

**IN THE NATIONAL CONSUMER TRIBUNAL,
SITUATED IN CENTURION**

Case Number: NCT/244674/2022/141(1)(b)-Rule 34

In the condonation application between:

TLANGELANI NAUGHTY SHIKWAMBANA

APPLICANT

and

BERNICE KOEKEMOER (NCRDC760)

RESPONDENT

In re:

TLANGELANI NAUGHTY SHIKWAMBANA

APPLICANT

and

BERNICE KOEKEMOER (NCRDC760)

RESPONDENT

Coram:

Dr A Potwana - Presiding Tribunal member

CONDONATION RULING

(Late filing of an application for leave to refer a complaint to the Tribunal)

THE PARTIES

1. The Applicant is Tlangelani Naughty Shikwambana, an adult male person.
2. The Respondent is Bernice Koekemoer, an adult female registered as a debt counsellor with the National Credit Regulator (NCR) under the registration number: NCRDC760.

APPLICATION TYPE AND JURISDICTION

3. In this application, the Applicant seeks condonation for the late filing of his application for leave to refer a complaint to the Tribunal after the NCR issued a Notice of Non-Referral in response to his complaint. In terms of section 142(3)(c) of the National Credit Act 34 of 2005 (NCA), applications to permit the late filing

of documents may be heard by a single member of the Tribunal. In terms of section 27(a)(i) of the NCA read with rule 34 of the Tribunal Rules,¹ the Tribunal has jurisdiction.

INTRODUCTION

4. On 14 October 2022, the Applicant filed an application in terms of section 141(1)(b) of the NCA with the Tribunal's Registrar (Registrar) and a condonation application for the late filing of the same using Form TI.r30A. The application in terms of section 141(1)(b) of the NCA is contained in NCR Form 32. The condonation application was made using the prescribed form for applying for condonation, Form TI.r34. The Applicant's affidavit in support of the condonation application is appended to the said Form TI.r34.

FACTS

5. In his affidavit filed in support of the condonation application, the Applicant submitted that the reason for the late filing was that it was difficult for him to complete his application documents due to their legal nature. In addition, he could not visit the Tribunal's offices due to the Covid 19 lockdown restrictions. He submitted that the late filing should be condoned because he and his family suffered financially and emotionally as a result of how his accounts were handled when he joined debt counselling. His levy and municipal account were handed over for debt collection. His daughter could not finish her college studies, and his last born's school handed over his account for debt collection. He stated that the interest rates were inflated when he was placed under debt review.
6. It appears from "*Part 3 – Reasons, Relief and Leave Required*" of the filed NCR Form 32 that the Applicant alleges that the Respondent violated his rights as a client by allowing his creditors to charge excessive interest rates. In particular, the Respondent failed to negotiate reasonable interest rates with some credit providers and failed to inform him that she did not reach an agreement for lower interest rates with some credit providers. This resulted in him being under debt review for exactly eight years. The Applicant wants a "*review of all my accounts based on a reasonable rate and be back dated to the date I started with the debt councillor in 2014.*" (*sic in toto*)
7. It appears from the contents of the NCR's letter dated 8 March 2021 that the Applicant filed a complaint with the NCR. The NCR concluded that the Applicant's complaint does not allege any facts which, if true, would constitute a ground for a remedy under the NCA and issued a Notice of Non-referral dated 30 March 2021.
8. On 17 October 2022, the Registrar issued a Notice of Filing – Rule 34 and served it to the parties.

¹ Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal, 2007 (as amended).

9. On 31 October 2022, the Respondent served and filed an opposing affidavit. In her affidavit, the Respondent submitted that the Applicant had to bring his application on 8 April 2021. From 1 March to 30 May 2021, South Africa was on adjusted alert level 1. Thereafter, the country was moved to level 2 until 15 June 2021. The national lockdown was lifted on 5 April 2022. During the 20 business days within which the Applicant had to file his application, citizens were permitted to move freely in South Africa, and the Applicant would have been able to visit the Tribunal's offices and comply with the Tribunal Rules. The Applicant has not explained to the Tribunal the real reasons for filing his application late. The Applicant's claim that it was difficult to complete the referral documents is without merit because the Applicant completed the Form 29 complaint to the NCR, which, in essence, is the same as Form 32. The application should be dismissed with costs.

THE LAW

10. Column c of Item 29, Part 2A of Table 2 of the Tribunal Rules provides that a referral of a complaint to the Tribunal following the NCR's non-referral of a complaint must be made within twenty business days of the notice of non-referral or within a longer period permitted by the Tribunal.

11. Rule 34 (1) of the Tribunal Rules states –

“A party may apply to the Tribunal in Form Tl 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.”*

12. Rule 34 (2) of the Tribunal Rules states that *“The Tribunal may grant the order on good cause shown”*.
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. 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. 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 discretion on an objective conspectus of all the facts.

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].

14. In *Melane v Santam Insurance Company Limited*,⁵ 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.”

15. In *Van Wyk v Unitas Hospital and Others*,⁶ the Constitutional Court held that factors that are relevant *“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.”* The Constitutional Court went further and stated-

“An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And what is more, the explanation given must be reasonable. The explanation given by the Applicant falls far short of these requirements. Her explanation for the inordinate delay is superficial and unconvincing.”

16. Before dismissing the application for condonation, the Constitutional Court stated-

“A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interests of justice.”

CONSIDERATION OF THE MERITS

17. In evaluating whether the Applicant has shown good cause which in the interests of justice favour the granting of the condonation application, I shall consider the extent of the delay and the reasons for the delay. The Applicant filed the application for condonation more than 18 months after the NCR issued a Notice of Non-Referral. As pointed out by the Respondent, the reasons submitted by the Applicant for the

⁵ 1962 (4) SA 531 (A) at 532C-F.

⁶ 2008(4) BCLR 442 (CC) (*Van Wyk*).

delay are implausible and do not cover the entire period of the delay. As the Constitutional Court stated in Van Wyk, “[T]o grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interests of justice.”

CONCLUSION

18. In view of the above, I find that the Applicant has not shown good cause for condonation to be granted.
19. Concerning costs, I find no basis for awarding costs against the Applicant.

ORDER

20. Accordingly, for the reasons set out above, the Tribunal makes the following order: -
 - 20.1. the Applicant’s application for condonation for the late filing of his application for leave to refer a complaint to the Tribunal is refused; and
 - 20.2. no order is made as to costs.

Thus, done and signed on 21 December 2022.

[signed]

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Dr A Potwana
Presiding Tribunal Member

Authorised for issue by The National Consumer Tribunal

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