

**IN THE NATIONAL CONSUMER TRIBUNAL  
HELD IN CENTURION**

**Case Number: NCT/120871/2018/57(1) Rule 34**

In the matter between:

**VAALPARK GENERAL TRADING (PTY) LTD**

**APPLICANT**

and

**NATIONAL CREDIT REGULATOR**

**RESPONDENT**

**IN RE:**

**NATIONAL CREDIT REGULATOR**

**APPLICANT**

and

**VAALPARK GENERAL TRADING (PTY) LTD**

**RESPONDENT**

Coram:

Ms H Devraj: Presiding member

Date received for adjudication: 15 April 2019

Date of this ruling: 19 April 2019

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**CONDONATION RULING- FOR THE LATE FILING OF AN ANSWERING AFFIDAVIT**

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**INTRODUCTION**

1. In this application for condonation:
  - 1.1. The Applicant, which is the Respondent in the main matter, is Vaalpark General Trading (Pty) Ltd. The Applicant is a registered credit provider with the National Credit Regulator (NCR); with registration number NCRCP6687;
  - 1.2. The Respondent, which is the Applicant in the main matter, is the National Credit Regulator, a juristic person established by section 12 of the National Credit Act, 34 of 2005 (the Act); and

- 1.3. For ease of reference in this interlocutory application, the Applicant will be referred to as “Vaalpark General Trading” and the Respondent will be referred to as “the NCR”.

## **BACKGROUND**

2. In the main matter; the NCR seeks an order to declare Vaalpark General Trading to be in repeated contraventions of various sections of the Act and Regulations. The NCR also seeks an order against Vaalpark General Trading to refund consumers that were overcharged on interest, fees, charges; and to appoint an independent auditor to identify loans that were granted recklessly. In the result, the NCR also moved for de-registration of Vaalpark General Trading and for the imposition of an administrative fine.
3. In summary, the NCR alleged that Vaalpark General Trading entered into credit agreements without conducting proper affordability assessments; entered into reckless credit agreements; overcharged consumers on interest, fees, charges; and contained unlawful provisions in its credit agreements.
4. On 22 November 2018, the NCR lodged the application in the main matter before the National Consumer Tribunal.
5. In terms of Rule 13 of the Tribunal Rules<sup>1</sup>, Vaalpark General Trading was required to file its Answering Affidavit within 15 business days of receiving the application. The NCR served the application on Vaalpark General Trading, via courier on 20 November 2018. In light of this, Vaalpark General Trading was required to file its Answering Affidavit by 11 December 2018.
6. On 12 February 2019, Vaalpark General Trading applied for condonation in terms of Rule 34 for the late filing of its Answering Affidavit.

## **ISSUE TO BE DECIDED**

7. The issue I am required to decide is whether the application to condone the late filing of the Answering Affidavit should be granted or not.

## **BRIEF FACTS BY THE RESPONDENT IN THE MAIN MATTER**

Reasons for the lateness

8. Vaalpark General Trading submitted that upon receipt of the application on 20 November 2018; it commenced putting together a response to the allegations made against it. However, due to the complexity and seriousness of the issues; it decided to appoint an attorney to handle this matter. The

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<sup>1</sup> 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). As amended.

attorney and counsel were available on 26 November 2018 for consultation. According to Vaalpark General Trading; the legal representatives required various documents before they could advise on the matter. It was a time-consuming exercise to put together the voluminous information; as the investigation had taken place in 2016 and the main application consisted of approximately 1000 (one thousand) pages. A further complication is that the owner of Vaalpark General Trading is a Chinese national and required the allegations contained in the main application to be translated.

9. Vaalpark General Trading averred that the legal representatives were not available during the festive season and it submitted the required documentation to its legal representatives in February 2019. On 12 February 2019, Vaalpark General Trading filed and served its Answering Affidavit.

#### *Prejudice*

10. Vaalpark General Trading submitted that the NCR and consumers would not be prejudiced if the condonation for the late filing of its Answering Affidavit is granted. However, it will be severely prejudiced. Furthermore, it should be allowed the opportunity to state its case in terms of the *audi alterum partem* rule.

