



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO. A132/2024

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED:
- (4) Date: 12 February 2026

Signature: [REDACTED]

In the matter between:

KANGRA COAL (PTY) LTD

Appellant

and

**THE TRUSTEES FOR THE TIME BEING
OF THE CORNEELS GREYLING TRUST**

1st Respondent

**MOOIBANK BOERDERY (PTY) LTD
(FORMERLY UKUCHUMA FARMING (PTY) LTD**

2nd Respondent

**CHIEF DIRECTOR: WATER USE LICENSING MANAGEMENT,
DEPARTMENT OF WATER AND SANITATION**

3rd Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

- [1]. This is an appeal in terms of section 149(1) of the National Water Act 36 of 1998 (“the Act”) against the whole of the decision of the Water Tribunal delivered on 19 April 2024.
- [2]. The Tribunal held that the respondents’ appeal against the grant of a Water Use Licence (“WUL”) to the appellant was valid, timeously lodged, and that condonation would in any event have been granted.
- [3]. The appeal was heard on 29 April 2025. No party opposed the appeal.
- [4]. Despite the lack of opposition, this Court remains obliged to determine the matter on the merits.

B. FACTUAL BACKGROUND

- [5]. The Chief Director granted a WUL to the appellant on 25 October 2021 for the Balgrathen A adit.
- [6]. The respondents were informed of the decision on the WUL on 3 December 2021. They subsequently requested reasons on 14 December 2021, 19 January 2022, and 13 April 2022, but no reasons were furnished until 17 November 2022.
- [7]. The respondents purported to lodge an appeal before the Tribunal on 14 July 2022, which was between seven and eight months after they had knowledge of the decision, but several months before receiving reasons.
- [8]. On 22 September 2022 the Tribunal issued a directive in amongst others the following terms:

“11. There is also [sic] further point raised by the parties in the correspondence which relates to the Appellant having launched the appeal out of time and without having applied for condonation. This aspect will be dealt with in the first the [sic] which this matter is to be heard. To the extent that the Appellant wishes to apply for condonation they must do so by no later than 5 October 2023.”

[9]. Consequently, on 5 October 2023, the First and Second Respondents delivered an application for condonation purportedly in terms of item 5(2) of Part 2 of Schedule 6 of the Act and regulation 4(4) of the Tribunal Rules seeking the following relief:

“68.1 The appeal was timeously lodged in compliance with section 148(3)(c) of the [National Water Act] and paragraph 4(1)(c) of the Tribunal Rules; and

68.2 In the event that the Water Tribunal is of the view that the [Water Use licence] Appeal was out of time, that condonation be granted for the delay in terms of item 5(2) of part 2 of Schedule 6 of the [National Water Act] and Regulation 4(4) of the Tribunal Rules”

[10]. The Appellant opposed the application.

[11]. The Tribunal found that the First and Second Respondents had made out a case for condonation for the late lodging of the appeal and made the following decision:

“(a) ...a legally compliant appeal [had been] lodged.

(b) the trigger event for the commencement of the 30 day period within which the appeal ought to have been lodged is the provision of the reasons by the first respondent.

(c) the appeal referred to in paragraph (a) was not lodged out of time and was in fact lodged four months before the date on which it ought to have been lodged.

(d) that to the extent that condonation was required, the Tribunal would have granted it.”

[12]. The Tribunal found that the appeal was in fact lodged “before time,” and that the trigger date for the 30-day appeal period was the provision of written reasons on 17 November 2022.

C. THE ISSUE

[13]. The central question is whether the Tribunal had jurisdiction to entertain an appeal lodged many months after the respondents became aware of the WUL, and if it could lawfully condone the late filing of the appeal.

[14]. Related to this is whether the Tribunal’s reasoning that the appeal was “filed before time” is legally sustainable.

D. LEGAL FRAMEWORK

1. Appeal time periods: s 148(3)

[15]. Section 148(3) requires an appeal to be **commenced** within **30 days** after:

- (a) publication of the decision in the *Gazette*;
- (b) notice of the decision is sent to the appellant or
- (c) the giving of reasons for the decision —

whichever occurs last. [emphasis given].

