

**ESCARPMENT ENVIRONMENTAL PROTECTION GROUP & LANGKLOOF ENVIRONMENTAL
COMMITTEE v DEPARTMENT OF WATER AFFAIRS & WER MINING (PTY) LTD, 2011
(UNREPORTED, WT 25/11/2009)**

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| Importance | The comments set out in the case of <i>Gideon Anderson t/a Zonnebloem Boerdery v Department of Water and Environmental Affairs & another</i> 2006 (Unreported, WT 24/02/2010) regarding the approach of the Water Tribunal to the issue of locus standi apply similarly to this case. |
| Parties | First Appellant: Escarpment Environmental Protection Group (EEPOG) Second Appellant: Langkloof Environmental Committee First Respondent: Department of Water and Environmental Affairs Second Respondent: WERM Mining (Pty) Ltd |
| Facts | <p>This case relates to water uses at the proposed Langkloof Colliery, situated in Emakhazeni (Belfast District), Mpumalanga. The Langkloof Colliery is an existing coalmine that had been partially mined by open pit methods. The mining area was abandoned in 1987 and no rehabilitation was undertaken. The new proprietors of the mine undertook to take both the rehabilitation of the defunct aspects of the mine with those impacts resulting from the new venture.</p> <p>The DWAF issued a water use licence to WERM Mining (Pty) Ltd on 24 October 2008 without at any stage inviting written comments from interested parties, or requiring the applicant to call for such comments, as envisaged by s 41 of the National Water Act 36 of 1998.</p> <p>The appellants lodged objections with DWAF regarding water use licence before it was issued and made continuous attempts to engage meaningfully with both DWAF and WERM mining regarding their objections. The appellants subsequently lodged an appeal against the granting of the licence on 12 November 2009. Although the appeal was lodged outside of the prescribed 30-day period, the appellants applied for and obtained condonation for the late filing.</p> <p>At the hearing the Tribunal raised the issue of <i>locus standi</i> of its own accord and the parties agreed to submit written argument on the matter. The appellants argued for <i>locus standi</i> on the basis of a purposive interpretation of the NWA. Additionally, the second respondent indicated that it preferred for the matter to be decided on the merits so as to avoid a further appeal to the High Court on the question of <i>locus standi</i> alone.</p> |
| Relief sought | The appellants appealed against the granting of a water use licence to WERM Mining (Pty) Ltd, calling for it to be set aside. |
| Legal Issues & Judgment | <p>The Tribunal's finding that the first and second appellants lacked <i>locus standi</i> to bring the appeal was based on the following arguments:</p> <ul style="list-style-type: none"> • The Tribunal is a creature of statute that exercises sporadic as opposed to inherent jurisdiction. It can thus only do that which its enabling legislation empowers it to do. • In the case of <i>Carolyn Nicola Shear v The Regional Head: Gauteng Regional Department of Water Affairs & Eye of Africa</i> |

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| | <p><i>Development (Pty) Ltd</i> (unreported WT 19/02/2009) the Tribunal had set out what it considered to be the 'whole appeal scheme' of the NWA, viz. that appeals may only be lodged by persons mentioned in s 148(1); that where no notice was published in the media as contemplated by s 41(4) of NWA, no right of appeal in terms of s 148(1)(f) of the NWA arises in favour of any objector.</p> <ul style="list-style-type: none"> • Such interpretation does not offend the Constitution and only recognizes the extension of the right of appeal to the Tribunal to a class of persons specified in the NWA. • There exists no justification for subjecting the provisions of the NWA to the National Environmental Management Act 107 of 1998, particularly the principle set out in s 2(4)(g) which provides that the interests, needs and values of all interested and affected parties must be taken into account when decisions are made. Both statutes are of equal standing and seek to regulate different situations. • The Promotion of Administrative Justice Act, 2000 does not confer or make provision for the right to internal appeal procedures. The Tribunal is not a tribunal established for purposes of administrative review, and anyone who wishes to review an administrative action is free to approach the courts to do so. • Any interpretation which extended the right of appeal to any person or objector other than those contemplated in s 148(1)(f) of the NWA would unduly strain the words of the statute and cannot be ascribed to that section. |
| Outcome | The appeal was dismissed and the file closed. |
| Obiter | None. |