

SOUTH AFRICA / JUDGMENT

Moonsamy v National Credit Regulator (NCT/115516/2018/56(1)R34) [2019] ZANCT 85 (21 May 2019)

[2019] ZANCT 85

COURT

National Consumer Tribunal

BEFORE

B Dumisa

CASE / FILE NUMBER

NCT/115516/2018/56(1)R34

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

Number: NCT/115516/2018/56(1)R34

In

the matter between:

RENEI
MOONSAMY APPLICANT
and
THE
NATIONAL CREDIT
REGULATOR RESPONDENT

Coram:

Presiding
Member: Prof B Dumisa
Date
of Judgement: 21 May 2019
CONDONATION

JUDGMENT**APPLICANT**

1. The Applicant is RENEI MOONSAMY (“the Applicant”), an adult female debt counsellor registered under NCRD2467, practising as such at the National Debt Counsellors which is situated at 1 Old Main Road, Umhlali, in the Province of KwaZulu-Natal.

RESPONDENT

2. The Respondent is the NATIONAL CREDIT REGULATOR (“the Respondent”); an organ of state within the public administration established in terms of Section 12 of the National Credit Act 34 of 2005 (“the Act” or “the NCA”). The NCR has its address at Randjies Park, Midrand, in the Gauteng Province (“the Applicant”).

BACKGROUND

3. On the 24th of April 2018, the National Credit Regulator, the Respondent, sent to Renei Moonsamy, the Applicant, a Notice of Compliance, in terms of Sections 55(1) and 55(3) of the National Credit Act of 2005 as amended (“the Act”), where the Respondent made allegations to the effect that:
 - 3.1 The Applicant failed to update consumers’ records on the Debt Help System (“DHS”) with status codes, which is in contravention of the Applicant’s General Condition of Registration number four (4) read with Sections 44(3)(b) and 48(3) and 52(5)(c) of the Act;
 - 3.2 That the Applicant charged and recovered fees from consumers for applications to the National Consumer Tribunal (“the NCT”) for consent orders in a manner not compliant with Debt Counselling Fees Guidelines issued by the Respondent, which is a contravention of the Applicant’s General Condition of Registration number nine (9), read with Sections 52(5)(c), 44(3) (b) and 48(3) of the Act; and
 - 3.3 Part D of the Respondent’s Compliance Notice contained the following information in bold black letters “We wish to bring to your attention that you may object to this Notice in terms of Section 56 of the Act and may request the NCT to review this Notice within fifteen (15) business days after receiving this Notice.”
4. In the main Objection application, the Applicant has applied for the Tribunal to make an Order setting aside the Notice of Compliance (see Paragraph 3 above) against the Applicant, on grounds, inter alia, that:
 - 4.1 the Respondent’s Notice of Compliance is extremely vague and difficult to respond to in a meaningful manner; and

4.2 the Notice of Compliance contains blanket averments which ought to have been particularised if due regard is had to the peremptory requirements contained in Section 55(3)(c) of the Act.

THIS CONDONATION APPLICATION BY THE RESPONDENT

5. This Condonation application is an interlocutory matter flowing from the main objection application, where the Respondent, the National Credit Regulator, has filed for the condonation of a late filing of the Respondent's Answering Affidavit, in terms of Rule 3(2)(c) (iv) read with Rule 34(1)(a), (b) and / or (d) of the Rules of Conduct before the National Consumer Tribunal. It is appropriate to clarify how the sequence of events may have led to some confusion:

5.1 The Applicant, Renei Moonsamy, lodged a purported application in terms of Form 14 against the Respondent. That purported application was found to be defective, as it was not fully compliant with the Rules;

5.2 Hence, on or about 17 September 2018, the Applicant applied for an extension of time in terms of Rule 34(1)(b) and further submitted a condonation application for the late filing of its objection application in terms of Rule 34(1)(d) of the Act;

5.3 A notice of filing in respect of said condonation was issued to the parties by the Registrar on 20 September 2018; and

5.4 On the 16th of October 2018, the Respondent informed the National Consumer Tribunal that it would not oppose the condonation application by the Applicant.

6 On the 10th of January 2019, the Registrar, at the Tribunal, issued the condonation ruling in favour of the Applicant (Renei Moonsamy).

