

SOUTH AFRICA / JUDGMENT

Mapoti v Xcelsior Financial Services (Pty) Ltd (NCT/279568/2023/141(1)(b) - Rule 34) [2023] ZANCT 48 (10 October 2023)

[2023] ZANCT 48

COURT

National Consumer Tribunal

BEFORE

A Potwana

CASE / FILE NUMBER

NCT/279568/2023/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL HELD

IN CENTURION

Case Number: NCT/279568/2023/141(1)(b) – Rule 34

In the matter between:

STEPHEN MAPOTI APPLICANT

and

XCELSIOR FINANCIAL SERVICES (PTY) LTD RESPONDENT

In re:

Coram: Dr A Potwana - Presiding Tribunal member

CONDONATION RULING (Late filing of an application for leave to refer a matter to the Tribunal)

INTRODUCTION

1. On 20 July 23, the applicant's attorneys, VZLR Attorneys, served the condonation application and other documents on the respondent by hand and filed the same with the Tribunal's Registrar (Registrar).

APPLICATION TYPE AND JURISDICTION

2. In this application, the applicant seeks condonation for the late filing of his application for leave to refer a matter to the Tribunal in terms of Tribunal Rule 34 of the Tribunal Rules.[1]

3. In terms of section 27(a)(i) of the National Credit Act 34 of 2005 (NCA), read with rule 34 of the Tribunal Rules, the Tribunal has jurisdiction.

FACTS

4. The deponent to the applicant's affidavit in support of his condonation application is Mpolokeng Matheko Radebe, an adult female practising as an attorney at VZLR Inc. (Ms Radebe).
5. Ms Radebe submitted that the applicant would suffer great injustice if condonation were not granted because he is a layman and did not know the law and procedures he needed to comply with to institute legal proceedings against the respondent. She averred that the delay in obtaining legal advice or securing the services of an attorney who would handle his case was due to various factors not of the applicant's making. She stated that there was an error when the applicant's attorneys initially filed the applicant's application for leave to refer a matter to the Tribunal. Upon further investigation, it became clear that the applicant's attorney had to reissue the application. The error caused an additional delay of over five months. She submitted that the respondent will not be prejudiced because it will be afforded the opportunity to peruse and

consider the applicant's application and prepare a response thereto. She stated the applicant enjoys good prospects of success

because the respondent is accused of contravening several provisions of the NCA.

6. It appears from one of the annexures to Ms Radebe's affidavit that the applicant initially filed his application on 15 December 2022. In response thereto, the Registrar's office erroneously issued a letter bearing a wrong reference number on 19 December 2022. The Registrar's office subsequently issued another letter dated 9 May 2023 advising the applicant that his application did not meet the requirements of Table 2 of the Tribunal's Rules.
7. The application is not opposed.

ISSUES TO BE DECIDED

8. The Tribunal is required to decide whether the applicant has shown good cause for condonation for the late filing of his application for leave should be granted.

THE LAW

9. Rule 34(1)(b) of the Rules states that "A party may apply to the Tribunal in Form TI r.34 for an order to extend or reduce the time allowed for filing or serving."
10. Rule 34(2) of the Tribunal Rules states,
"The Tribunal may grant the order on good cause shown."

11. Column C, Part 1B of Table 2 of the Tribunal Rules states that applications for leave to refer must be filed within “20 business days of the date of the notice of non-referral, or within a longer time permitted by the Tribunal.”
12. 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 *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*[4] (Head of Department, Department of Education, Limpopo Province), it was held that the standard of considering an application of this nature is the interests of justice. Whether it is in the interest of justice to grant condonation depends on the facts and circumstances of each case. It requires the exercise of discretion on an objective conspectus of all the facts.
13. In *Melane v Santam Insurance Company Limited*,[5] it was 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.”

CONSIDERATION OF THE MERITS

14. Annexure “F” to the applicant’s application for leave to refer is a Notice of Non-Referral that was issued by the National Credit Regulator on 26 November 2021. The applicant has failed to explain why he could not approach the Tribunal between November 2021 and December 2022. The delay is extensive, and the applicant has not accounted for the entire period of the delay. In *Van Wyk v Unitas Hospital and Others*,[6] the Constitutional Court said:

“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.”
15. Before dismissing the application for condonation, the Constitutional 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.”

CONCLUSION

16. As the Constitutional Court stated in Van Wyk, “[T]o 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.”
17. The applicant has failed to show good cause for condonation to be granted.

ORDER

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

18.1. Condonation for the late filing of the applicant’s leave to refer is refused, and

18.2. No order is made as to costs.

Thus, done and dated 10 October 2023.

Presiding Tribunal Member

Dr A Potwana

- [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] 2003 (11) BCLR 1212 (CC) at para [11].

- [5] 1962 (4) SA 531 (A) at 532C-F.

- [6] 2008(4) BCLR 442 (CC) (Van Wyk).

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