

**THE WATER TRIBUNAL
RULING**

Appeal: **WT02/24/KZN**

In the matter between:

MARTIN VAN HUYSTEEN N.O. Appellant

MICHAEL DAVID WILLIAMS N.O. Appellant

And

DEPARTMENT OF WATER AND SANITATION Respondent

Neutral citation: *Martin Van Huyssteen N.O. & Michael David Williams N.O. v The Department of Water and Sanitation (WT02/24/KZN)*
[2026] Water Tribunal (8 May 2026)

Coram: Lahlane Malema

Heard: 3-4 September 2025

Held: 23rd Floor Embassy Building 199 Samore Micheal Street
Durban

Delivered: This ruling was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down of the Ruling is deemed to be 11h57 on 8 May 2026.

Summary

The Appellant averred that on 25 November 2021, the Respondent issued the main-Directive notifying him of the existing water use contraventions, and directing him to rectify the contraventions involving the impeding or diverting of the flow of water in a watercourse, and the altering of the bed, banks, course or characteristics of a watercourse without a water use authorization. The Appellant is the owner of 38 Chesterton Road Seaview EThekwini municipality, and had sought relief for condonation of late filing of the appeal in terms of Rule 4 (4) of the Water Tribunal Rules.

The Appellant lodged the appeal almost two years and four months after receiving the main-Directive. His grounds for condonation were that (1) he was a lay person acting in good faith, (2) there were procedural deficiencies in the Respondent's own directives since it failed to specify the 30-day timeframe for lodging an appeal (3) that the Respondent had failed to advise him that the time period for lodging an Appeal had expired (4) that the Respondent's advice of 6 November 2023 and 12 March 2024 on lodging the appeal was a clear expectation that the appeal was a legitimate and available remedy even at that late stage.

Held that the Appellants' excuse that he was a lay person was not a valid excuse and defense for breaking the Tribunal Rules.

Held that the Appellants' argument that there were procedural deficiencies in the Respondent's own Directives since it failed to specify the 30-day timeframe for lodging an appeal, is unsubstantiated.

Held that the Appellants' claim that the Respondent had failed to advise him that the time period for lodging an Appeal had expired, was unwarranted.

Finally, the Tribunal also rejected the Appellant's averment that the Respondent's advice of 6 November 2023 and 12 March 2024 on lodging the appeal was a clear expectation that the appeal was a legitimate and available remedy even at that late stage.

The application is dismissed.

L Malema

Introduction

1. This is an application for condonation of late filing of an appeal lodged by the Appellant before the Water Tribunal (“hereinafter referred to as the Tribunal”) in terms of the Water Tribunal Rules (“hereinafter referred to as the Rules”) Rule 4(4), subsequent to lodging on 24 April 2024 in terms of 148 (1) (f) of the National Water Act, 1998 (Act 36 of 1998) (“the NWA”).
2. The Appellant is the owner of 38 Chesterton Road Seaview EThekweni municipality, however, whereas it is the Appellant’s averment that the property is co-owned by other parties as well. In this regard, no substantive application was brought by the Appellant requiring me to order the other parties to be co-joined to the Appeal proceedings.
3. The appeal was set down for 3, 4 and 5 September 2025 at 23rd Floor Embassy Building 199 Samore Micheal Street Durban, KwaZulu Natal Province.
4. The parties presented their oral arguments and made written submissions, after being so directed on 3 September 2025. It is worth mentioning that this application was supported by affidavits by both parties.
5. This ruling constitutes the decision of the Tribunal in terms of Rule 15(1).
6. For the sake of clarity, the parties are referred to as they appear in the appeal itself.

Background

7. The Responsible Authority (hereinafter referred to as the Respondent”) issued a Directive to the Appellant dated 25 November 2021 (“hereinafter referred to as the main-Directive”), in terms of section 53(1)(a) of the NWA. In the main, the main-Directive served to notify the Appellant of the existing contraventions and to direct the Appellant to take specified actions in order to rectify the contraventions. The contraventions included the Appellants’ alleged engaging in the activities identified as water uses in terms of section 21(c) that involves

the impeding or diverting of the flow of water in a watercourse, and section 21(i) involving the alleged altering of the bed, banks, course or characteristics of a watercourse without a water use authorization at 38 Chesterton Road Seaview EThekweni municipality, in the Kwazulu-Natal Province.

