

SOUTH AFRICA / JUDGMENT

Rogers v Motortown Western Province CC t/a Motorama (Condonation Ruling) (NCT/279189/2023/75(1)(b) - Rule 34) [2023] ZANCT 28 (18 September 2023) [2023] ZANCT 28

COURT

National Consumer Tribunal

BEFORE

Zodwa Ntuli

CASE / FILE NUMBER

NCT/279189/2023/75(1)(b) - Rule 34

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

(IN CHAMBERS)

Case Number: NCT/279189/2023/75(1)(b) - Rule 34

In the matter between:

KEVIN EDMUND ROGERS

APPLICANT

and

MOTORTOWN WESTERN PROVINCE CC T/A MOTORAMA

RESPONDENT

Coram:

Ms Zodwa Ntuli: Presiding Tribunal Member

Date of Consideration: 18 September 2023

Date of Ruling: 18 September 2023

CONDONATION RULING

Late filing of an application for leave to refer a matter directly to the Tribunal in terms of section 75(1)(b) under Rule 34

APPLICANT

1. The applicant is Kevin Edmund Rogers, an adult male, and a consumer, as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA).

RESPONDENT

2. The respondent is Motortown Western Province CC t/a Motorama, a close corporation registered in terms of the laws of South Africa under registration number 2007/033536/23 and a supplier as defined in section 1 of the CPA.

TERMINOLOGY

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

APPLICATION TYPE AND JURISDICTION

5. The applicant seeks an order condoning the late filing of the application for leave to refer a complaint directly to the National Consumer Tribunal ("Tribunal") in terms of rule 34.
6. In terms of section 27(a)(i) of the National Credit Act 34 of 2005 (the NCA), read with rule 34, the Tribunal has jurisdiction to consider this application.

BACKGROUND

7. The applicant applied for leave to directly refer a complaint to the Tribunal in terms of section 75(1)(b) after the National Consumer Commission (the NCC) issued a notice of non-referral for an alleged violation of the CPA.
8. According to the applicant, he offered to purchase a Renault Captur 900T Dynamique 5DR 2016 (the vehicle) on 8 December 2021 from the respondent and paid the full purchase price of R120 000 on 10 December 2021. The respondent delivered the vehicle on 13 December 2021. However, the respondent told him it was overheating and advised that the applicant take it to a mechanic at the respondent's cost. The mechanic repaired the vehicle, but on 15 January 2022, it overheated again and was towed back to the mechanic.
9. The mechanic could not repair the vehicle this time, and the applicant asked the respondent to reimburse him for all the costs of repairs. The respondent declined, and the applicant requested the full value of the purchase price to be refunded as the respondent sold him a defective product that he failed to repair. The respondent also failed to give the applicant the correct ownership papers for the vehicle.

10. The applicant complained to the Motor Industry Ombudsman of South Africa (MIOSA), and upon assessment, they said there was no reasonable possibility that the matter would be resolved and closed their file. The applicant complained to the NCC, which stated that the remedy requested was not possible under the CPA and that the respondent was untraceable. The NCC issued a notice of non-referral on 20 October 2022.
11. The applicant approached the Tribunal as permitted under section 75(1)(b) and sought a refund of the purchase price and the costs incurred for the repairs of the defective vehicle. The respondent allegedly failed to disclose the defects in the vehicle and refused to repair or refund the purchase price in violation of sections 55 and 56. The applicant avers that sections 69 and 72 allow him to enforce his rights under the CPA.
12. The Tribunal registrar issued the filing notice on 20 July 2023, confirming that the applicant has complied with the filing requirements. The applicant served the application on the respondent and provided proof of service. The matter was enrolled as unopposed, as the respondent did not file opposing papers.
13. However, the applicant's leave-to-refer application was filed outside the 20 days set in the rules. Hence, the request for the Tribunal to condone the late filing.

REASONS FOR THE LATE FILING

14. According to the applicant, he received the notice of non-referral on 20 October 2022 and immediately filed his application for leave to refer with the Tribunal in November 2022. His application was rejected twice because it did not meet the requirements. The applicant sought assistance from Clientele Legal, which initially allocated a lawyer based in Johannesburg. In April 2023, Clientele Legal gave him a new lawyer who assisted him in preparing and filing his application. The delay was thus caused by the applicant's lack of understanding of the Tribunal processes and the time required to prepare and file the application after getting the lawyer.

ISSUES TO BE DECIDED

15. The Tribunal is required to decide whether the applicant has shown good cause for condonation to be granted.

THE LAW

16. Section 150 (e) of the NCA states that in addition to its other powers under the NCA, the Tribunal may make an appropriate order concerning prohibited conduct or required conduct in terms of the NCA or the CPA, including condoning any non-compliance with its rules and procedures on good cause shown.
17. Rule 34 (1) provides, "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.”
18. Rule 34 (2) provides, “The Tribunal may grant the order on good cause shown.”
19. 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 as “overlook or forgive (wrongdoing)”.^[3]
20. 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.
21. The facts and circumstances of each case would determine if it was in the interest of justice to grant condonation. 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]
22. In *Melane v Santam Insurance Company Limited*,^[6] 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 degree of lateness, the explanation for it, the prospects of success, and the importance of the case. These facts are interrelated and are not individually decisive. An objective conspectus of all the facts is needed.

CONSIDERATION OF THE MERITS

23. The applicant filed twice in November 2022, but the application was rejected for non-compliance. As a layperson, he did not understand the Tribunal processes. It was only after he got a lawyer that he filed properly. The explanation for the delay is reasonable. Although the delay is substantial, there was no wilful disregard for the rules of the Tribunal.
24. The applicant said he has already paid R120 000 for the purchase price plus the costs of repairs, which the respondent refused to reimburse. He also incurred public transport costs as he could not use the defective vehicle. Therefore, according to him, he would be prejudiced, and his constitutional right would be violated if the Tribunal did not grant this condonation.
25. The applicant has exhausted all alternative remedies to get relief under the CPA in vain. The applicant has a right^[7] to have the dispute heard by the Tribunal as it relates to sections 55 and 56 of the CPA, which falls within the parameters of the

Tribunal's mandate. The Tribunal is the competent forum.

26. Section 55 guarantees consumers a right to receive goods of good quality and free of defects. Section 56 entitles consumers to direct the supplier to repair, replace, or refund the consumer for defective goods. The respondent allegedly violated the provisions of the CPA. The referral application is seemingly not barred by section 116. The applicant has reasonable prospects of success.
27. The application is unopposed, and according to rule 13(5), any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit will be deemed admitted. Rule 25(2) allows the applicant to apply for a default order if no response to the application was filed within the time prescribed.
28. Based on the above, the Tribunal should hear this matter in the interest of justice. The Tribunal is satisfied that the applicant has shown good cause for condonation to be granted.

ORDER

29. Accordingly, the Tribunal makes the following order:

29.1 The condonation for the late filing of the application for leave to refer a complaint directly to the Tribunal is granted;

29.2 The respondent may file its answering affidavit within 15 business days of the ruling being issued; and

29.3 There is no order as to costs.

[SIGNED]

Ms Z. Ntuli

Presiding Tribunal Member

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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

- [3] Collins English Dictionary and Thesaurus, Fourth Edition 2011, at pg 170.
- [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.
- [7] Section 34 of the Constitution of South Africa, 1996
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Prepared on 12 October 2026 · Esheria