

SOUTH AFRICA / JUDGMENT

Adams t/a SA Credit Solutions (Pty) Ltd v National Credit Regulator In Re National Credit Regulator v Adams t/a SA Credit Solutions (Pty) Ltd (NCT/116600/2018/57(1)) [2019] ZANCT 99 (5 July 2019) [2019] ZANCT 99

COURT

National Consumer Tribunal

BEFORE

Tanya Woker

CASE / FILE NUMBER

NCT/116600/2018/57(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

Number: NCT/116600/2018/
57(1)

In

the matter between

ZAHID

ADAMS T/A SA CREDIT SOLUTIONS (PTY) LTD

APPLICANT

and

THE

NATIONAL CREDIT

REGULATOR RESPONDENT

IN

RE:

THE

NATIONAL CREDIT

REGULATOR APPLICANT

ZAHID

ADAMS T/A SA CREDIT SOLUTIONS (PTY)

LTD RESPONDENT

Coram: Prof
Tanya Woker – Presiding member
CONDONATION

JUDGMENT

INTRODUCTION

1. The Applicant in this condonation application is Zahid Adams a debt counsellor trading under the name of SA Credit Solutions (Pty) Ltd registered with the National Credit Regulator (NCR) in terms of the National Credit Act, 2005 (the NCA) with registration number NCRDC426.
2. The Respondent is the NCR a juristic person established by section 12 of the National Credit Act, 2005 (NCA) tasked with the responsibility of inter alia monitoring registrants in the consumer credit market to ensure that prohibited conduct is prevented or detected and prosecuted.[1]
3. The Applicant in this condonation matter is the Respondent in the main matter which involves an application by the NCR to the Tribunal for an order to cancel the registration of the Applicant as a debt counsellor.
4. For ease of reference the Applicant will be referred to as Mr Adams and the Respondent as the NCR in this

judgment.

BACKGROUND

5. As stated above, in the main matter, the NCR is seeking an order from the Tribunal to cancel the registration of Mr Adams as a debt counsellor on the basis that Mr Adams has repeatedly contravened the NCA and his conditions of registration.
6. This matter is starting to have a rather long and convoluted history and has been set down for a hearing into the merits of the matter on a number of occasions. The inability to proceed with the matter has been at the instance of Mr Adams who has either applied for a postponement or for condonation.
7. The inability of the matter to proceed into a hearing of the merits has been as a result of Mr Adams initially failing to file his answering affidavit and then failing to file it in accordance with a Tribunal order.

8. This Tribunal granted Mr Adam's application for condonation for the late filing of his answering affidavit on 27 February 2019, despite the fact that the Tribunal member, Advocate Simpson, found that Mr Adams had barely provided sufficient cause for condonation to be granted. Such condonation was only granted because the NCR did not oppose the application and because of the seriousness of the charges against him. Mr Adams was granted a final opportunity to file his answering affidavit.
9. The condonation ruling directed that the answering affidavit must be filed by no later than 15 March 2019. The answering affidavit was filed at 00.03 am on 16 March 2019 and so it was ruled late by the Registrar and was not included in the pleadings.
10. On 8 April 2019 the matter was then set down on a default basis for hearing on 9 May 2019.
11. Despite the fact that the matter was set down on a default basis, both parties attended the hearing and Mr Adams duly represented by Ms Squirra applied for a postponement of the matter. It was explained that Mr Adams wanted to file another application for condonation for the second late filing of his answering affidavit. In fact he had filed his application for condonation on 8 May 2019, the day before the default hearing despite the fact that he was informed by the Registrar that he could bring an application for condonation on 16 April 2019. In the same email he was informed by the Registrar that the matter was currently unopposed as there was no answering affidavit filed.
12. After considering all the arguments of the parties[2] the Tribunal decided to grant the postponement in order to provide Mr Adams with the opportunity to explain why he filed his answering

affidavit three minutes late. The Tribunal pointed out that the final judgment in this matter was not a foregone conclusion and that the Tribunal after considering the evidence must decide in favour of the NCR or Mr Adams.

