

SOUTH AFRICA / JUDGMENT

Munsamy v National Credit Regulator (NCT/115468/2018/56(1)R34) [2019] ZANCT 117 (11 June 2019)

[2019] ZANCT 117

COURT

National Consumer Tribunal

BEFORE

B Dumisa

CASE / FILE NUMBER

NCT/115468/2018/56(1)R34

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

Number: NCT/115468/2018/56(1)R34

In

the matter between:

ALFREDA
MUNSAMY APPLICANT
and
THE
NATIONAL CREDIT
REGULATOR RESPONDENT

Coram:

Presiding
Member: Prof B Dumisa
CONDONATION

JUDGMENT

APPLICANT

1. The Applicant is ALFREDA MUNSAMY ("the Applicant"), an adult female debt counsellor registered under NCRD2533, 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 11th of April 2018, the National Credit Regulator, the Respondent, sent to Alfreda Munsamy, 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 ("OHS") 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 APPLICANT

5. This Condonation application is an interlocutory matter flowing from the main objection application, in terms of Rule 3(2)(c)(iv) read with Rule 34(1)(a) of the Conduct of Matters before the National Consumer Tribunal, where the Applicant has filed for the condonation of a late filing of the Applicant's Replying Affidavit to the Respondent's Answering Affidavit.

5.1 In order to comply with the Tribunal's filing procedures and Rules, the Applicant was to have filed their Replying Affidavit by the 3rd of April 2019, but failed to do so;

5.2 The Applicant, Alfreda Munsamy, has now filed for condonation for non-compliance with the rules of the Tribunal in their failure to serve a replying affidavit within the prescribed period;

5.3 The Applicant alleges some vital financial information that the Respondent required could only be provided by their attorneys on record, where the Director responsible was away out of office receiving cancer treatment;

5.4 The Applicant alleges they only got the necessary financial documents required by the Respondent much later when the Director at their attorneys on record eventually came back to office;

5.5 The Applicant argued that that good cause exists to condone the late service and filing of their Replying Affidavit;

5.6 The Applicant further argued that the delay was not excessive and the Respondent had not suffered prejudice as a result of the delay;

5.7 The Applicant's submissions were that the financial records that they had to wait for were pivotal in assisting the Tribunal in making a proper and informed finding; and

5.8 The Applicant would suffer severe damage to her professional reputation should the contents of her replying affidavit not be considered.

6. This Condonation application was referred for consideration by a single member in Chambers.

APPLICABLE SECTIONS OF THE ACT AND CASE LAW

7. Rule 34 (1)[1] states "A party may apply to the Tribunal in Form TTr.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".
8. Rule 34 (2) states "The Tribunal may grant the order on good cause shown."
9. 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].
10. 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.
11. 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:
- 11.1 the nature of the relief sought;
 - 11.2 the extent and cause of the delay;
 - 11.3 the effect of the delay on the administration of justice and other litigants;
 - 11.4 the reasonableness of the explanation for the delay;
 - 11.5 the importance of the issue to be raised in the intended appeal; and
 - 11.6 the prospects of success[5]
12. 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."
13. From the dictum in *Melane* it was held that these factors are interrelated and should not be considered separately.

CONSIDERATION OF THE MERITS

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

- 14.1 The application for condonation Is NOT opposed by the Respondents;
- 14.2 The Applicant has submitted substantial reasons in motivation of this condonation Application;
- 14.2.1 The delays in filing the Applicant's Replying Affidavit were beyond the Applicant's control;
- 14.2.2 The Applicant is determined to pursue their Objection to the Compliance Notice
15. The Tribunal finds that the factors listed above constitute good cause under these specific circumstances:

ORDER

16. Accordingly, for the reasons set out above. the Tribunal makes the following order.
- 16.1 Condonation is hereby granted to the Applicant for the late filing of its Replying Affidavit;
- 16.2 As the late filing of the Applicant's Replying Affidavit has been condoned, the normal time periods and processes that take place after the filing of the Applicant's Replying 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
- 16.3 No order is made as to costs.

DATED ON THIS 11th day of June 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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