Notice of the nature and purpose of the proposed administrative action

8. In terms of the Promotion of Administrative Justice Act, Act 3 of 2000 (“hereinafter referred to as PAJA”) section 3(2)(b), and in order to give effect to the right to procedurally fair administrative action, an administrator (“hereinafter and in the context of this Ruling be referred to as the Respondent”), and subject to subsection (4), must give a person whose rights or legitimate expectations may be materially and adversely affected (i) adequate notice of the nature and purpose of the proposed administrative action; (ii) a reasonable opportunity to make representations; (iii) a clear statement of the administrative action; (iv) adequate notice of any right of review or internal appeal, where applicable; and (v) adequate notice of the right to request reasons in terms of section 5.
9. The notice periods under Section 3(2)(b)(iv) of the PAJA hinge on the principle that procedurally fair administrative action requires individuals to be informed of their rights to internal appeal or judicial review, enabling them to challenge decisions that materially affect them.
10. This section requires adequate notice of any right of review or internal appeal, where applicable and it is in this appeal, applicable.
11. The notice required under section 3(2)(b) encompasses more than just the rights of appeal including the adequate notice of the nature and purpose of the proposed action, reasonable opportunity to make representations, a clear statement of the administrative action, adequate notice of right of review or internal appeal (Section 3(2)(b)(iv)), and adequate notice of the right to request reasons (Section 3(2)(b)(v)).
12. The Tribunal found that the pre-Directive and main-Directive generally meet

the requirements of an adequate notice to the Appellant in terms of section 3(2)(b) of PAJA.

Notice to lodge an Appeal

13. In terms of the main-Directive, the Respondent further notified the Appellant in terms of section 5.1 paragraph V of the main-Directive that he may appeal this Directive to the Chairperson of the Tribunal in terms of Section 148(1) of the NWA, and provided contact details of the Tribunal. The Respondent, again notified the Appellant in terms of section paragraph 5.2 under section V that even though the Appellant may appeal against the main-Directive to the Tribunal, such an appeal does not suspend the main-Directive pending the outcome of the Tribunal regarding the main-Directive. Furthermore, the Respondent notified the Appellant to contact the Respondent's Office should the Appellant have any concerns or queries.
14. Prior to the main-Directive, the Respondent issued the Appellant with a prior notice of intention to issue the main-Directive in terms of the said section 53(1)(a) of the NWA dated 4 October 2021 ("hereinafter referred to as the pre-Directive"). For purposes of this Ruling, the Respondent notified the Appellant in terms of paragraph 4 of the pre-Directive that the Appellant may appeal the pre-Directive of the Respondent to the Chairperson of the Tribunal in terms of Section 148(1) of the NWA and again, provided contact details of the Water Tribunal.
15. Section 148 of the NWA further stipulates that an appeal must be commenced within thirty days after notice of the decision is sent to the Appellant by the Respondent.
16. On the other hand, Rule 4(1)(3) stipulates that an appeal must be commenced within thirty days after notice of the decision is sent to the Appellant by the Respondent.
17. The Appellant was required, in terms of the provisions of the NWA and the Rules, to lodge his appeal with the Tribunal within 30 days from the date of the

main-Directive.

18. The Appellant averred that the Respondent failed to notify him of the 30-days notice however, there was no substantive argument or evidence brought before the Tribunal by the Appellant to the effect that the Respondent is specifically obligated by law to insert the wording “*30-days’ notice period*” in its Directive, or that a material procedure or condition prescribed by the NWA or the Rules were not complied with, suffice it to say that there has been reference to the NWA section 148(1).
19. The Appellant took almost two years and 5 months to lodge an appeal, this despite active communications, interactions and engagements with the Respondent and the Appellant’s representatives.
20. The Tribunal found that the Respondents’ notification to the Appellant in terms of section 5.1 paragraph V of the main-Directive, and in terms of paragraph 4 of the pre-Directive, that the Appellant may appeal the respective Directives to the Chairperson of the Tribunal in terms of Section 148(1) of the NWA, and providing contact details of the Tribunal, met the requirements for adequate notice.
21. The Tribunal found that the Appellants’ claim against the Respondent that the Respondent failed to notify him of the 30-days’ notice is without legal basis.

The Appellant’s Awareness and Responsiveness to the Notice

22. It is common cause that pursuant to the pre-Directive, the Appellant immediately commenced communications, interactions and engagements with the Respondent and his own consultants, representatives and experts in order to respond, rectify and/or comply with the requirements outlined in the pre-Directive. The correspondence between the parties ensued effective the issue of the Respondent’s pre-Directive dated 4 October 2021, followed by the Appellant’s email acknowledging, through his representative, receipt of the Respondent’s notice of intention to issue its pre-Directive of 4 October 2021 and amongst others making commitments to keep the Respondent informed of

the developments.

