

THE WATER TRIBUNAL IN THE APPEAL OF:

HELD AT PRETORIA

CASE NO: WT 16/07/2015

NET TWEE BOERDERY BK

APPELLANT

AND

DEPARTMENT OF WATER TRIBUNAL

RESPONDENT

JUDGMENT

1. This appeal comes to the Water Tribunal in terms of Section 148 (1)(e) of the National Water Act, Act no.36 of 1998 (the National Water Act). As such it is an appeal against a decision of a responsible authority on verification of a water use under section 35 by a person affected thereby.

2. The facts are in the main common cause: The Appellant, Net Twee Boerdery had a lawful water use entitlement derived from the Old Water Act, Act no.54 of 1956(the 1956 Water Act), the immediate predecessor to the National Water Act. That entitlement gave the Appellant the right to irrigate 25.3 hectares of land using a maximum allocated volume of 192 786 cubic metres of water. However during the critical two year period (*the relevance of the two year period will become evident later*) immediately before the commencement of the National Water Act Appellant was only irrigating 10 hectares of land, using 76 200 cubic meters of water per year:-

2.1. Respondent, acting in terms of section 35(4) of the National Water Act issued a determination that reduced Appellant's water use entitlement to 76 200 cubic meters per year, irrigating 10 hectares of land. Appellant is appealing against that determination, and wants its old water use entitlement of 192 786 cubic meters for irrigation of 25.3 hectares restored.

3. Part 3 of the National Water Act is titled '**Existing lawful water uses, (ss 32 - 35)**' and has the following explanatory preamble:-

'This part permits the continuation, under certain conditions of an existing water use derived from a law repealed by this Act. An existing lawful water use, with any conditions attached, is recognized, but may continue only to the extent that it is not limited, prohibited or terminated by this Act (own emphasis). No licence

is required to continue with an existing lawful water use until a responsible authority requires a person claiming such an entitlement to apply for a licence. If a licence is issued, it becomes the source of authority for the water use. If a licence is not granted the use is no longer permissible”.

3.1 Applying the preamble to the Applicant, its water use entitlement derived from the 1956 Water Act is recognized. Recognition is however not equivalent to confirmation of its water use entitlement, because the preamble also provides expressly for limitation, prohibition or termination of recognised lawful water use under the National Water Act.

3.2 Therefore the National Water Act permits limitation, and or total deprivation of existing water use rights and or entitlements. This observation is reinforced by the following extract from the preamble to the National Water Act.

‘Acknowledging the National Government’s overall responsibility for and authority over the nation’s water resources and their use, including the equitable allocation of water for beneficial use, the redistribution of water,(own emphasis) and international water matters’.

3.2.1 Indeed, Appellant has not challenged any of the provisions of the National Water Act insofar as same may be seen as depriving it of its water use entitlement.

There is therefore no need to address the constitutionality or otherwise of section 35(4) of the National Water Act.

3.2.2 What Appellant has done in oral argument and in both his main and supplementary heads of argument is to challenge the Respondent's right to invoke section 35 (4) of the National Water Act. Before addressing the challenge mounted by the Appellant it is best to first analyse the provisions of the sections of the National Water Act that provide the context for section 35(4) so as to understand why the Respondent invoked the provisions of section 35(4) in the case of the Appellant. I must state from the onset that I agree with the Respondent.

3.2.3 Firstly, this section is contained in Part 3 of the National Water Act. Part 3 has sections 32, 33, 34 and 35. According to the head note, Part 3 it is aimed at ***'permitting the continuation under certain conditions of an existing water use from a law repealed by this Act'***. Now for the component section of Part 3.

3.2.4 Section 32 provides as follows:-

32(1) An existing lawful water use means a water use:-

(a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which:-

(b) *was authorized by or under any law which was in force immediately before the date of commencement of this Act.*

The rest of the subsections are not relevant for the purpose of this appeal.

3.2.5 The two subsections give the definition of existing lawful water use only if they are read together, absent one of them then there is no existing lawful Water use.

Appellant's argument in its heads was as follows:-

'The property was allocated a water use rights of 25, 3 hectares (ha) at a quote of 7 6203/ha/annum (192786 cubic meters/annum) under the Old Water Act (Act 54 of 1956). The lawful water use was therefore 25.3 ha (own emphasis)'.

