

IN THE WATER TRIBUNAL HEARING

HELD IN PRETORIA

REF: WT 11/08/2008

In the application for condonation between:

P NEL

APPELLANT

and

DEPARTMENT OF WATER AFFAIRS

FIRST RESPONDENT

CHIEF DIRECTOR: WATER USE

SECOND RESPONDENT

CONDONATION RULING: 22 JUNE 2009

APPEARANCES:

Coram : Mr L J Lekale (Chairperson)
Dr W Singo (Deputy Chairperson)
Mr H Thompson (Member)
Mr A S Hadebe (Member)
Mr A S Makhanya (Member)

For the Appellant : Adv Jan Verster

For the Respondents : Mr Andrew Seletisha

1. DETAILS OF HEARING AND REPRESENTATION:

- 1.1. This is a unanimous decision in the appeal hearing held on 29 May 2009 in Pretoria;
- 1.2. The Appellant was represented by **Adv Jan Verster** and the instructing attorney was **Mr Francois Botes** from Francois Botes Attorneys with the correspondent attorney being **Mr Danie Barnard** from Barnard Khan Attorneys;
- 1.3. The Respondents were represented by **Mr Andrew Seletisha** from the Directorate Legal Services in the National Office of the Respondent.

2. ISSUES TO BE DECIDED:

- 2.1. The question to be answered by the Water Tribunal was whether there is a good reason to grant condonation for the late lodging of an appeal by Mr. P Nel against a decision by the Chief Director: Water Use of the Department of Water Affairs and Forestry (DWAFF), as it was then known, dated 29 May 2008; and

- 2.2. In the event that the Tribunal is satisfied that there is such a good reason, the Tribunal was requested to grant such condonation.

3. BACKGROUND TO THE ISSUE:

- 3.1. Linsal Boerdery CC applied for a licence on 21 May 2007 for the permanent transfer of 21.5 ha allocated water use from the remaining extent of the farm Blauwbanksdrift 195 to the remaining extent of Nooitgedacht Minor no 119.
- 3.2. The Chief Director: Water Use of DWAF decided on 29 May 2008 that the application should not be approved, as the application does not promote the redress of past racial and gender discrimination. A letter dated 29 May 2008 informing Linsal Boerdery CC of the decision was addressed to them.
- 3.3. A copy of the letter informing Linsal Boerdery CC of the decision was later also sent by the Free State Regional Office of DWAF dated 11 June 2008 and signed on 10 June 2008 to them.
- 3.4. Linsal Boerdery CC appealed against this decision to the Water Tribunal and the appeal notice was lodged with the Registrar of the Tribunal on 8 July 2008.
- 3.5. According to section 148(3)(b) of the NWA and rule 4(1)(b) of the Water Tribunal Rules (Rules) an appeal must commence within 30 days after notice of the decision was sent to the appellant. Further, according to rule 4(3) of the Rules, where a person has been notified of a decision by a written document, the date of the document is deemed to be the date on which the decision was given.
- 3.6. Therefore the lodging of the appeal was some 10 days late.
- 3.7. The Appellant applied in terms of rule 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 or written evidence was adduced. The Appellant 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.

Arguments

- 4.3. Adv Verster stated that to date the Appellant has not received the original letter from the Chief Director: Water Use dated 29 May 2008 informing Linsal Boerdery CC that the licence application was not successful. The Appellant did receive a copy of the letter from the Free State Regional Office of DWAF by way of a letter dated 11 June 2008 and signed on 10 June 2008.

- 4.4. According to the Appellant he has good prospects of success on appeal and that no party would be prejudiced if condonation is granted.
- 4.5. Mr Seletisha stated that he went through all the relevant documents and notices and found that they confirmed the contentions by the Appellant. He further felt that there existed no reason to object to the application. He was satisfied that there was a valid reason for condonation.

5. **ANALYSIS OF EVIDENCE AND ARGUMENTS:**

- 5.1. The following factors should be addressed in determining whether there is a good reason to grant condonation for the late lodging of an appeal, namely: The degree of lateness; the reasonableness of the explanation for the delay; the prospects of success in the dispute concerned; and whether there is prejudice to the other parties to the matter.
- 5.2. The appeal was lodged within 27 days from the date that the Appellant received the copy of the letter from the Free State Regional Office. This indicates to the Tribunal that the Appellant reacted within a reasonable time after he received the decision.
- 5.3. The Tribunal is therefore satisfied that there is a reasonable explanation for the 10 days lateness in the lodgement of the appeal.
- 5.4. There is no evidence before the Tribunal that any party would be prejudiced if condonation is granted and that there is also no evidence indicating that the appeal does not enjoy reasonable prospects of success.
- 5.5. Therefore the Tribunal is satisfied that there exists a good reason to grant condonation for the late lodging of an appeal by P Nel against a decision of the Chief Director Water Use not to issue a licence for the transfer of the water use.

6. **DECISION:**

- 6.1. In this result, the Tribunal grants condonation for the late lodging of an appeal by P Nel against a decision of the Chief Director: Water Use dated 29 May 2008.
- 6.2. The Registrar of the Tribunal must schedule the necessary hearing for this appeal and notify the parties concerned accordingly.


H. Thompson