

IN THE WATER TRIBUNAL

HELD AT PRETORIA

CASE NO:

In the matter between:

P. DE VILLIERS

APPLICANT

and

**THE MINISTER OF WATER AFFAIRS AND
FORESTRY**

FIRST RESPONDENT

CHIEF DIRECTOR: WATER USE

SECOND RESPONDENT

CONDONATION RULING : DATE 22-06-2009

APPEARANCES:

Coram : Mr. L.J LEKALE (Chairperson)
Dr. W Singo (Deputy Chairperson)
Mr. A.S Hadebe (Member)
Mr. Hubert Thompson (Member)
Mr. A.S Makhanya (Member)

For the Applicant : **Adv. Jan Verster** instructed by Danie Barnard of Barnard & Khan Attorneys of Pretoria

For the Respondents : **Mr. Andrew Seletisha** from the First Respondent's Legal Services Directorate

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

- 1.1. An application for condonation of the late lodgement of an appeal was heard in Pretoria on the 29th May 2009;
- 1.2. The applicant was represented by **Adv. J. Verster** instructed by **Mr. Danie Barnard** of Barnard & Khan Attorneys of Pretoria while the respondents, on their part, were represented by **Mr. A. Seletisha** from the First Respondent's Legal Services Directorate.

2. **ISSUE TO BE DECIDED:**

- 2.1. The question to be determined was whether or not good reason as contemplated by item 5(2) of Schedule 6 to the National Water Act (NWA) read with the provisions of Rule 4 of the Water Tribunal rules (the Rules) existed for condonation of the late lodging of an appeal;
- 2.2. In the event of the foregoing question being decided in the affirmative, the Tribunal was required to condone the late lodgement so as to enable the Registrar of the Water Tribunal to accept the appeal and to reschedule it for a hearing in due course.

3. **BACKGROUND TO THE ISSUE:**

The applicant applied unsuccessfully for permanent surrender of entitlement to water use in his favour with the decision refusing the application being signed on the 14th October 2008.

The applicant, thereafter, lodged an appeal against the refusal on the 27th March 2009.

The applicant, eventually, applied for condonation of the late lodging of the appeal on the 30th March 2009 after being advised to do so by the Registrar of the Water Tribunal per a letter dated the 11th December 2008.

The foregoing happened after the applicant wrote to the Registrar on the 10th December 2008 effectively requesting extension of the time period within which he could lodge an appeal.

The application was, eventually, scheduled for a hearing on the 29th May 2009 and this is a majority ruling on the same.

4. **SURVEY OF EVIDENCE AND ARGUMENT:**

No oral evidence was adduced. The parties made oral submissions and relied on documents forming part of the bundle prepared by the Registrar, among others.

The relevant submissions are dealt with under paragraph 5 below.

5. ANALYSIS OF EVIDENCE AND ARGUMENT:

The onus was on the applicant to prove, on a balance of probabilities, that good reason existed for condonation of the late appeal.

The majority of the members of the Tribunal were persuaded that good reason for condonation existed insofar as:

5.1. Degree of lateness:

Although the delay involved was inordinate viz. some 134 days, there existed sufficient and acceptable reason for the same as set out in 5.2 below.

5.2. Reason or explanation for the delay:

The undisputed explanation for the delay was to the effect that the letter communicating the decision of the second respondent was not very clear and the applicant set about to get clarity with no response forthcoming from the respondents.

Mr. Seletisha for the respondents conceded that the notice of the impugned decision was not very clear.

5.3. Prospects of success:

In the light of adequate and acceptable explanation furnished for the delay, it was effectively accepted by the respondents that prospects of success passed muster insofar as Mr. Seletisha expressly opined that there existed no reasonable grounds for opposing the application. It is, further, established, as a general rule, that the stronger the explanation for the delay the weaker the prospects need to be (see generally *SABC v CCMA & others* (2002)23 ILJ 1549 (LAC)).

5.4. Prejudice to the respondents:

The logical conclusion that could be drawn from the fact that the respondents were not opposing the application was that they would not be prejudiced in the conduct of their case(s) at the appeal hearing if condonation was granted.


In conclusion the Tribunal was inclined to exercise its discretion in favour of granting the application herein regard being had to, inter alia, the following:

- the statutory 30(thirty) day period prescribed for lodging an appeal starts running from the date on which a decision was sent to the appellant or the date on which the reasons for the decision were given whichever is the later date (see section 148 (3) of NWA read with the provisions of rule 4(1) of the Rules);

- the applicant effectively requested reasons for the decision when he set about to ask for an explanation;
- no explanation or reasons had been given as at the date of the lodgement of the appeal;
- it was, thus, possible that the appeal was lodged prematurely insofar as the prescribed 30 (thirty) day period only starts running from the date on which the reasons are given if a request therefor was made in terms of section 42(a) of NWA or the provisions of Promotion of Administrative Justice Act (PAJA).

6. **RULING:**

- 6.1. In the premises condonation is granted;
- 6.2. The Registrar of the Water Tribunal shall, therefore, accept the appeal and schedule the same for a hearing in due course.



LEPONO LEKALE
Chairperson