6.1 The Applicant was granted an extension of time and for late filing;

6.2 The condonation ruling stated that the normal time periods and processes that take place after the filing of an objection and founding affidavit, would apply as at date of the issue of the judgement; and

6.3 The consequence of these processes was that the Respondent, in terms of the Tribunal Rules and dies non, had to deliver its answering affidavit on or before the 30th of January 2019.

REASONS

FOR THE RESPONDENT'S OWN CONDONATION APPLICATION

7. The Respondent missed the deadline, of the 30th of January 2019, for the filing of its Answering Affidavit, in response to a condonation ruling granted earlier to the Applicant for late filing of its Objection to Notice of Compliance and the founding affidavit thereof, in terms of Rule 34(1)(d). These are the reasons submitted by the Respondent for failing to submit their Answering Affidavit timeously:
 - 7.1 The Respondent claimed the delays were beyond their control;
 - 7.2 The Legal Advisor who was working on the matter had her father passing away, which forced her to abruptly leave the office with no formal hand over of the matter;
 - 7.3 As a result, the matter did not receive any attention, and upon discovery of this oversight by the Regulator, the matter was handed over to another legal advisor albeit late;
 - 7.4 The Regulator submits that good cause exists to condone the late filing; and
 - 7.5 The Regulator submits there will be no prejudice to be suffered by the other party, the Applicant, by condoning this application.
8. This Condonation application was referred for consideration by a single member in Chambers.

APPLICABLE SECTIONS OF THE ACT AND CASE LAW

9. Rule 34 (1) [1]states “A party may apply to the Tribunal in Form TI r.34 for an order to:-
 - (a) condone late filing of a document or application;
 - (b) extend or reduce the time allowed for filing or serving;
 - (c) condone the non-payment of a fee; or
 - (d) condone any other departure from the rules or procedures.”
10. Rule 34 (2) states “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*, which means to “refrain from punishing”[2]. It can also be defined to mean “overlook or forgive (wrongdoing)”[3].
12. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*[4] it was held that the standard of considering an application of this nature is in the interests of justice.
13. 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 a discretion on an objective conspectus of all the facts. Factors that are relevant include but are not limited to:
 - 13.1 the nature of the relief sought;
 - 13.2 the extent and cause of the delay;

13.3 the effect of the delay on the administration of justice and other litigants;

13.4 the reasonableness of the explanation for the delay;

13.5 the importance of the issue to be raised in the intended appeal; and

13.6 the prospects of success[5]

14. In *Melane v Santam Insurance Company Limited*[6] 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. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. There is a further principle which is applied and that is that without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused...cf Chetty v Law Society of the Transvaal 1985(2) SA 756 (A) at 765 A-C; National Union of Mineworkers and Others v Western Holdings Gold Mine 1994 15 ILJ 610 (LAC) at 613E.”

15. From the dictum in *Melane* it was held that these factors are interrelated and should not be considered separately.

CONSIDERATION OF THE MERITS

16. In evaluating the merits of the application the Tribunal will consider the following factors:

16.1 The application for condonation is NOT opposed by the Applicants;

16.2 The Respondent has submitted substantial reasons in motivation of this condonation

Application

16.2.1 The delays in filing the Respondent's Answering Affidavit were beyond the Respondent's control;

16.2.2 The Respondent is determined to defend its issuing of a Compliance Notice against the Applicant; it is for that reason it insisted on filing an Answering Affidavit, after reading and having considered the likely implications of the Applicant's attack on the Compliance Notice, if it was to be left unchallenged; and

16.2.3 The Respondent initiated the whole case, hence this delay on its part will in no way prejudice the Applicant, especially because the Applicant did also similarly apply for condonation for late filing, which was granted by the Registrar, which in turn triggered this condonation application by the Respondent.

17. The Tribunal finds that the factors listed above constitute good cause under these specific circumstances:

ORDER

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

18.1 Condonation is hereby granted to the Respondent for the late filing of its Answering Affidavit which, in terms of Tribunal Rules and dies non, the Respondent should have delivered on or before the 30th of January 2019;

18.2 As the late filing of the Respondent's Answering Affidavit has been condoned, the normal time periods and processes that take place after the filing of the Respondent's Answering Affidavit to an Objection to a Compliance Notice, as set out in the Rules, will apply as at the date of ISSUE of this Ruling; and

18.3 No order is made as to costs.

DATED ON THIS 21st day of May 2019

Prof B Dumisa

Presiding Member

[1] Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer

Tribunal, 2007

[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] 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.

[6] 1962

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

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Prepared on 11 October 2026 · Esheria