

**IN THE WATER TRIBUNAL**

IN THE APPEAL OF:

Case NO: WT 27/01/2006

P. MOYNIHAN

Appellant

and

THE DEPARTMENT OF WATER AFFAIRS AND FORESTRY

Respondent

**DECISION**

1. This is an appeal against the decision of the Respondent to disapprove the Appellant's application for a licence in terms of Section 21 (d) read together with Section 36 of the National Water Act (Act 36 of 1998). Pursuant to Section 21 (d) read together with Section 36 of the National Water' Act, the Appellant applied to the Respondent for a licence to grant 25ha of Pine trees on the farm Vitown 511 KT located in Pilgram's Rest in the Lydenberg District of Mpumalanga.
2. On 19 October 2005 the Respondent issued a directive requiring the Appellant to remove the 25ha of the Pine trees and submit a plan for the rehabilitation of the piece of land in question.
3. The Respondent refused to grant the water use licence to engage in a stream flow reduction activity in order to legalised 25ha of Pine trees based on the following reasons:
  - 3.1. *The trees to be legalised are located on Catchment B60F of the Lower Olifants sub-area that is currently in a deficit of 63 million m3 for the current level water infrastructure development;*
  - 3.2. *The area applied for is, according to the Mpumalanga Parks Board, of a conservation value; and*

- 3.3. *The trees have been established without prior authorisation or due consideration of the applicable licensing procedures and environmental legislation.*
4. Firstly, the Respondent based the decision to deny the Appellant's water use application on the ground that the 25ha area was situated on catchment B60F that is currently in a deficit of 63 million m<sup>3</sup> with respect to the level of water infrastructure development. The Appellant needed to know the "full details of the [water] balance". The Respondent indicated that the decision was based on the DWAF's own Report No: P WMA 04/000/00/0304 (Department of Water Affairs and Forestry Olifants River Water Management Area Internal Strategy Perspective Version 1 February 2004) which also further referred to Report: DWAF 2004(b) Department of Water Affairs and Forestry, Report: P VVMA 04/000/00/0203. The Respondent further cited an official complaint lodged by the Kruger National Park regarding its inability to satisfy its own water needs and international obligations with Mozambique, a neighbouring state. The Respondent also submitted that the location of the 25ha in question, on the upper Section of the Blyderiverpoort Dam, would over time have an incremental effect of the water level of the dam and that this dam is already fully allocated.
5. Secondly, the Appellant agreed with the Mpumalanga Parks Board, that the area applied for is valuable for conservation but did not see it as a reason to refuse his application.
6. The Appellant accused the Respondent for unfairly focusing on his farm while ignoring neighbouring farmers who allow "wattle jungle" to grow on their farms uncontrolled. In fact, the Appellant urged the Respondent to engage in an exchange of focus. The Respondent argued that it would be unfair to punish other water users in exchange for helping the Appellant's application rather than insist on corrective action.
7. The Appellant averred that after noticing the expiration of his existing planting permit he lodged an application which was sent to the DWAF Nelspruit Office where it subsequently disappeared. The disappearance of the application caused frustrations which prompted him to plant 25ha of Pine trees before the necessary authorisation was obtained with the hope that approval thereof would be a formality. The Appellant insisted that his application was turned down due to poor administrative procedures. The Respondent submitted that the Appellant failed to provide any evidence of the record to substantiate his allegation. The Appellant could not provide proof of the expired

original water use authorisation, the copy thereof or any proof of receipt of the application for renewal. The Respondent could not trace the alleged original permit from DWAF' records.

8. After reviewing all the evidence advanced by both the Appellant and the Respondent, the Tribunal finds no basis for upholding the Appellant's appeal because:

8.1. The Appellant admitted that he knowingly planted 25ha of Pine trees without authorisation.

8.2. Regarding the deficit of 63 million m<sup>3</sup> for the current level of water infrastructure development on Catchment B60F where the 25ha in question is currently located, the Respondent advanced its own research reports which were further corroborated by the Kruger Park official complaint. The Appellant has not advanced any scientific evidence to the contrary.

8.3. The Appellant agreed with the Mpumalanga Parks Board, that the area applied for is valuable for conservation.

8.4. The Appellants' proposal for an exchange of focus neither addresses his unlawful water use nor justify why the appeal should not be dismissed.

8.5. The loss of the Appellant's application does not justify his contravention of Section 22 of the National Water Act (Act 36 of 1998).

9. Based on the above-mentioned reasons the Water Tribunal upholds the Respondent's decision to deny the issuance of a licence to the Appellant to legalise the planting of 25ha of Pine trees on the farm Vitown 511 KT located in Pilgram's Rest in the Lydenberg District of Mpumalanga.

10. The appeal is, therefore, dismissed.

Singo W.

11. I agree that the appeal be dismissed

Steele L.S.