3.2.6. The above statement was of course correct, Appellant's water use entitlement under the 1956 Water Act is common cause. The statement however does not assist the Appellant because it does not take into account section 32 (1)(a) which provides that the water use must have taken place at any time before the commencement of the National Water Act. It was conceded on behalf of the Appellant that as from the time Appellant's then two members acquired ownership rights over it in 1994 till the time of the Appeal, Appellant never irrigated the full 25.3 ha or used the total allocation of 192 786 cubic metres. Granted the National Water Act came into effect on the 01st October 1999 Appellant therefore never had existing lawful water use as defined in section 32 (1)(a) read with section 32 (1)(a)(i) of the National Water Act.

3.2.7 Due to the concession made by Appellant's counsel concerning non-existence of lawful water use, it is not necessary to enquire if the verification of existing water use done by the Respondent was correct or not.

4. Appellant's counsel, having failed to appreciate the importance of the definition of existing lawful water use mounted his challenge to Respondent's use of section 35(4) by arguing that that the Appellant's water use entitlement derived from the 1956 Water Act was fully operative under the National Water Act and could be verified in terms of section 35(4) only if Appellant was exercising it in an unlawful manner. To address this misconception I now turn to the provisions of section 35.

4.1. Section 35 is titled '**Verification of existing water uses**' and provides as follows:-

4.1(1) The responsible authority may, in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming an entitlement to that water use to apply for a verification of that use.

4.1(2) A notice under subsection (1) must:-

4.1.(2) (a) have a suitable application form annexed to it,

4.1.(2) (b) specify a date before which the application must be submitted.

4.1.(2) (c) *Inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date, and*

4.1.(2) (d) *be delivered personally or sent by registered mail to the person concerned.*

4.2. *A responsible authority:-*

(a) *May require the Applicant, at the Applicant's expense to obtain and provide it with other information, in addition to the information contained in the application.*

(b) *May conduct its own investigation into the veracity and the lawfulness of the water use in question,*

(c) *May invite written comments from any person who has an interest in the matter.*

(d) *must afford the Applicant an opportunity to make representation on any aspect of the application (own emphasis)*

4.3 *A responsible authority may determine **the extent** and lawfulness of a water use pursuant to an application under this section, and such determination limits **the extent** of any existing lawful water use contemplated in section 32(1).(own emphasis)*

For purposes of this appeal it is not necessary to reproduce the rest of the subsections.

4.4 Counsel for the Appellant contended as follows in his Heads of argument:

'The gist of the argument may be summarized as follows:-

During 2013 an investigation was done in terms of section 35(4) of the said Act. The purpose of that section is to verify the water use which are(sic) exercised by users who claim that they have the right to do so, but whose right to do so is in doubt it being illegal and excessive or against authorization"

4.5 Unfortunately his contention is based on an incorrect understanding of not only section 35 (4), but also the other related sections forming part of Part 3 of the National Water Act referred to earlier.

4.6 Firstly, an investigation by the responsible authority verifying the lawfulness or extent of an existing water use is not done in terms of section 35(4) but is done in terms of section 35(3)(b), refer to the latter provision cited in full above.

4.7 Secondly, section 35(1) of which section 35(4) is a follow up section is couched in very wide terms. The request for verification may be directed to *"any person claiming entitlement to (that) water use"*.

4.8 Further, the wording of section 35(4) is clear and unambiguous, consequently there is no basis for departing from the accepted canon of interpretation, namely

that in interpreting the provisions of a statute the ordinary meaning of the words used in the provision must be followed. In the circumstances, I understand Section 35 (4) to be available for use by the Respondent in determining the extent and lawfulness of a water use by any person claiming an entitlement to use water, including the Appellant in these proceedings.

- 4.9 Furthermore, If one keeps in mind that the National Water Act acknowledges in its preamble the National Government's overall responsibility to *inter alia* allocate water equitably, and if need to be (my own insertion) **redistribute it** (own emphasis) the additional purpose of section 35(4) that is linked to the overall purpose of the National Water Act becomes clear. That purpose is to redistribute equitably the use of water within the regulated parameters of the National Water Act. .
- 4.10 It seems that Counsel for the Appellant never adverted to this redistributive function of the National Water Act, hence his submissions are simply incorrect.
5. What however also needs to be addressed is reliance of Appellant's counsel for his submission as to the purpose of section 35(4) on Hubert Thompson, Water Law, A Practical Approach to Resource Management and the Provision of Services, 2006, Juta. Appellant's Counsel relies specifically on page 414 where there is a paragraph titled ***'Verification of existing water uses'***. Section 35 of the National Water Act has exactly the same heading. That heading is however expanded on in subsection 35(1) which provides as follows:-

