

SOUTH AFRICA / JUDGMENT

Capvino Cash Loans CC v National Credit Regulator (NCT/76167/2017/140(1)NCA - Rule 34) [2017] ZANCT 92 (30 June 2017) [2017] ZANCT 92

COURT
National Consumer Tribunal

BEFORE
H Devraj

CASE / FILE NUMBER
NCT/76167/2017/140(1)

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IN THE NATIONAL
CONSUMER TRIBUNAL
HELD IN
CENTURION

Case

Number: NCT/76167/2017/140(1)

NCA – Rule 34

In

the matter between: CAPVINO
CASH LOANS CC
APPLICANT
and
THE
NATIONAL CREDIT REGULATOR
RESPONDENT

Coram: Mrs
H Devraj – Presiding member
CONDONATION

JUDGMENT**APPLICANT**

1. The Applicant in this matter is Capvino Cash Loans CC, a registered credit provider (hereinafter referred to as “the Applicant”).

The Applicant is the Respondent in the main matter.

RESPONDENT

2. The Respondent in this matter is the National Credit Regulator (“the NCR” or “the Respondent”), a juristic person established in terms of section 12 of the National Credit Act, 2005 (“the Act”). The Respondent is the Applicant in the main matter.

BACKGROUND

3. The Respondent conducted an investigation into the activities of the Applicant on or about 28 August 2015.
4. During February 2017, the Respondent lodged an application with the Tribunal in terms of Section 140(1) of the National Credit Act. The Notice of Complete Filing was sent to the parties on 02 March 2017.
5. Rule 13 of the NCT Rules[1] requires the Respondent to file an answering affidavit should the Respondent intend to oppose a matter.
6. The Applicant completed and submitted the application for condonation and supporting affidavit in March 2017. The condonation application was initially incomplete and a notice of complete filing in respect of the condonation application was issued by the NCT Registrar on 24 April 2017.
7. The Applicant submitted that he intended to file an answering affidavit timeously. However, as he is based in the Western Cape and his legal team is based in Gauteng , communication was difficult. Furthermore, the Applicant submits that he is Chinese and speaks mandarin which also impacted on the communication. The Applicant had entered into settlement negotiations with the Respondent.
8. The Respondent has not filed any opposing affidavit in respect of the condonation application.

APPLICABLE SECTIONS OF THE ACT AND CASE LAW

9. Rule 34 (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. Rule 13 (1) states “Any person required by these Rules to be notified of an application or referral to the Tribunal may oppose the application or referral by serving an answering affidavit on:
- (a) the Applicant; and
 - (b) every other person on whom the application was served.

13(2) An answering affidavit to an application or referral other than an application for interim relief must be served on the parties and filed with the Registrar within 15 business days of the date of the application”.

12. 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].
13. 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.
14. 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:
- 1. the nature of the relief sought;
 - 2. the extent and cause of the delay;
 - 3. the effect of the delay on the administration of justice and other litigants;
 - 4. the reasonableness of the explanation for the delay;
 - 5. the importance of the issue to be raised in the intended appeal; and
 - 6. the prospects of success[5]
15. 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. (Salojee & 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).”

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

CONSIDERATION OF THE MERITS

17. The Tribunal notes the delay in the number of days for the filing of the condonation application and does not find this to be an excessive period of time. There is no reason to disbelieve the Applicant's reasons for not filing an answering affidavit. Furthermore, the Respondent has not opposed the condonation application for the late filing of the answering affidavit and on this basis, the Respondent will not be prejudiced in this matter. The Tribunal therefore, accepts the reasons advanced by the Applicant for the late filing of its answering affidavit.
18. The allegations made by the Respondent are of a serious nature and the Applicant should be given an opportunity to respond to these

issues.

This matter is therefore important to both the parties.

19. The Tribunal finds that the factors listed above constitute good cause in these specific circumstances. The Tribunal therefore grants the condonation for the late filing of the Answering Affidavit.

ORDER

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

19.1 Condonation is hereby granted to the Applicant for the late filing of the answering affidavit.

19.2 The answering affidavit must be served on the Respondent and filed with the Tribunal within 15 business days of receipt of this order.

19.3 No order is made as to costs.

DATED ON 30 June 2017

[Signed]

Presiding Member

Mrs H Devraj

[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 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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