

SOUTH AFRICA / JUDGMENT

## National Credit Regulator v Coco's Cash Loans (Pty) Ltd In Re National Credit Regulator v Coco's Cash Loans (Pty) Ltd (NCT/116729/2018 57(1)NCA) [2019] ZANCT 104 (8 July 2019)

[2019] ZANCT 104

COURT

National Consumer Tribunal

BEFORE

J Simpson

CASE / FILE NUMBER

NCT/116729/2018 57(1)NCA

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/116729/2018 57(1) NCA – Rule 34

In the matter between:

NATIONAL CREDIT REGULATOR APPLICANT

And

COCO'S CASH LOANS PTY LTD RESPONDENT

IN RE:

Coram:

Adv J Simpson

– Presiding member

CONDONATION RULING AND REASONS

APPLICANT

1. The Applicant in this matter is the National Credit Regulator (hereinafter referred to as “the NCR”). The NCR is also the Applicant in the main matter.

RESPONDENT

2. The Respondent is Coco's Cash Loans Pty Ltd, a registered credit provider (hereinafter referred to as "Coco's").

The Respondent is also the Respondent in the main matter.

## BACKGROUND

3. The NCR filed its original application against Coco's on 28 September 2018. The NCR is alleging that Coco's is a registered credit provider with 24 separate branches. During August 2017 it conducted raids on 6 of Coco's branches and found numerous instances of prohibited conduct in terms of the National Credit Act, 2005 ("the NCA"). The NCR is applying for the cancellation of Coco's registration, an administrative fine and an order that consumers be refunded.
4. The matter was set down on a default basis for hearing on 3 December 2018. On the day of the hearing a representative of Coco's appeared and requested a postponement of the matter. The matter was postponed to enable Coco's to file its answering affidavit and an application for condonation. On 15 January 2019 it filed its answering affidavit incorporating an application for condonation. On 5 April 2019 a single member of the Tribunal granted the condonation in a written ruling.
5. The matter was set down for hearing on 6 June 2019. On 4 June 2019 the NCR filed an application to condone the late filing of its replying affidavit. The matter was therefore removed from the 6 June 2019 hearing roll.
6. This ruling is to consider the application to condone the late filing of the replying affidavit.
7. In summary, the NCR submits that it had to file the replying affidavit by 30 April 2019. Coco's has raised numerous defences to the application that the NCR needs more time to consider and reply to. The investigation related to 6 separate branches and requires a substantial amount of time to consider properly. It submits that there is no substantial prejudice to Coco's.
8. In an emailed reply, the legal representative for Coco's stated that it would not be opposing the application for condonation.
9. The replying affidavit has not yet been filed.

## APPLICABLE SECTIONS OF THE ACT AND CASE LAW

10. 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.”
11. Rule 34 (2) states “The Tribunal may grant the order on good cause shown”.
12. Rule 14 states “The Applicant may within 10 business days of being served with an answering affidavit, lodge a replying affidavit to any new issues raised in the answering affidavit, other than a point of law”.
13. 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].
14. 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 the interests of justice.
15. 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, based on an objective conspectus of all the facts. Factors that are relevant include but are not limited to:
- 15.1 the nature of the relief sought;
- 15.2 the extent and cause of the delay;
- 15.3 the effect of the delay on the administration of justice and other litigants;
- 15.4 the reasonableness of the explanation for the delay;
- 15.5 the importance of the issue to be raised in the intended appeal; and
- 15.6 the prospects of success.[5]
16. 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. The courts have traditionally demonstrated their reluctance to penalize a litigant on account of the conduct of his representative but it emphasized that there is a limit beyond which a litigant cannot escape the results of the representative’s lack of diligence or the insufficiency of the information tendered. (Saloojee & Another NNO v Minister of Community Development 1965*

- (2) A 135 (A) 140H-141B; Buthelezi & Others v Eclipse Foundries Ltd 18 ILJ 633 (A) at 6381-639A.”
17. From the dictum in Melane it was held that these factors are interrelated and should not be considered separately.

#### CONSIDERATION OF THE MERITS

18. Based on the voluminous number of files and evidence submitted in this matter it appears to be of substantial complexity. The nature of the application has serious implications and a large number of branches are involved. It is therefore in the interests of justice that the NCR properly prepare its replying affidavit.
19. Coco's has not opposed the application.
20. The Tribunal must however note its concern that the replying affidavit has still not been filed.

#### CONCLUSION

21. The Tribunal finds that there is sufficient cause to grant the application to condone the late filing of the replying affidavit.

#### ORDER

22. Accordingly, for the reasons set out above, the Tribunal makes the following order:-
- 22.1 The Application to condone the late filing of the replying affidavit is granted. The replying affidavit must be filed within 10 business days of this ruling being issued; and
- 22.2 No order is made as to costs.

DATED ON THIS 8TH DAY OF JULY 2019

(signed)

Adv J Simpson

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.

- [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