'The responsible authority may in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming entitlement to that water use to apply for a verification of that use'.(own emphasis)

5.1. From the above, it is clear is that when the section is invoked the aim is to verify two things concerning exercise of water entitlements namely:-

- (i) the lawfulness thereof; and
- (ii) the extent of water use. The use of the word or is disjunctive and introduces an alternative see Reader's Digest Oxford, Complete Word Finder, page 1067. This means that even if water use is lawful the responsible authority may still invoke section 35 in order to verify the extent of that lawful use. Thompson in his book at page 414 limits section 35 to only those instances that are tainted with some illegality, be it lack of authority, contravention of the conditions of water use or excessive use.

5.2. What Thompson does not take into account is the fact that for lawful water use to be given recognition as an entitlement in the National Water Act it must also fulfill the definition of existing lawful water use as set out in section 32 of the National Water Act. That definition includes water use which has taken place at any time during a period of two years immediately before the date of commencement of the National Water Act. Although the term water use is not defined in the National Water Act, entitlement to water use is always given in

measurement, i.e extent. Consequently by verifying the extent of water use the responsible authority facilitates the task of the National Government set out in the preamble to the National Water Act, namely ensuring equitable allocation and redistribution of water where necessary. Indeed section 35(4) speaks directly to this redistribution function when it provides that a responsible authority may determine the extent and lawfulness of a water use, and such determination limits the extent of any existing lawful water use.

5.3. If the interpretation of Thompson as regards the purpose of the verification provisions of the National Water Act were to be accepted, and verification limited as he says, to unlawful and or excessive water use, the reforming nature of the National Water Act would be hampered and its redistribution aim thwarted . This incidentally is clearly illustrated by the Appellant's case because:

5.3.1. It is common cause that Appellant, under the 1956 Water Act had a water use entitlement of 25.8 hectares with a volume of 192 786 cubic meters per annum. It is also common cause that Appellant never used the full volume of the water allocated to it from the time it fell into the hands of its two quarrelling members in 1994 till the time of the Appeal, what Appellant was using was 76 200 cubic meters per annum to irrigate 10 hectares.

5.3.2. In the circumstances the Respondent correctly invoked section 35(4) of the National Water Act in reducing the extent of water use Appellant had under the

1956 Water Act because that volume was not being used, to the actual volume used.

6. Another aspect of the Appellant's argument that needs to be addressed is contained in the heads of argument whereat its Counsel queries how determination of water usage during September 1997 to October 1999 can assist the Respondent in establishing what the position should be in 2013 when the decision/determination was made.

6.1. The simple answer to his query is that water use entitlements derived from the 1956 Water Act had to have been actually and or physically exercised in the two year period immediately preceding the commencement of the National Water (i.e they had to be exercised between September 1997 and October 1999 in order for them to be valid under the National Water Act), refer to definition of existing lawful water use in section (32)(1).

7. Appellant has therefore failed to make out a case insofar as it claims that its lawful water use in terms of the 1956 Water Act ought not to have been interfered with. However the matter does not end there.

8. Now for the Respondent:-

8.1 It is trite law that the Respondent in making the adverse determination on the water use entitlement of the Appellant was performing an administrative function, therefore the Promotion of Administrative Justice Act, Act No 3 of 2000 (PAJA) applied, see definition of Administrative Action, section 1 PAJA.

8.2 The determination affected the Appellant adversely in that his lawful water use entitlement in terms of the 1956 Water Act was reduced

8.3 However, it needs to be kept in mind that it was conceded on behalf of the Appellant that from 1994 until the time of this appeal, Appellant never utilized its full allocation of 25.3 ha/ 192 786 cubic meters per annum, but was only irrigating 10 ha with 7 620 cubic meters of water.

8.3.1 Therefore Appellant's water use entitlement was not existing lawful water use protected in terms of section 32, National Water Act.

8.3.2 As such, what Appellant had was a legitimate expectation that it would be afforded an opportunity to make representations to the Respondent. The representations would be aimed at persuading the Respondent to recognise its water use entitlement in terms of the 1956 Water Act as existing lawful water use protected in terms of the National Water Act.

