

GIDEON ANDERSON T/A ZONNEBLOEM BOERDERY v DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS & ANOTHER 2006 (UNREPORTED, WT 24/02/2010)

Importance	<p>This is a decision by the Water Tribunal and the remarks in this section are qualified by the advice that the Tribunal is (in the opinion of the author) in the nature of an administrative tribunal. It therefore does not have the authority to set binding legal precedents which bind other judicial fora or later decisions of the same forum. However, its legal interpretation of s 148(1)(f) of the National Water Act 36 of 1998 (NWA) is significant because the Tribunal may follow a trend in later cases on the same issue.</p> <p>On the face of it this decision is outrageous because it holds that an objector has no <i>locus standi</i> to appeal to the Water Tribunal against a decision to grant a water use licence, simply on the basis that no formal invitation to submit written objections to the licence application was required by the authority (<i>in casu</i>, the Department of Water and Environmental Affairs). On a purely technical basis, however, the decision is correct because s 41(4) of the NWA does not require an applicant to publish details of the licence application in newspaper or other media. Whether this is required, at any stage of the application process, is within the <i>discretion</i> of the competent authority.</p> <p>The first major problem, then is with the NWA itself which contrary to the trend strongly entrenched in other pieces of environmental legislation does not require public dissemination of the licence application (which would then include details of the process for submitting written objections). This relates to the broader problem of the ambiguity and ‘fuzziness’ of the water use application process in general in the NWA.</p> <p>The second major problem which this case illustrates is one relating to implementation of the law. Why, in the circumstances of this case (which had raised eyebrows because the applicant was politically connected) did the authority <i>not</i> require that a notice of the licence application be published? And why did the applicant, on the basis of good corporate governance, not publish such a notice on its own initiative?</p> <p>Finally, the third major problem lies with the overly-technicist approach of the Tribunal itself. In a court of law, the judges would have taken into account the text of both ss 148(1)(f) and 41(4) of the NWA, but would then have considered these in relation to the objectives of the NWA, the trends apparent in other environmental legislation and the constitutional obligations of the State in relation to the environment in order to determine whether the legislature intended that appeals against the granting of a water use licence can only be lodged when there is a formal invitation to do so. The overly-technicist approach of the Water Tribunal probably reflects an immaturity and/or lack of capacity to deal with questions of law on the</p>
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	part of a body that is not entirely constituted of lawyers.
Parties	Appellant: Gideon Anderson (T/A Zonnebloem Boerdery) First Respondent: Department of Water and Environmental Affairs Second Respondent: Vuna Enterprises (Pty) Ltd
Facts	In December 2009, Vuna Enterprises (Pty) Ltd was (controversially) granted a water use licence in respect of coal mining operations which bordered and were carried out in the immediate vicinity of the appellant's farm in Mpumalanga. Prior to the granting of the relevant licence, the appellant communicated his concerns in writing (by way of letters dated 4 and 18 November 2009 respectively) to both respondents on a number of occasions. The appellant only became aware of the relevant licence on 20 January 2010 when it received a letter from the first respondent replying to the letters it had submitted in November 2009. The appellant subsequently lodged an appeal against the granting of the water use licence to the Water Tribunal (an administrative tribunal established in terms of the National Water Act 36 of 1998 (NWA)) on 19 February 2010.
Relief sought	The appellant appealed against the granting of a water use licence to Vuna Enterprises (Pty), wishing it to be set aside.
Legal Issues & Judgment	<p>The tribunal noted that the matter raised two legal and factual issues: (a) the preliminary issue of whether the appellant had <i>locus standi</i> to lodge an appeal in the matter before the Water Tribunal in terms of s 148(1)(f) of the NWA; and (b) whether Vuna Enterprises was entitled to a water use licence.</p> <p>In the event, it was not necessary for the Tribunal to consider the second issue because it found that the appellant did <i>not</i> have <i>locus standi</i> to lodge the appeal (para 28). This, despite the fact that the parties were generally in agreement that the appellant constituted an 'objector' for purposes of s 148(1)(f) of the NWA (para 25) and that the second respondent had submitted that it wished to see the matter being decided on the merits so as avoid a further appeal to a High Court of law (para 16.1).</p> <p>Its reasoning in this regard was based on an interpretation of s 148(1)(f) read together with s 41(4) of the NWA. The Tribunal pointed out that appeals against the issue of a water use licence may only be lodged by persons mentioned in s 148(1) of the NWA. Section 148(1)(f) indicates that an appeal may be lodged by the applicant and 'any other person who has timeously lodged a written objection against the application'. Section 41(4) of the NWA indicates that the responsible authority <i>may</i> require the applicant for a water use licence to publish a notice in newspapers and 'other media' stating that written objections may be lodged against the application within a specific time. In the present case, the Department of Water and Environmental Affairs did not require that Vuna Enterprises publish such a notice. There was thus no <i>formal</i> invitation to submit written objections. The nub of the Tribunal's decision on the law was that a 'written objection' for purposes of s 148(1)(f) of the NWA can only mean a written</p>

	response to a formal request for objections where this is required on the part of the applicant by the responsible authority. Because such a formal invitation had not been required in this case, even though the appellant had submitted his objections in writing, they did not qualify as a 'written objection' for purposes of establishing <i>locus standi</i> before the Water Tribunal.
Outcome	The appeal was dismissed and the file closed.
Obiter	None.