ISSUE TO BE DECIDED

13. The issue I am required to decide is whether Mr Adams' late filing of his answering affidavit following a Tribunal ruling should be condoned. This judgment is concerned with that issue only.
14. Mr Adams has deposed to an affidavit in support of his application for condonation whilst the NCR has opposed the application.

LEGAL PRINCIPLES

15. The applicable legal principles for condonation were comprehensively set out in the previous judgment of the Tribunal when Mr Adams was first granted condonation. However, for the sake of completeness they are repeated here.

16. The Tribunal rules provide that a party may apply to the Tribunal for an order to condone the late filing of a document[3] and the Tribunal may grant condonation “on good cause shown”. [4]
17. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*[5] it was held that the standard for considering an application of this nature is the interests of justice. Whether it is in the interests of justice to grant an extension of time depends on the facts and circumstances of each case. Factors that are relevant include but are not limited to:
 - a. the nature of the relief sought;
 - b. the extent and cause of the delay;
 - c. the effect of the delay on the administration of justice and other litigants;
 - d. the reasonableness of the explanation for the delay;
 - e. the importance of the issue to be raised in the intended application; and
 - f. the prospects of success.[6]
18. Similar facts were also discussed by the court in the earlier case of *Melane v Santam Insurance Company Limited*[7] where it was pointed out that a court has a discretion that should be exercised judicially upon consideration of all the facts.

CONSIDERATION OF THE MERITS

19. Mr Adams on his own version attempted to file his answering affidavit at 23.59 on 15 March 2019 but the affidavit was not attached to the email. He then managed to file the affidavit at three minutes past midnight on 16 March 2019.
20. The fact that Mr Adams waited until the last minutes of 15 May 2019 indicates a substantial degree of tardiness on his part and, it seems, as argued by the NCR that Mr Adams is not taking this process and the charges against him seriously. This is especially so when business hours at the Tribunal close at 16.00.
21. In the previous application for condonation, the Tribunal member granted condonation because the NCR had not opposed the application and because of the seriousness of the charges against Mr Adams.
22. Here the NCR has opposed the application and has argued that on two occasions it was not just a case of not complying with the Tribunal rules, Mr Adams was in fact in contempt of Tribunal orders.
23. There seems to be ample reasons to find that Mr Adams does not have respect for the Tribunal or its processes.

24. However, the charges against Mr Adams are extremely serious and if the NCR is successful in its application to de-register Mr Adams he will lose his license to practice as a debt counsellor and consequently his livelihood.
25. It is also in the interests of justice that this matter should be finalised as soon as possible. Mr Adams has filed his answering affidavit and therefore as soon as the NCR files its replying affidavit the matter can be set down for a hearing into the merits of the matter.

ORDER

26. Accordingly, for the reasons set out above, I make the following order:-

- (1) The application for condonation is granted; and
- (2) There is no order as to costs.

27. As Mr Adams has already filed his answering affidavit, the normal time periods for the filing of a replying affidavit by the NCR will apply from the date on which this judgment is issued by the Tribunal.

DATED ON THIS 5 day of July 2019

(signed)

T Woker

Presiding Member

[1] See section 15 (d) of the NCA.

[2] The NCR opposed the application for a postponement on the basis that Mr Adams had ambushed the Tribunal and the NCR and that he was not showing earnestness in the process.

[3] Rule 34 (1).

[4] Rule 34 (2).

[5] 2003

(11) BCLR 1212 (CC) at para[11].

[6] Van Wyk v Unitas Hospital and Others 2008(4) BCLR 442 (CC) at para 20 as applied in Camagu v Lupondwana Case No 328/2008 HC Bisho.

[7] 1962

(4) SA 531 (A) at 532C-F.

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