9. PAJA protects legitimate expectations by providing that administrative action which materially and adversely affects the rights and legitimate expectations of any person must be procedurally fair. The requirements of that procedural fairness are set out in section 3 (2). Reproduced hereunder are two of those requirements which apply directly in the specific circumstances of this matter:-

2(a) A fair administrative procedure depends on the circumstances of each case.

2(b) In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection 4, must give a person referred to in subsection.....(ii)a reasonable opportunity to make representations.

- 9.1. PAJA apart, section 35(3) of the National Water Act also provides for procedural fairness in that section 35(3)(d) states that a responsible authority must afford the Applicant an opportunity to make representations on any aspects of the application.
- 9.2. During oral argument counsel for the Respondent was asked specifically if the Appellant was afforded the opportunity make representations as provided for in section 35(3)(d). Her response was that the letters written by the Respondent to the Appellant afforded it the opportunity to make representations. I therefore now turn to the letters as same appeared in the record. The chronology of the letters is contained in a letter sent by the Respondent to the Registrar of the Water Tribunal, page 7, 8 and 9 of the Appeal record.
- 9.3. The first letter was sent on the 05th February 2013 and is dated 30 January 2013. It requested the Appellant to apply for verification of its water use entitlement in order to confirm the extent and lawfulness thereof. Included in the letter was a table showing the lawful use under the 1956 Water Act and possible existing lawful use which at the end of the day became the determined existing lawful water use. The two last paragraphs of the letter have a bearing on whether Appellant was afforded an opportunity to make representations.

9.3.1. Commencing from the penultimate paragraph it reads as follows:-

'Upon receipt of your application, the responsible authority may require further investigation in terms of section 35(3) of the Act. You will be informed of this if required.

You may then make further representations before the responsible authority finally decides on your application in terms of section 35(3) of the Act. A final determination is applicable in terms of the Act".

9.4 Appellant's member responded, albeit late. The handwritten portion of his response pertinent here appears on page 23 of the record. Under the heading 'Existing Water Rights or Entitlement' he wrote, *see attached certificate*. He apparently attached the certificate issued in terms of the 1956 Water Act which gave Appellant 25.3ha at a volume of 192 786 cubic meters per annum. Under another block titled 'remarks/ comments' he wrote *see letter attached*, said letter is not identifiable from the record. On the same block he further wrote as follows:

I am uncertain what the implication is with the volume (cubic meters/year) indicated as 192 786 at to lawfull (sic) water use of 76 200. I would appreciate an explanation.

Appellant's application containing the response outlined above was sent on the 08th May 2013. Although it was sent late, Respondent had not yet made the determination. Consequently nothing turns on the lateness.

9.5 Respondent did not reply to the Appellant's application with the notes described above, meaning that the sought for explanation by the Appellant was not given by the Respondent.

9.6 Instead, on the 19th June 2013, the Respondent sent a second letter with the following heading in block letters.

'APPLICATION FOR VERIFICATION OF EXISTING LAWFUL WATER USE IN TERMS OF THE NATIONAL WATER ACT, 1998 (ACT 36 OF 1998). REQUEST FOR ADDITIONAL INFORMATION IN TERMS OF SECTION 35(3) (a) AND SECTION 35(3)(d)'.

9.6.1 The heading was of course incorrect because section 35 (3)(d) is not for furnishing additional information, but is the section that obliges the Responsible Authority to afford the Appellant an opportunity to make representations.

9.6.2 The letter went on and stated as follows:-

'In terms of section 35(3)(a) and 35(3)(d) of the Act, you are hereby required to obtain and provide other information in addition to what is contained in your application for verification of existing water use..... . You are also afforded the opportunity to make representations on any aspect of the application. Then followed the property description after which the letter continued as follows:-

The following items are examples of the information required, this list is for illustrative purposes only:-

- (a) any permit, water court decision, servitude, agreement or other legal proof allowing you to store water.*
- (b) any determination in terms of section 33 of the National Water Act, 1998 declaring your water use as existing lawful water use.*
- (c) Evidence or proof of why you should be allowed to irrigate a large (sic) area than the allowable (sic) volume on the property.*
- (d) proof of abstraction or storage of water during the qualifying period as indicated in section 32 of the National Water Act.*

9.6.3 *Please furnish this office with the requested information before or on 01st July 2013. If the time given to meet this requirement is insufficient a written application for the extension of time is required.* So the letter ended.