23. The Appellant did not only communicate, interact and engage with the Respondent actively on the pre-Directive as well as the main-Directive, but that he applied his mind to the Respondent's Directives in order to respond, rectify and/or comply with the Directives. It is glaring, however, that at all material times during his communications, interactions and engagements with the Respondent that the Appellant did not demonstrate or exercise his right to request, demand or compel the Respondent to provide, clarify or confirm the information relating to the paragraph giving him an option to lodge an appeal in the event he chose to lodge it.
24. On the other hand, it is evident that despite a trail of communications, interactions and engagements between the parties since 4 October 2021 and 5 October 2021 respectively, the issues in dispute remained unresolved between the parties. In the natural course of events and over the course of time, the parties exchanged further correspondence including further Directives from the Respondent dated 15 December 2021 and 15 June 2022 ("hereinafter referred to as additional-Directives"). It is, therefore, further evident that the content of the additional-Directives is no longer in the original form and content of the pre-Directive and the main-Directive.
25. The Tribunal found that the pre-Directive and main-Directive are fundamental for purposes of the determination of the Ruling in this application, and that the additional-Directives were furthering the course of amending the pre-Directive and main-Directives subsequent to the Appellant's rectifications to the Respondent's pre-Directive and main-Directive.
26. The Tribunal found that the Appellants' application for condonation and a plea for being a lay person is not just and is not substantiated to justify his failure to break the Tribunal Rules and delay the lodgment with almost 2 years and 5 months.
27. The Appellants' argument that there were procedural deficiencies in the Respondent's own Directives since it failed to specify the 30-day timeframe for

lodging an appeal, is without legal foundation.

28. The Appellants' claim that the Respondent had failed to advise him that the time period for lodging an Appeal had expired, was unwarranted and in addition, the Appellant's averment that the Respondent's advice of 6 November 2023 and 12 March 2024 on lodging the appeal was a clear expectation that the appeal was a legitimate and available remedy even at that late stage, was rejected.
29. The Tribunal found that the Respondent's notice and reference to Section 148(1) of the NWA suffices to meet the requirements of a reasonable notice to the Appellant to take appropriate action, lodge an appeal, to seek clarity from the Respondent or the Chairperson of the Tribunal regarding the paragraph relating to the appeal, in the event of any confusion or misunderstanding, or rather seek his own representation to assist him.

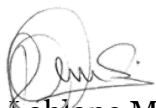
Prospects of Success on Appeal

30. The Appellant made an averment to have reasonable prospects of success on the grounds that the Respondent failed to notify him in its Directives of the 30-day notice Directive in that the Directives that were issued for the property 38 Chesterton Road were not encumbered by any water resource. Section 53 of the NWA makes a provision for the Directive to be issued to the Appellant if he contravened the provisions of the NWA.
31. The Appellant made further averments relying on the "findings that the watercourse is devoid of flow and surface water. The NWA defines a watercourse to include "a natural channel in which water flows regularly or intermittently. The Appellant's contestation that the Directive were vague in that it that do not identify the watercourse, the activity concerned and the properties and all affected areas is without merit. The Appellant made reference to the relevant watercourse named as the Mhlathuzana River, through his Environmental Specialists.
32. The contraventions stated in the pre-Directive and the main-Directive in terms

of the NWA make a provision for the infilling of the watercourse constituting an offense even if the watercourse does not run through the Appellant's property.

33. The Appellant's contestation regarding the Respondents' alleged procedural unfairness, and that the Directives failed to provide timeframes within which the Appeal should be lodged with the Tribunal; have already been dealt with.
34. The delay in the Appellant's application for condonation of late lodging of this appeal were found to be inordinate, unconscionable, and disproportionate.
35. The Appellants' grounds for the delay and averred prospects of success were found to be undue, unreasonable and without merit.
36. The Tribunal found that it will not be in the interest of justice to uphold the Appellant's claim that the Respondents' notice, i.e. the pre-Directive and the main-Directive, were legally defective and unlawful.
37. The Tribunal found that Appellant's claim for reasonable prospects of success on appeal and good reasons do not exist for the Tribunal to grant the condonation for the late lodging of this Appeal.
38. The Appellants' application for condonation of late lodging of the Appeal is hereby, dismissed.

Handed down at Pretoria on 8th day of May 2026



Cahiane Malema

Presiding Chair

WTo2/24/KZN

Appearances:

For the Appellant: Adv Kuben Samie
Regus Durban Country Club, Durban

Instructed by: Martin Van Huyssteen N.O. & Michael David Williams N.O.

For the Respondent: Adv Sibusiso Ntshebe
Kingsmead Chambers, Durban

Instructed by: Ndabenhle Ndlela: State Attorney's Office, Durban