

IN THE WATER TRIBUNAL

In the matter between:

CASE NO: WT10/08/2005

DRIES ALBERTS

Appellant

and

**THE DIRECTOR GENERAL: DEPARTMENT OF
WATER AFFAIRS AND FORESTRY**

Respondent

<p>DECISION</p>

1. Mr Alberts constructed a structure on the banks of Haartebeespoort dam. This structure was referred to by both parties as "a jetty". The jetty is used to launch "pleasure cruises" for paying customers on the dam. The jetty that is the subject of the appeal was constructed after 1 October 1998.
2. The respondent issued a directive against Mr Alberts. The directive specifies that the jetty be removed because the construction of the jetty constituted "water use" as defined in section 21 (i) of the National Water Act, Act 36 of 1998 and that such water use was unauthorised. In addition, the directive specifies that the jetty constitutes "water use" in that the jetty altered the bed, banks, course and characteristics of the Haartebeespoort dam, "a watercourse" as defined in the National Water Act.

3. The Respondent says that directive against Mr Alberts was served on him on 13 January 2005 (Mr Alberts says it was served later, but nothing turns on this). One being served with the directive, Mr Alberts wrote to the Respondent stating that he obtained authorisation in 1975 from a Mr Piet Broodryk of the Respondent's legal department, to build the jetty. Mr Alberts did not produce any records referring to this authorisation. Evidence on behalf of the Respondent was that the Respondent had no record the application or the authorisation in 1975 or any record by Mr Broodryk dealing with the jetty. The further evidence on behalf of the Respondent was that Mr Broodryk would, in any event under the 1956 Water Service Act, have had no power to grant authorisation to Mr Alberts.
4. The further evidence was that Mr Alberts, after receiving the directive as indicated above, continued with the construction and earth-fijfing works on the shore of the Haartebeespoort dam close to the existing jetty. Mr Alberts admitted this in his evidence. He mentioned that what he did was to change the supporting mechanisms from using steel drums to using steel and concrete.
5. Mr Alberts' primary response to the claim by the Respondent that the use of the jetty is unlawful is that he has prior authorisation both to construct the jetty and to launch boats from the jetty. The fundamental question that the tribunal must decide is thus whether Mr Alberts was indeed authorised.
6. Mr Alberts, as indicated above, was unable to provide proof of authorisation for the construction of the jetty. Similarly, evidence on behalf of the Respondent was that the Respondent has no record of any approvals authorising Mr Alberts concerning the construction of a jetty. Assuming that approval was made as claimed by Mr Alberts, such approval would be in terms of the 1956 legislation. This would be the case

having regard to the evidence of Mr Alberts and to his affidavit in the appeal that he obtained the authorisation before 1998.

7. I conclude that, on the evidence, together with other affidavits filed on record, Mr Albert's construction of the jetty on the banks of the dam took place after 1 October 1998, when the National Water Act had commenced. As a result, any change affecting the dam and to do with the use of water in the dam, could only lawfully take place, in terms of authorisation issued under the National Water Act. This conclusion calls for a determination on whether the construction of the jetty by Mr Alberts constitutes a "water use" and whether, given the assertion by Mr Alberts that he obtained authorisation prior to the National Water Act coming into effect, the construction of the jetty was "an existing water use" within the meaning of the National Water Act.
8. The evidence was that Mr Alberts undertook earth filling works on the shore of the Haartebeespoort dam after 1 October 1998. This entailed the construction of a concrete structure for the launching of boats onto the dam.
9. I accept that the Haartebeespoort dam is "a watercourse" within the meaning of section 1 of the National Water Act. I also accept the evidence on behalf of the Respondent that the construction of the jetty constituted an alteration of "the bed, banks, course and characteristics" of the Haartebeespoort dam. I do not accept the evidence of Mr Alberts that the jetty could not possibly affect the characteristics of the Haartebeespoort dam and thus does not breach section 21 of the National Water Act.
10. The statutory prohibition does not require that the National Water Act is breached only if it can be demonstrated that a particular structure has changed for example the total volume of water in the dam. It is sufficient that

it be demonstrated that at least one of the elements in the definition, such that an activity has altered the "bed" or "bank" of a watercourse, be demonstrated.

I am satisfied that the Respondent, in this case, has demonstrated that the bed or bank of the Haartebeespoort dam has been "altered". I conclude therefore that the construction of the jetty constitutes "water use" within the meaning of the National Water Act.

11. There is the related question of whether the water use by Mr Alberts was lawful. I shall assume that Mr Alberts was authorised under the 1956 Water SeNice Act. I conclude, on the evidence and on the documents filed in the appeal, that Mr Alberts did not exercise his entitlement to the water use within the two year period prior to the coming into effect of the National Water Act. I have reached this conclusion on the ground that the jetty and the alterations to the shores of the Haartebeespoort dam took place after 1 October 1998.
12. I would therefore dismiss the appeal.

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13. I agree that the appeal be dismissed.

DR. SINGO