9.6.4 It is common cause that Appellant never responded to this second letter and no explanation was given for the failure to respond, both in oral agreement and in the heads of argument.

9.6.5 On the 13th September 2013, Respondent made the determination reducing the water entitlement in terms of the 1956 Act to the volume verified to be existing water use in terms of section 32, National Water Act.

9.6.6 According to the Respondent before making the determination Appellant was afforded an opportunity to make representations concerning the application in terms of section 35(3)(d).

9.6.7 The question then is:- given the wording of the letters reproduced above, can it be accepted as a fact that Appellant was afforded an opportunity to make representations.

9.6.8 The first letter from the Respondent in the two last paragraphs advised the Appellant that after receipt of his application the Respondent may request further investigation in terms of section 35(3). It also further advised that after the further investigations he might then make representations. Things however did not unfold as set out in the first letter. Instead what happened is the following:-

9.6.8.1 The Respondent did not request or do further investigation but requested further information from the Appellant. A reading of the second letter which contained that request shows that the requested information was the same information already furnished by the Appellant in response to the first letter.

9.6.8.2 Further, Appellant was not called upon to make representations after the second letter before the Respondent made the determination. Further also, Appellant's request for explanation of the different volumes mentioned in the letter calling on it to apply for verification went unanswered by the Respondent.

9.6.8.3 Looking at the promised sequence of events and the contents of the two letters from the Respondent to the Appellant I could not find any evidence that the Respondent afforded the Applicant an opportunity to make representations. Further, I need to draw attention to the wording and structure of the provision of section 35 (3). This Section has four subsections, three of them 35(3)(a), 35(3)(b) and 35(3)(c) commence with "may" and refer to the various possible steps a responsible authority may take in verifying entitlement to water use. Subsection 35(3)(d), however commences with must. That in my view strongly indicates that the Respondent ought to have afforded the Appellant a clear unambiguous opportunity to make representation.

9.6.8.4 In point of fact in the covering letter attached to the application for water use verification Appellant wrote as follows to the Respondent:- *" I am a little bit in the dark because I received from your office a registration certificate for which I submitted a receipt note. I would appreciate your response on this matter to understand what I need to do to validate the water use yearly"*. Respondent did not come forward with the requested response.

9.7 The preamble to PAJA states that Act's purpose as follows:-

'To give effect to the right to administrative action that is lawful, reasonable and procedurally fair"

- 9.8 One would expect a reasonable and fair administrator to respond to the letter and afford the Appellant an opportunity to make proper representation since he confessed that he did not know what to do.
- 9.9. My conclusion that the Respondent never afforded the Appellant an opportunity to make representation is buttressed by the fact that during appeal it came to light that Appellant has a business plan for crop rotation that would utilize the full water allocation under the 1956 Water Act. That business plan formed part of the appeal record.
- 9.10 Procedurally the business plan provided a dilemma for us members of the Water Tribunal hearing the appeal because, from the evidence led it became clear that it was never forwarded to the Respondent before the adverse determination was made. Respondent's counsel in her argument ignored it altogether although it was raised and relied on in Appellant's heads of argument. Further Respondent's counsel confirmed that it was coming before the Respondent for the very first time during the appeal. Respondent's counsel did not however object to it being part of the appeal record, and Appellant's counsel did not apply for it to be admitted as further evidence. That aforesaid may be anomalies in a normal court appeal where the rules are strict and formal.
- 9.11 However, the Water Tribunal does not have the formality and strictness of court proceedings, it is therefore impossible to jettison the Appellant's business report. Further, appeals and applications to the Tribunal take the form of a rehearing:

Rule 7.1 Water Tribunal Rules published in Government Notice No.28060, 23 September 2005.

9.12 In the circumstances the Water Tribunal had to take into account the business report.

9.13 Although the Water Tribunal in handling an appeal from a decision of the Respondent is not sitting as a reviewing tribunal there are significant similarities between the Tribunal hearing an appeal from the decision of a responsible authority and a reviewing court. Those similarities are the following:-

9.13.(i) Like the courts:- The Water Tribunal is external to the Respondent, its members being appointees of the Minister of Water Affairs on the recommendation of the Judicial Service Commission as contemplated in section 178 of the Constitution, and the Water Research Commission established by section 2 of the Water Research Act, 1971 (Act 34 of 1971 in accordance with item 3, schedule 6).

