondent, on its part, was represented by **Mr T Sedibe** from its Legal Services Directorate in Pretoria.
- [4] The proceeding was recorded digitally by the Registrar of the Tribunal.

**ISSUE TO BE DECIDED:**

- [5] The issue to be determined is whether or not on proper interpretation of the provisions of section 27(1) of the National Water Act (NWA) the appellant is entitled to a water use licence regard being had to all the factors relevant to the application.
- [6] In the event of the foregoing question being answered in the affirmative, the Tribunal is required to grant the relevant licence.

**BACKGROUND TO THE ISSUE:**

- [7] The appellant applied for permanent transfer of water rights on the 24<sup>th</sup> January 2007 after concluding an agreement for the purchase of, inter alia, water rights in order to facilitate the granting of the said water use licence.
- [8] The application was supported by all the stakeholders such as the Great Fish Water User's Association and Davids Labour Law Consultants and was, further, recommended by the Chief Director: Eastern Cape Region of the respondent.
- [9] On the 13<sup>th</sup> October 2009 the respondent, as the responsible authority, declined the application. The appellant, thereupon, lodged an appeal with the Tribunal and applied successfully for condonation which was granted on the 26<sup>th</sup> August 2011.
- [10] At the commencement of the appeal hearing the appellant party submitted further documents such as a certificate from chartered accountants to the effect that the appellant's annual turnover does not exceed R5 million with the consent of the respondent party.

**SURVEY OF EVIDENCE AND ARGUMENT:**

- [11] The parties submitted documents through the office of the registrar and, further, made oral submissions. The appellant party also submitted Heads of Argument through Mr de la Harpe.

[12] On behalf of the appellant it is submitted that the correct approach in dealing with applications for water use licences, according to recent case law viz. **Guguleto Family Trust v Chief Director, Water Use Department of Water Affairs and Forestry and Ano Case No. A566/10**, is for the responsible authority and the Water Tribunal to take account of all relevant factors, including those specifically mentioned in section 27 of NWA, and then balance them all without attaching undue weight to any one with a view to serving the objects of the Act.

[13] Adv. De la Harpe further contends that the appellant has established that he is actively engaged in addressing the development of historically disadvantaged individuals and that by the expansion of his present enterprise he will be better placed to extend upon and continue those benefits.

[14] It is furthermore contended for the appellant that the refusal of the application will not serve the factors mentioned in section 27(1) of NWA.

[15] Mr Sedibe for the respondent concedes that on available documents and information it is clear that the appellant is entitled to the relevant licence.

**ANALYSIS OF EVIDENCE AND ARGUMENT:**

[16] The parties are ad idem that the facts of the present matter warrant the granting of the licence applied for.

[17] The Tribunal is, on its part, satisfied on available undisputed facts that the relevant factors, inclusive of those set out in section 27(1) of NWA, balanced against one another cry out for the licence to be granted.

(See **Guguletto Family Trust v Chief Director, Water Use Department of Water Affairs & Ano (supra)** and **Norsand Holdings (Pty) Ltd v The Department of Water Affairs & Forestry and Ano. WT26/08/2008**).

**DECISION:**

[18] In the result the appeal succeeds.

[19] The appellant is granted a licence on the respondent's standard terms and conditions applicable to relevant water use licences.

[20] The respondent shall proceed to issue the relevant licence without undue delay.

  
**LEPONO J. LEKALE**  
**CHAIRPERSON**