

SOUTH AFRICA / JUDGMENT

Braai Block (Pty) Ltd v National Consumer Commission (NCT-384960-2025-165 - Rule 34) [2025] ZANCT 32 (18 June 2025)

[2025] ZANCT 32

COURT

National Consumer Tribunal

BEFORE

MC Peenze

CASE / FILE NUMBER

NCT-384960-2025-165 - Rule 34

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT-384960-2025-165 - Rule 34

In the matter between: BRAAI BLOCK (PTY) LTD APPLICANT And NATIONAL CONSUMER COMMISSION RESPONDENT

Coram:

Dr MC Peenze

- Presiding Tribunal Member

Date of consideration (in chambers) - 18 June 202

Date of ruling

- 18 June 2025

CONDONATION RULING

LATE FILING OF AN APPLICATION TO RESCIND A TRIBUNAL ORDER

INTRODUCTION

1. The applicant in this matter is Braai Block (Pty) Ltd, a supplier as defined under section 1 of the Consumer Protection Act, 68 of 2008 (CPA). The applicant wants to apply for the rescission of an order granted by the National Consumer Tribunal (the Tribunal) under case number NCT/341406/2024/73(2)(b) on 11 December 2025 (the order). The applicant was the respondent in the application that resulted in the order.
2. The applicant submits that its former legal representative failed to present its case properly, resulting in an order citing the incorrect legal entity and an exorbitant fine.
3. The applicant has appointed a new legal representative and wishes to rescind the order.
4. The applicant failed to bring the application for the rescission of the order timeously and seeks condonation for such non-compliance in this interlocutory application.
5. The respondent is the National Consumer Commission (NCC), a juristic person established by section 85 of the CPA (the respondent). The respondent was the applicant in the application that resulted in the order.

TERMINOLOGY

6. A reference to a rule in this ruling refers to the Rules of the National Consumer Tribunal (the rules)[1].

APPLICATION TYPE

7. The applicant seeks condonation in terms of rule 34(1) for filing its rescission application late.
8. In terms of section 27(a)(i) of the National Credit Act 34 of 2005, read with rule 34, the Tribunal has jurisdiction to consider this condonation application.

BACKGROUND

9. On 31 July 2024, after completing an investigation into a complaint, the NCC referred the complaint to the Tribunal in terms of section 73(2)(b) of the CPA. Braai Block (Pty) Ltd did not file an answering affidavit, and the hearing was set down unopposed. Irrespective, Braai Block (Pty) Ltd's legal representative attended on the day of the hearing, and the presiding member permitted him to participate in the proceedings.
10. The NCR requested an order of prohibited conduct and a fine. The Tribunal found that Braai Block (Pty) Ltd contravened sections 23(6)(a) and 26(3)(b) of the CPA and issued a fine of R1,000,000.00. The Tribunal granted the order on 11 December 2024 under case number NCT/341406/2024/73(2)(b) and served it on all parties.

11. According to Mr Simon Malikhanye Mabena (Mr Mabena), the managing director of Braai Block (Pty) Ltd, he received the order in December 2025 but only became aware of his legal options to request a rescission after his new legal representative advised him of it in March 2025. His legal representative brought a rescission application on behalf of Braai Block (Pty) Ltd on 20 March 2025.
12. Mr Mabena outlines in his founding affidavit that the incorrect legal entity was cited in case number NCT/341406/2024/73(2)(b). According to him, Industrial Butcher (Pty) Ltd owns and conducts business and trade as the Braai Block, not Braai Block (Pty) Ltd. Mr Mabena is the sole owner of Braai Block (Pty) Ltd and Industrial Butcher (Pty) Ltd t/a Braai Block. Mr Mabena submits that this matter is very important because a fine of R1,000,000 was issued against the wrong entity. Braai Block (Pty) Ltd alleges that it has a reasonable prospect of success in the rescission application.
13. According to Mr Mabena, the facts regarding tipping were never sufficiently and adequately disclosed to the Tribunal. Therefore, the Tribunal erred in granting the order.
14. Braai Block (Pty) Ltd filed its rescission and condonation applications on 20 March 2025. On 14 April 2025, the Registrar of the Tribunal (the Registrar) issued a notice of complete filing.
15. The NCC raised Braai Block (Pty) Ltd's non-compliance with rule 24A(1)(b) in its answering affidavit, opposing the condonation. The NCC submits that the rescission application was not in line with rule 24A(1), as Braai Block (Pty) Ltd applied for rescission more than three months after the order was issued.

RELEVANT LEGAL CONSIDERATIONS

16. In terms of rule 24A, an application for the variation or rescission of a Tribunal order must be made within 20 days of the date that the applicant became aware of the order that was granted in its absence, or the ambiguity, error or omission, or a mistake common to the parties to the proceedings.
17. Rule 34(1)(a) provides that a party may apply to the Tribunal for an order to condone the late filing of a document or application. In terms of rule 34(2), the Tribunal may grant the order on good cause shown.
18. In determining whether good cause has been shown for the granting of condonation, our courts often refer to the paragraph enunciated by Holmes AJ in *Melane v Santam Insurance Co. Ltd*,^[2] where it was stated:

"In deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion to be exercised judicially upon a consideration of all the facts and, in essence, is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success, and the importance of the case. Ordinarily, these facts are inter-related; they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion ... "

19. It is trite that the interest of justice is critical in determining whether condonation should be granted. In *Van Wyk v Unitas Hospital*

and *Another*,^[3] the Constitutional Court stated:

"This Court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised ... and the prospects of success."