9.13 (ii) Being external to the Respondent means that the Water Tribunal similar to a reviewing court does not have firsthand knowledge of the appealed matter possessed by a direct functionary like the Respondent, nor the expertise, and investigative machinery that is vital in making the determination..

9.14(iii) Furthermore, in the given circumstances of this matter where the Appellant is requesting that a lawful water use entitlement under the 1956

Water Act which does not qualify as existing water use entitlement in terms of section 32 National Water Act be reinstated the Tribunal would essentially be dealing with a situation provided for in section 33 of the National Water Act.

10. Section 33 is titled "**Declaration of Water Use as existing water use**", and has the following provisions:-

A person may apply to a responsible authority to have water use which is not one contemplated in section 32(i)(a) to be an existing lawful water use.

A responsible authority may on its own initiative, declare a water use which is not one contemplated in section 32 (1)(a) to be an existing lawful water use.

A responsible authority may only make a declaration under subsection (1) and (2) if it is satisfied that the water use:-

took place lawfully more than two years before the date of commencement of the Act and was discontinued for good reason; or

had not yet taken place at any time before the date of commencement of this act but:-

(i) would have been lawful had it so taken place, and

(ii) steps towards effecting the use had been taken in good faith before the date of commencement of this Act.

10. *Section 41 applies to an application in terms of this section as if the application has been made in terms of that section. Section 41 envisages among others the following steps which must be taken before a decision is made:-*
- 10.1 An assessment by a competent person of the likely effects of the proposed license on the resource quality, section 41 (2) (ii).
- 10.2 An independent review of the furnished report in terms of subparagraph (ii), by a person acceptable to the responsible authority: section 41 (2)(iii)
- 10.3 Further, the responsible authority:- may conduct its own investigation on the likely effect of the proposed license on the protection, use and development, conservation, management and control of the water resource: section 41(2)(b)
- 10.4 May invite written comments from any organ of state which or person who has an interest in the matter: section 41(2)(c).
- 10.5 Clearly during the hearing of the appeal, the Water Tribunal would not have had the benefit of the assessment machinery mentioned in section 41 in order to conclude that the business report filed by the Appellant warrants reinstatement of the water use entitlement Appellant had in terms of the 1956 Water Act.
- 10.6 Added to the machinery of section 41 are the 10 relevant factors mentioned in section 27 of the National Water Act, section 27(1)(a)-(k) which must be taken into account before a responsible authority issues a water licence. Those ten factors fall within the administrative machinery of the Respondent.

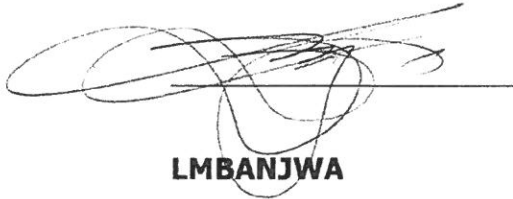
10.7 Having assessed and outlined what consideration of the Business Plan would entail for the Water Tribunal, I am therefore confident that the dictum in Gauteng Gambling Board v Silverstar Development Ltd and others 2005 (4) SA 67 (SCA) quoted in Vodacom (Pty) Ltd and Another v Nelson Mandela Bay Municipality and Others 2012 (3) SA 240 (ECP) applies, In that judgment Heher JA writing for a unanimous court stated as follows:-

"An administrative functionary that is vested by state with the power to consider and approve, or reject an application is generally best equipped by the variety of composition, by experience, and its access to sources of relevant information and experience to make the right decision. The court typically has none of these advantages and is required to recognize its own limitations. See Minister of Environmental Affairs and Tourism and Others Phambili Fisheries (Pty) Ltd, Minister of Environmental Affairs and Tourism and Others v Bato Star Fishing (Pty) Ltd 2003 (6) SA 407 (SCA) in paras (47)-(50) and Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others 2004 (4) SA 490 CC 2004 (7) BLLR 678 in paras 46-49. That is why remittal is almost always the prudent and proper course".

12. In the circumstances the following order is made:-

1. The determination made by the Respondent on the 13th September 2013 reducing Appellant's water use entitlement is hereby set aside.

2. The matter is remitted back to the Respondent for it to afford the Appellant an opportunity to make representations on any aspect of its application for verification of water use entitlement as provided for in section 35(d).

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line, positioned above the printed name.

LMBANJWA

DEPUTY CHAIRPERSON

WATER TRIBUNAL