[16]. The procedure for the lodging of an appeal to the Water Tribunal is contained in Part 2 of Schedule 6 which regulates how an appeal is commenced. There are two distinct steps to commencing an appeal. The first is the service of a copy of

a written notice of appeal on the relevant responsible authority. The second is the lodging of the original notice of appeal with the Tribunal.¹

2. Extension of time periods: s 66

- [17]. Section 66 of the Act provides that **only the Minister** may extend a statutory time period or condone non-compliance therewith “in exceptional circumstances and for good reason.”

3. The Tribunal’s limited powers

- [18]. Item 5(2) of Schedule 6 empowers the Tribunal to condone only the **late lodging** of the appeal with the Tribunal — not the late **service** of an appeal, nor the late commencement of the appeal.

4. The authoritative position: SCA judgment (February 2025)

- [19]. In *Kangra Coal (Pty) Ltd v Trustees for the Time Being of the Corneels Greyling Trust and Others* [2025] ZASCA 9, the Supreme Court of Appeal held unambiguously that:

- The Tribunal **has no jurisdiction** to condone late appeals under section 148(3);
- Only the Minister may extend time under section 66;
- The Tribunal “ought not to have entertained” such condonation applications.

¹ Item 6 of Part 2 to Schedule 2 to the Act.

[20]. This pronouncement is binding on this Court and dispositive of the present matter.

E. ANALYSIS

1. The respondents' appeal was late

[21]. The respondents were notified of the decision on 3 December 2021.

[22]. Even allowing for repeated requests for reasons, they elected to lodge an appeal without such reasons in July 2022, which was 7–8 months late.

[23]. The Tribunal erred in holding that the trigger date was the later provision of reasons. The respondents had already filed their appeal long before reasons were furnished, thereby waiving reliance on the reasons-trigger date.

[24]. The statutory 30-day period had long expired, and no extension was sought from the Minister as required by section 66.

2. The Tribunal lacked jurisdiction

[25]. In terms of the authoritative SCA decision, the Tribunal **cannot** extend the time period for commencing an appeal under section 148(3).

[26]. The Tribunal's finding that (i) there was a legally compliant appeal lodged by the appellants and it "would have granted condonation" did not take into account that an appeal commences when the copy of the notice of appeal is served on the Minister and the original is lodged with the Tribunal. It is only then that the appeal commences. The Tribunal has only the power to condone the late lodging of the appeal. The Tribunal thus erred in finding that the appeal was valid, timeous, or capable of being condoned. Its finding in this regard, was *ultra vires*.

3. Consequence

[27]. If a copy of the notice of appeal is served after the expiry of the 30-day period without a Ministerial extension, an appeal to the Tribunal does not commence and therefore no appeal exists and thus there can be no valid appeal. The finding that a valid appeal existed cannot be sustained.

[28]. The Tribunal's decision must therefore be set aside and substituted with a declaration that no valid appeal was before the Tribunal.

F. COSTS

[29]. The matter was unopposed. The interests of justice dictate no order as to costs.

G. ORDER

[30]. The following order is made:

1. The appeal is upheld.
2. The decision of the Water Tribunal dated 19 April 2024 is reviewed and set aside.
3. It is declared that:
 - 3.1. The Water Tribunal lacked jurisdiction to condone or determine any appeal purportedly lodged by the respondents under s 148(3) of the National Water Act 36 of 1998.
 - 3.2. No valid appeal existed before the Water Tribunal, as the respondents' appeal was lodged outside the 30-day period

prescribed by s 148(3), and no extension was granted by the Minister under s 66.

4. The Tribunal's order is replaced with the following:

"There is no valid appeal before the Tribunal."

5. No order as to costs.



J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

I agree



S.K. HASSIM
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing:	29 April 2025
Date of Judgment:	12 February 2026
On behalf of the Applicant:	Adv P Louw SC
With him:	Adv GJ Scheepers SC
Attorneys for the Applicants:	Van der Merwe & Van den Berg Attorneys.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 12 February 2026.