CONSIDERATION

20. The Tribunal considered Braai Block (Pty) Ltd's argument that it was only possible to approach a new legal representative by the end of January 2025, due to the festive season closure of attorney offices. Mr Mabena explained that he sought legal counsel to address the alleged incorrect judgment. In his founding affidavit, Mr Mabena outlines that his legal representative had to research the matter and obtain evidentiary documents, which took time. During the first week of March 2025, Mr Mabena's legal representative advised him on options and the way forward. That advice included the option to launch a rescission application or appeal. Mr Mabena subsequently decided to opt for a rescission application.
21. The Tribunal is not persuaded that the date of obtaining legal advice to file a rescission application is when Braai Block (Pty) Ltd became aware of the supposedly wrong citation or the allegedly wrong facts placed before the Tribunal. From the judgment in case number NCT/341406/2024/73(2)(b), it is clear that Braai Block (Pty) Ltd was served correctly and chose not to file any answering papers in the matter. The Tribunal order was made on the evidence presented to it.
22. Rule 24A(1) requires an application for the variation or rescission of an order to be made within 20 days of the date the applicant became aware of the order or its ambiguity, error, omission, or mistake. As Braai Block (Pty) Ltd became aware of the order on the date it was issued, the prescribed 20-day period would have ended on 16 January 2025. The applicant filed the rescission application on 20 March 2025, two months outside the prescribed period of 20 days. Consequently, the Tribunal finds that the applicant filed the rescission application late. In the circumstances of this matter, the Tribunal regards the extent of lateness as excessive.
23. Rule 24A(1)(d) provides the period to be extended at the Tribunal's discretion. The Tribunal considered the principles of fairness and natural justice in exercising its discretion. The Tribunal is not convinced that it is in the interest of justice that the applicant be allowed to file its rescission application, as the applicant failed to provide any plausible reason for the late filing. The unavailability of legal counsel is, in itself, not accepted as a plausible reason for the late filing of a rescission application. The applicant provided no further reasons for

the delay.

24. In exercising its discretion, the Tribunal must further be convinced that the applicant has a chance to succeed in the main matter (the rescission application). The applicant did not persuade the Tribunal that it has a chance of success in the rescission application. The applicant wishes to rescind the order based on an allegation of a wrong citation and factual discrepancies in the merits presented to the Tribunal in NCT/341406/2024/73(2)(b). The merits cannot be rehearsed in a rescission application, and an order cannot be rescinded based on a respondent's failure to submit evidence and argument during a past hearing. This is particularly so in this matter, as Braai Block (Pty) Ltd chose not to oppose the application in NCT/341406/2024/73(2)(b).
25. It is in the interest of justice that finality in proceedings is provided, and the Tribunal is functus officio after issuing a judgment on the merits. The NCC provided evidentiary documents regarding which entity was investigated and brought before the Tribunal.

Similarly, evidence was put before the Tribunal to substantiate the allegations of prohibited conduct. Consequently, there was no doubt about who the respondent was in NCT/341406/2024/73(2)(b). The Tribunal is persuaded that Braai Block (Pty) Ltd has no chance of success in the rescission application.

CONCLUSION

26. The Tribunal is not convinced that good cause exists to permit a more extended period to file a rescission application in terms of rule 24A. An applicant seeking condonation bears the onus to provide a complete and satisfactory explanation for the delay, demonstrate good cause, and show that the application is made bona fide and not merely as a delaying tactic. In the present matter, the applicant has failed to provide a reasonable or adequate explanation for the delay, nor has any compelling justification been advanced for the non-compliance with the prescribed timeframes. Moreover, there is no demonstration of the prospects of success in the rescission application. Without these critical elements, the requirements for condonation have not been met, and the lateness is not condoned.
27. For the reasons outlined above, the Tribunal does not favourably consider the request for condonation for the late filing of the applicant's rescission application. The applicant did not persuade the Tribunal that condoning the late filing would be in the interests of justice. The application is excessively late, it has no prospects of success, public resources will be committed, and no case has been made that the public has an interest in the matter.[4]

ORDER

28. Accordingly, the Tribunal makes the following order:
 - 28.1 The condonation for the late filing of the applicant's rescission application is refused; and
 - 28.2 No cost order is made.

Dr MC Peenze - Presiding Tribunal member

[1] GN 157, G. 39663 (4 February 2016)

[2] 1962

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

[3]

[2007] ZACC 24; 2008

(2) SA 472 (CC) at para 20.

[4] See *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others*, Case no 314/2020 [2021] ZASCA 91 (25 June 2021) (Unreported).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2025/32.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/braai-block-pty-ltd-v-national-unknown-topic-anct-2025>

Prepared on 9 October 2026 · Esheria