

SOUTH AFRICA / JUDGMENT

Adjust 4 Sleep (Adjustable Beds) v Paladh (Condonation Ruling) (NCT/255043/2023/75(1)(b)) [2023] ZANCT 30 (15 September 2023) [2023] ZANCT 30

COURT

National Consumer Tribunal

BEFORE

A Potwana

CASE / FILE NUMBER

NCT/255043/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/255043/2023/75(1)(b)

In the condonation application between:

ADJUST 4 SLEEP (ADJUSTABLE BEDS)

APPLICANT

and

TERRENCE ALVIN PALADH

RESPONDENT

In re:

TERRENCE ALVIN PALADH

APPLICANT

ADJUST 4 SLEEP (ADJUSTABLE BEDS)

RESPONDENT

Coram:

Dr A Potwana - Presiding Tribunal member

CONDONATION RULING

(Late filing of an answering affidavit)

THE PARTIES

1. The applicant in this condonation application is the respondent in the main application.
2. The respondent in this condonation application is the applicant in the main application.
3. The parties will be referred to as cited in the main application for convenience.

TYPE OF APPLICATION AND JURISDICTION

4. In this application, the respondent seeks an order condoning the late filing of its answering affidavit in response to the allegations made by the applicant in his founding papers. The condonation application is made in terms of rule 34 of the Tribunal Rules.[1]
5. The National Consumer Tribunal (the Tribunal) has jurisdiction in terms of section 27(a)(i) of the National Credit Act 34 of 2005.

INTRODUCTION

6. On 4 January 2023, the applicant filed an application for leave to refer a matter to the Tribunal. The applicant's complaint pertains to a bed he and his wife purchased from the respondent for R86 670.00. The bed was supposed to be well-suited to their health needs, but it was not. The respondent did not oppose the application. On 31 March 2023, the Tribunal's Registrar (Registrar) issued the Tribunal's ruling granting the applicant leave to refer a matter to the Tribunal in terms of section 75(1)(b) of the Consumer Protection Act 68 of 2008 (CPA).
7. On 3 July 2023, the respondent properly served the current condonation application for the late filing of its answering affidavit and its answering affidavit to the applicant and filed it with the Registrar. The applicant is not opposing the application.

FACTS

8. The deponent to the respondent's condonation affidavit is Craig David Nunns (Nunns). In his affidavit, Nunns stated that he is the respondent's authorised representative. He averred that on 10 January 2023, the respondent submitted its answering affidavit to the Registrar via email. On 12 January 2023, the office of the Registrar advised that the respondent's submission did not meet the requirements. On 3 February 2023, the respondent received correspondence from the Tribunal informing it that the matter was set down for hearing on the unopposed hearing roll. On the same day, he suffered a stroke and only returned to work on 6 March 2023. According to Nunns, the respondent has not yet received the applicant's submission from the Post Office nor received any notice to collect the registered post. The Post Office has closed down. The nearest Post Office is 17km away. The toll number supplied to track the parcel is no longer operational. He stated that the respondent made two

attempts to contact the applicant via email to request the applicant's consent to receive the service of documents by email.

THE LAW

9. Rule 34 (1)(a) of the Tribunal Rules states that "A party may apply to the Tribunal in Form TIR.34 for an order to condone late filing of a document or application."
10. Rule 34 (2) of the Tribunal Rules states that "The Tribunal may grant the order on good cause shown".
11. To condone means to "accept or forgive an offence or wrongdoing". The word stems from the Latin term *condonare*, meaning "refrain from punishing"[2]. It can also be defined to mean "overlook or forgive (wrongdoing)."[3] In *Melane v Santam Insurance Company Limited*,[4] the Court held that:

"The approach is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degrees of lateness, the explanation therefore, the prospects of success and the importance of the case. These facts are inter-related: they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong."

CONSIDERATION OF THE MERITS

12. In *Van Wyk v Unitas Hospital and Others*[5] (*Van Wyk*), the Constitutional Court stated-

"An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable. The explanation given by the applicant falls far short of these requirements. Her explanation for the inordinate delay is superficial and unconvincing."[6]

13. Before dismissing the application, the Court stated-

"A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interests of justice."

14. The explanation for the delay is inadequate. It lacks detail and is unconvincing. On the one hand, the respondent claims that it filed its answering affidavit on 10 January 2023. On the other hand, it claims that it has never received the applicant's submission from the Post Office nor received any notice to collect the registered post. This begs the question of how the respondent could have prepared an answering affidavit if it had never received the applicant's founding papers. In addition, the delay is extensive, and the respondent's explanation for the delay does not traverse the entire delay period.

15. The applicant is entitled to have closure on litigation. Accordingly, the interests of justice do not favour the granting of condonation.

CONCLUSION

16. The respondent has not shown good cause for condonation to be granted.

ORDER

17. Accordingly, for the reasons set out above, the Tribunal makes the following order:-

17.1. condonation for the late filing of the respondent's answering affidavit is refused, and

17.2. no order is made as to costs.

Thus, done and signed on 15 September 2023. [signed]

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Dr A Potwana

Presiding Tribunal member

Authroised for issue by The National Consumer Tribunal

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- [1] Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal, 2007 (as amended).
- [2] Oxford English Dictionary, Second Edition at pg 151.
- [3] Collins English Dictionary and Thesaurus, Fourth Edition 2011, at pg170.
- [4] 1962
- (4) SA 531 (A) at 532C-F.
- [5] 2008(4) BCLR 442 (CC).
- [6] At paragraph 22 of the judgement.

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