

SOUTH AFRICA / JUDGMENT

Broers v Director-General, Department of Water Affairs and Forestry (WT9/S2) [2011] ZAWT 7 (1 January 2011)

[2011] ZAWT 7

COURT

Water Tribunal

BEFORE

M.M. Mabesele

CASE / FILE NUMBER

WT9/S2

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IN THE WATER TRIBUNAL

CASE NO.: WT9/S2

IN THE APPEAL OF:

STAPELBERG BROERSAPPELLANT

AND

THE DIRECTOR-GENERAL

DEPARTMENT WATER AFFAIRS AND FORESTRYRESPONDENT

DECISION

1. The Appellant submitted an application for a stream flow reduction activity licence in respect of an area of land in extent 81 ha situated on Portion 4 of the farm Witbank No. 300, Registration Division IT, Mpumalanga, for afforestation with eucalyptus spp. plantations. The Respondent refused to grant a licence to the Appellant on the grounds that the Appellant's property is situated in a critical catchment area where licences for afforestation can no longer be issued.
2. The main ground of appeal is failure by the Respondent to apply his mind in that the Respondent based his decision on reasons which are factually and legally incorrect and the Respondent has failed also to follow correct administrative procedures.

3. On the 22nd February 2001 the Regional Director for Mpumalanga addressed a letter to the Director-General: Department of Water Affairs and Forestry wherein the Regional-Director conveyed to the Director-General the recommendations of the Stream Flow Reduction Activity Licence

Assessment Advisory Committee (SFRALAAC) as follows:

During the SFRALAAC meeting held on the 22nd February 2001, it was decided to recommend the application for the afforestation of 51 (fifty-one) ha on the remaining portion of the farm Witbank IT in the quaternary catchment W 53 A. The favourable consideration for the issuing of a licence for the afforestation of 51 (fifty-one) ha on the Witbank IT for a valid period of 40 (forty) years is recommended provided that water is available in the quaternary catchment for the development.

On 12th April 2001 the Chief Director: Water Use and Conservation disapproved of the application for reasons stated earlier.

At the meeting of 22nd February 2001, the SFRALAAC considered the Stapelberg Broers application and mandated Ms Fourie to determine the areas for afforestation. (See annexure "A".) From the minutes of this meeting no recommendation was made to DWAF Head Office regarding the application.

A report was prepared by Naomi Fourie recommending inter alia the granting of water use licence for a maximum of 51 (fifty-one) ha and that the licence be valid for a maximum period of 40 (forty) years. This report did not serve before the SFRALAAC for consideration and decision.

The submission by the Regional-Director that the SFRALAAC recommended application for the afforestation of 51 (fifty-one) ha is incorrect. However, the Regional-Director directed this application to DWAF head office together with Naomi Fourie's well-prepared report. There is no evidence on record that the Chief-Director ever considered Naomi Fourie's report when taking decision. If the Chief-Director could have considered all the information surrounding this application, including Naomi Fourie's report, the Chief-Director could have referred the application back to the SFRALAAC to consider the report and make recommendation. Alternatively the Chief-Director could have considered the contents of the application and the report and thereafter come to a conclusion. Failure by the Chief-Director to follow either of these procedures infringed upon the applicant's right to be heard.

The reasons advanced by the Chief-Director for his decision not to grant the licence are rejected in that neither the SFRALAAC nor Naomi Fourie found that the Appellant's property is situated in a critical catchment area. Moreover, the Chief-Director failed to adduce evidence that the property is situated in a critical catchment area.

With this application now before the Tribunal with all supporting documents, it will be unwise to refer it back to the SFRALAAC.

Having read Naomi Fourie's report and other documents filed of record, the Tribunal come to the following decision:

4. (1) The decision of the Chief-Director is set aside.

(2) Appeal succeeds.

The Chief-Director is ordered to issue licence to the Appellant for the afforestation of 51 (fifty-one) ha on the remaining portion of the farm Witbank IT in the quaternary catchment W 53 A.

The licence shall be valid for a period of 40 (forty) years.

The licence shall be subject to the provisions of section 49 of the National Water Act, 1998 (Act No. 36 of 1998) and any reasonable conditions as may be imposed by other relevant departments.

M.M. MABESELE (ADDITIONAL MEMBER)

(Other members concur)

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