

**IN THE WATER TRIBUNAL
HELD AT PRETORIA**

REF: WT 18/08/2010

In the application for condonation between:

A J GROBBELAAR

APPLICANT

and

THE DEPARTMENT OF WATER AFFAIRS

RESPONDENT

CONDONATION RULING: 3 JUNE 2011

1. APPEARANCE, REPRESENTATIONS AND DETAILS OF HEARING

Coram : Dr. W Singo (Deputy Chairperson of the Water Tribunal
and Presiding Officer of the hearing)

Mr. H Thompson (Member of the Water Tribunal)

Mr. A S Makhanya (Member of the Water Tribunal)

Mr. A S Hadebe (Member of the Water Tribunal)

For the Applicant : Mr. A J Grobbelaar

For the Respondent : Mr. T M Sedibe, legal officer from the Directorate:
Legal Services of the Department of Water Affairs

1.1. This is a unanimous ruling in the application for condonation heard on 3 June 2011 at the Protea Hotel Capital in Pretoria.

1.2. The proceeding was recorded mechanically on 1 audio tape.

2. ISSUE TO BE DECIDED

2.1. The question to be answered by the Water Tribunal was whether there is a good reason to condone the late lodging of an appeal by the Applicant against a decision of the Respondent dated 17 May 2007.

3. BACKGROUND TO THE ISSUE

- 3.1. The Applicant applied on 23 September 2003 for a licence in terms of section 41 of the National Water Act 36 of 1998 (NWA) to take a maximum quantity of 156 700 m³ water per year of subterranean water on Portion 4 of the farm Grootbos 149.
- 3.2. The Responsible Authority informed the Applicant by a letter dated 17 May 2007 that the "... property lies within the C24C quaternary catchment, as well as the catchment area of the Schoonspruit Eye and deficit is seen in the water balance of the Eye and no further groundwater allocations can be approved. The quaternary catchment C24C has been identified as a groundwater stressed area and the proposed abstraction would have a negative impact on the groundwater situation. Based on the ...[this] the Department does not approve the issuance of the licence."
- 3.3. The Applicant appealed against this in terms of section 148(1)(f) of the NWA by a letter dated 5 October 2009 to the Water Tribunal.
- 3.4. According to section 148(3)(b) an appeal must commence within 30 days after notice of the decision was sent to the appellant concerned. The appeal was therefore lodged about 2 years and 3½ months late.
- 3.5. The Applicant applied in terms of rule 4(4) of the Rules to the Water Tribunal for the condonation of the late lodging of the appeal.

4. SURVEY OF EVIDENCE AND ARGUMENTS

Evidence and documents submitted

- 4.1. No oral evidence was adduced. Both the Applicant and Respondent made oral submissions through their respective representatives.
- 4.2. The Bundle from the Registrar of the Water Tribunal also forms part of the evidence and arguments analysed by the Tribunal.

Contents of the documents submitted by the Appellant and also argued

- 4.3. The Applicant only started to farm during 2003 after he completed his studies. He did not have the opportunity to register any water use when it was requested.
- 4.4. The Applicant did an investigation regarding the neighbouring farms and their access to irrigation water. It came to his notice that in a radius of 15 km around his farm, his farm is the only without access to water for irrigation purposes.

- 4.5. The financial impact of this on him is severe and due to that he has to rent land from neighbouring farms to service his needs. The cost implication of this has a severe negative impact on him and put a strain on potential growth.
- 4.6. There is a feedlot on his property that provides work to 10 households, but with the strain on the financial side, as they cannot obtain their own water. It has stopped the growth of the feedlot and potential new jobs.
- 4.7. The allocation of water would bring about growth to the maize production side of the farm that would create a further job opportunity for 5 households.
- 4.8. Both the consulting and investigation done showed that the allocation of water to the property concerned would have no negative effect on any neighboring black owned farms or future black owned farms. There would also be no negative impact on the informal settlements, because they are serviced by municipal water.
- 4.9. On the question why he waited for 2 years and 3½ months before lodging the appeal, the Applicant answered that at the time of refusal the application he was not in a strong financial position to undertake the development, but his financial position has since improved.
- 4.10. Regarding whether he has any information on the availability of the water from the water resource for development, he mentioned that he had discussed the matter with a Prof van der Walt who mentioned that no further ground water is available for development in this area. The Applicant said that according to the Professor he has actually no case.

Arguments by the Respondent

- 4.11. It is not clear what type of investigation was done to show that the allocation of water would have no negative effect on any neighbouring black owned farms or future black owned farms.
- 4.12. The Applicant has not given any explanation why the application was late and has also not shown any prospect of success. Therefore the Tribunal should not grant any condonation for the late lodging of the appeal.

5. ANALYSIS OF EVIDENCE AND ARGUMENTS

- 5.1. An appeal must in terms of section 148(3)(b) of the NWA commence within 30 days after notice of the decision was sent to the appellant concerned. The appeal lodged is 2 years and 3½ months late.

- 5.2. According to the Tribunal the following should be addressed in determining whether there is a good reason to grant condonation for the late lodging of the appeal: the degree of lateness; the explanation for the delay; the prospects of success in the matter; and whether there is prejudice to the other parties to the matter. (See for example *Melane v Santam Insurance Co Ltd* 1962 4 SA 531 (A)).
- 5.3. As far as the degree of lateness is concerned, the Tribunal is of the opinion that the delay of 2 years and 3½ years is serious. Therefore, before condonation could be granted, there should be an acceptable reason for the delay and a strong prospect of success.
- 5.4. The Tribunal is not satisfied that the reason given by the Applicant for the delay is acceptable. Why apply for a licence if not financially strong enough to do the development, and then later, when financially strong enough, ask for condonation?
- 5.5. The Applicant has also not shown that there is any prospect of success.
- 5.6. After the Tribunal has considered all the relevant information, the Tribunal is not satisfied that there exists any good reason to grant condonation for the late lodging of the appeal against the decision not to grant a licence to abstract subterranean water on Portion 4 of the farm Grootbos 149. The Applicant did not give any acceptable explanation why the appeal was lodged late and has also not shown any prospect of success.

6. DECISION

- 6.1. In the result, the Water Tribunal does not grant condonation for the late lodging of an appeal by the Applicant against the decision on the verification of the water use not to grant a licence to abstract subterranean water on Portion 4 of the farm Grootbos 149 dated 17 May 2007.
- 6.2. The file before the Water Tribunal should therefore be closed.

Dated at Pretoria on this ²¹..... day of July 2011.


H. Thompson