

SOUTH AFRICA / JUDGMENT

National Consumer Commission v Claremont Holdings (Pty) Ltd T/A Claremont VW (NCT/252538/2022/101(1)) [2023] ZANCT 51 (11 August 2023)

[2023] ZANCT 51

COURT

National Consumer Tribunal

BEFORE

PT Manzi-Ntshingila

CASE / FILE NUMBER

NCT/252538/2022/101(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

Number: NCT/252538/2022/101(1)

In

the condonation
application of:

NATIONAL
CONSUMER COMMISSION APPLICANT
and
CLAREMONT
HOLDINGS (PTY) LTD T/A CLAREMONT VW RESPONDENT
In

re:

CLAREMONT HOLDINGS (PTY)
LTD T/A CLAREMONT VW APPLICANT
NATIONAL
CONSUMER COMMISSION RESPONDENT

Coram:

Ms. PT Manzi-Ntshingila -
Presiding Tribunal member
Date
of consideration (in chambers) - 8 August 2023
Date
of ruling - 11 August 2023

RULING**AND REASONS****(CONDONATION FOR THE LATE FILING OF AN ANSWERING AFFIDAVIT)****THE PARTIES**

1. The applicant in this condonation application is the National Consumer Commission (NCC), a regulatory body established in terms of section 85 of the Consumer Protection Act, 2008 (the CPA). The NCC is the respondent in the main matter.
2. The complainant, Vuyolwethu Goni, is a consumer, as defined in section 1 of the CPA (the complainant).
3. The respondent in this condonation application is Claremont Holdings (Pty) Ltd t/a Claremont VW (VW), a business located at 76 Chichester Road, Claremont, Cape Town. VW is the applicant in the main matter.
4. VW has bought an application in terms of section 101 to review a compliance notice the NCC issued against it.

TERMINOLOGY

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

APPLICATION TYPE

7. In this application, the NCC seeks condonation in terms of rule 34(1) for the late filing of its answering affidavit which was due on 10 February 2023.
8. VW has not opposed this application for condonation, and the application is accordingly considered on an unopposed basis.

BACKGROUND

9. The complainant alleges that she purchased a Jeep Compass 2.0 from the respondent on 31 May 2018 for R105 004.83. Within three (3) months of the purchase on 20 August 2018, the vehicle displayed engine defects, which he reported to VW. Despite the complainant's requests, VW failed or refused to repair the defective engine issues, and the complainant, therefore, demanded a cancellation and a refund of the purchase price.

10. The complaint was referred to the Motor Industry Ombudsman of South Africa, which closed its file because it was unable to resolve the complaint. The complainant then lodged a complaint with the NCC on 4 June 2020. The NCC attempted to investigate the complaint, but VW did not co-operate with the NCC investigators.
11. Consequently, on 18 October 2022, the NCC issued a compliance notice in terms of section 100(1),[2] where VW was found to have sold a vehicle that did not comply with the requirements and standards set out in the CPA and had failed to refund the complainant or repair the vehicle.
12. VW's conduct allegedly amounted to a violation of violated section 56(2)(a) read with section 4(2)(ii) (bb). VW was called on to repair the vehicle and or refrain from conducting itself contrary to the CPA or the compliance notice.
13. On 28 November 2022, VW objected to the compliance notice and filed an application with the Tribunal in terms of section 101(1) to review the compliance notice. Although the application was out of time, the Tribunal condoned the application in a ruling dated 24 January 2023.
14. After the ruling was issued on 24 January 2023, the NCC was given 15 business days to file its answering affidavit to the review application that expired on 14 February 2023. However, the answering affidavit was filed outside of the Tribunal hours on 16 February
2023. The answering affidavit was subsequently rejected for lateness and the NCC had to bring this application to condone the lateness.
15. This application was finally submitted on 31 March 2023 and the Registrar issued a filing notice on 04 April 2023.
16. The NCC submitted that the first draft of the answering affidavit was received on 14 February 2023 and the deponent required certain amendments to be made, which was done on 15 February 2023. However, the answering affidavit could not be signed on the same day as the NCC's representative was not available due to prior work commitments. The answering affidavit was subsequently signed on 16 February 2023 and served on the same day.
17. The NCC detailed the sequence of events and the reasons for the late filing of its answering affidavit, which was supported by a paper trail. The NCC conceded that the application was filed outside the prescribed period but emphasized that the initial application was filed on 16 February 2023, which was 1 day late and, therefore, not a significant delay. The condonation application was ultimately served on the Registry on 31 March 2023 and the notice of filing was issued on 04 April 2023.

LEGAL PRINCIPLES

18. 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”.^[3] It can also be defined as “overlook or forgive (wrongdoing)”.^[4]
19. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*,⁵ it was held that the standard of considering an application of this nature is the interest of justice.
20. It Whether it is in the interest of justice to grant condonation depends on each case’s facts and circumstances. It requires the exercise of discretion based on an objective conspectus of all the facts. The relevant factors 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 in the intended appeal and the prospects of success.^[5]
21. In *Melane v Santam Insurance Company Limited*⁷, it was held that the court has a discretion, to be exercised judicially upon considering all the facts. 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 interrelated and are not individually decisive. What is needed is an objective conspectus of all the facts.

CONSIDERATION OF THE EVIDENCE

22. This condonation application is very important to the complainant who purchased a motor vehicle only for it to break down within three (3) months of purchase. In terms of the agreement between the parties, the complainant expected to receive a fully functional vehicle, which he appears not to have gotten. There was also no actual assistance from the respondent for five years following the vehicle’s purchase. Not allowing this condonation would, therefore, be greatly disadvantageous to the complainant.
23. The NCC conceded to the initial late filing of a few days. There is nothing to suggest that the subsequent delay was intentional or a malicious disregard of the rules.
24. The NCC alleges that VW lacks standing to launch the review application and has not raised a defence in law. These issues need to be sufficiently ventilated at a formal hearing justifying the condonation of the NCC’s late filing of its answering affidavit.
25. The Tribunal has considered these factors and is persuaded that it is in the interests of justice to grant the condonation application.

ORDER

26. Accordingly, the Tribunal makes the following order:
 - 31.1. The NCC’s application to condone the late filing of its answering affidavit is granted.

31.2. The respondent is to file its replying affidavit within 15 business days of this ruling being issued.

31.3. There is no cost order.

[SIGNED]

Ms. PT Manzi-Ntshingila

[1] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

[2] 100 (1) Subject to sub-section (2), the Commission may issue a compliance notice in the prescribed form to a person or association

of persons whom the Commission on reasonable grounds believes has engaged in prohibited conduct. (2) Before issuing a notice in terms of subsection (1) to a regulated entity, the Commission must consult with the regulatory authority that issued a licence to that regulated entity.

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of persons whom the Commission on reasonable grounds believes has engaged in prohibited conduct.

(2) Before issuing a notice in terms of subsection (1) to a regulated entity, the Commission must consult with the regulatory authority that issued a licence to that regulated entity.

[3] Oxford English Dictionary, Second Edition at pg 151.

[4] Collins English Dictionary and Thesaurus, Fourth Edition 2011, at pg

170. 5 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. 7 1962 (4) SA 531 (A) at 532C-F.

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Prepared on 9 October 2026 · Esheria