

IN THE WATER TRIBUNAL

HELD AT NEW CASTLE

CASE NO: WT 26/09/2007

In the matter between:-

NORMANDIEN FARMS (PTY) LTD

APPELLANT

AND

**DEPARTMENT OF WATER AFFAIRS AND
FORESTRY**

RESPONDENT

APPEAL DECISION

DATE: 10 DECEMBER 2008

APPEARANCES:

CORAM : **L.J LEKALE (CHAIRPERSON)**
DR.W. SINGO (DEPUTY CHAIRPERSON)
MR. H. THOMPSON (MEMBER)
MR. A.S HADEBE (MEMBER)
MR. A.S MAKHANYA (MEMBER)

FOR APPELLANT : **NO APPEARANCE**

FOR RESPONDENT : **MR. L. QWABE**

1. **DETAILS OF HEARING AND REPRESENTATION:**

- 1.1. The appeal hearing was held at **NEWCASTLE** on the 3rd December 2008;
- 1.2. There was no appearance for the appellant although it was patent from the bundle prepared by the Registrar of the Water Tribunal that it was notified properly and timeously of the date, time and venue of the hearing as required by Rule 5 of the Water Tribunal rules;
- 1.3. The respondent, on its part, was represented by **Mr. Linda Qwabe**, its Legal Administration officer;
- 1.4. The hearing proceeded in the absence of the appellant in terms of Rule 9 of the Tribunal rules.

2. **ISSUE TO BE DECIDED:**

- 2.1. The question to be determined was whether or not the appellant was entitled to an afforestation licence in terms of section 42 of the National Water Act (the Act) with specific reference to the questions whether or not:
 - 2.1.1. the area in which the proposed plantation is to be established is in a water stressed catchment insofar as it lies in the region upstream of the **Ntshingwayo Dam**;
 - 2.1.2. an additional 250 hectares of plantation could make a real difference in the amount of water flowing into the Ntshingwayo Dam.

3. **BACKGROUND TO THE ISSUE:**

The appellant applied for an afforestation licence on the 28th April 2006 and the same was refused on the 13th August 2007 on the ground that **“the properties fall upstream of the Ntshingwayo Dam in a stressed catchment.”**

The appellant, thereafter, noted an appeal on the 22nd August 2007. The respondent, on its part, furnished its reasons for the decision refusing the application on the 9th November 2007.

The matter was, eventually, rescheduled for a hearing but was postponed on two (2) occasions with the most recent adjournment having been on the 25th July 2008 when the Tribunal directed that a document, which the respondent handed in at the hearing, be served on the appellant who was not in attendance on the day in question.

In the notice of appeal the appellant expressly disputed that Ntshingwayo Dam was stressed and, further, opined that 250 hectares of plantation would not make a real difference in the water flowing into the said dam.

4. **SURVEY OF EVIDENCE AND ARGUMENT**

4.1. **Evidence:**

The respondent adduced oral evidence and, further, submitted documentation in support of its case.

4.1.1. **Documents submitted:**

- (a) The bundle prepared by the Registrar of the Tribunal;
- (b) Exhibit A: Copy of the **Internal Strategic Perspective** in respect of the Thukela Water Management Area.

4.1.2. **Oral Evidences:**

Jacobus Christoffel Davel testified under oath to, inter alia, the following effect on behalf of the respondent:

- (a) he is employed as **Control Technician** in Kwazulu-Natal by the respondent and his work entails consideration of stream flow reduction activities, among others;
- (b) when an application for afforestation is received his section has to determine if there is sufficient water in the relevant catchment area because trees use water;
- (c) the proper time to determine the availability of water is during the low flow period viz winter when there is no rain;
- (d) trees take up to 92% of available water;
- (e) the proposed plantation is to be established in an area lying upstream of the Ntshingwayo Dam and that area is a stressed catchment area according to the Internal Strategic Perspective (ISP);
- (f) according to the ISP viz page 42 of Exhibit A no additional afforestation in the relevant area is allowed because the same **“would have a limiting impact on the options for additional water supply to Newcastle”**;
- (g) he has recently reliably learnt that all of the surplus water in the relevant dam would be used up for domestic and industrial developments in five (5) years' time;
- (h) 250 hectares of plantation would definitely have a significant impact on the stream flow.

4.2. **Argument:**

Mr. Qwabe submitted to the following effect, among others:-

- (b) there existed fair and sufficient reason not to grant the application in question.

5. ANALYSIS OF EVIDENCE AND ARGUMENT:

The onus was on the appellant, as the applicant party, to generally prove that it was entitled to the relevant licence by showing, on a balance of probabilities, that:

- * the relevant area in which the proposed plantation is to be established is not in a water-stressed catchment area; and
- * the proposed plantation would not make any real difference to the relevant stream flow.

The appellant was in default and the Tribunal, therefore, only had the uncontroverted version of the respondent before it. The evidence tendered on behalf of the respondent was not inherently improbable and the witness who gave the same made a good impression to the Tribunal. The Tribunal, thus, had no reason not to accept the evidence in question.

When all was said and done, the Tribunal was satisfied that:

- * the proposed plantation, if established, would lie in a water stressed catchment area;
- * the said plantation would, further, make a substantial difference to the relevant stream flow.

6. DECISION:

- 6.1. In the result the appeal fails and the decision of the respondent is confirmed;
- 6.2. The file shall, therefore be closed.

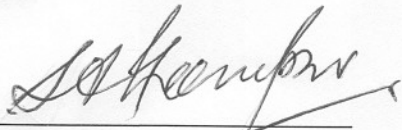


L.J LEKALE

We concur.



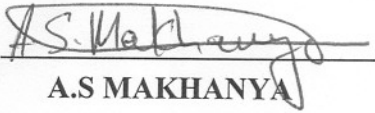
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