#### **THE NCR's OPPOSITION TO THE CONDONATION APPLICATION**

11. The NCR did not oppose the condonation application.

#### **LEGAL PRINCIPLES**

12. It is convenient to set out the relevant statutory and regulatory provisions as well as the case law governing the condonation application.

13. Rule 34 (1) states -

*"A party may apply to the Tribunal in Form T1 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."*

14. Rule 34 (2) states that the Tribunal may grant the order on good cause shown.

15. Rule 3(2)(c) provides that:

*"The Tribunal may consider applications related to an adjudication process—*

- (i) to intervene in proceedings in terms of rules 11 and 12;*

- (ii) to amend documents in terms of rule 15;*
- (iii) to change the forum at which a matter will be heard in terms of section 140 (4) or 141*
  - (2) (a);*
- (iv) to condone non-compliance with the rules and proceedings of the Tribunal;*
- (v) for an order of substituted service in terms of rule 30;*
- (vi) to grant a default order in terms of rule 25; or*
- (vii) relating to other procedural matters”;*

16. Rule 4(2) provides that:

*“If an application relates to a matter contemplated in rule 3 (2) (c) that is not specifically provided for in Table 2, the Applicant must:*

- (a) apply by way of Notice of Motion in Form T1.r4;*
- (b) append a supporting affidavit setting out the facts on which the application is based;*
- (c) serve the Notice and affidavit on the Respondent and other parties to the matter; and*
- (d) file the application documents and proof of service with the Registrar.”*

17. Rule 13 (1) and (2) respectively provide that :

***“Opposing an application or referral***

*(1) Any Respondent to 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.*

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

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”<sup>2</sup>. It can also be defined to mean “overlook or forgive (wrongdoing)”<sup>3</sup>.

19. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*<sup>4</sup> it was held that the standard for determining an application of this nature is the interests of justice.

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<sup>2</sup>Oxford English Dictionary, Second Edition at pg 151.

<sup>3</sup>Collins English Dictionary and Thesaurus, Fourth Edition 2011, at pg170.

<sup>4</sup>2003 (11) BCLR 1212 (CC) at para[11].

20. Whether it is in the interests 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. 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.<sup>5</sup>

21. In *Melane v Santam Insurance Company Limited*<sup>6</sup> it was held that:

*“In deciding whether sufficient cause has been shown, the basic principle 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 therefor, the prospects of success and the importance of the case. Ordinarily these facts are inter-related; they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. And the Respondent’s interests in finality must not be overlooked*

22. The dictum in *Melane* reveals that these factors are interrelated and should not be considered separately.

## CONSIDERATION OF THE MERITS

23. I now turn to the merits of the condonation application.

### *Background*

24. This matter has a long history. It was initially set down for a hearing on 14 February 2019, on a default basis. The matter was subsequently removed from the roll. This was due to the filing of the condonation application by Vaalpark General Trading on 12 February 2019; for the late filing of its Answering Affidavit.

### *Lateness*

25. According to Rule 13(2) of the Tribunal Rules, Vaalpark General Trading should have filed its Answering Affidavit within 15 business days of receiving the application. The main application was served on Vaalpark General Trading on 20 November 2018. Based on the submissions

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<sup>5</sup> *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.

<sup>6</sup> 1962 (4) SA 531 (A) at 532C-E.

made by Vaalpark General Trading, it is clear that it was unable to respond to the serious allegations made against it within the 15 day period. It also required time to put together the documentation in order to respond to the extensive voluminous application; into credit agreements that were entered into in 2016. The Tribunal accepts the explanation provided for the late filing of the Answering Affidavit.

*Prejudice*

26. In my view, Vaalpark General Trading will suffer prejudice if it is not provided with an opportunity to respond to the serious allegations against it.

*Prospects of success and importance of the main matter*

27. This matter is important to Vaalpark General Trading and the allegations raised are serious. One of the orders sought by the NCR is that of de-registration. This will have dire consequences for Vaalpark General Trading.

**CONCLUSION**

28. With regard to the condonation for the late filing of the Answering Affidavit; I am persuaded that it is important that Vaalpark General Trading be provided with the opportunity to respond to the issues raised by the NCR. It is also in the interests of justice that all the facts are placed before the Tribunal and that the condonation application be granted. This will enable the parties to fully ventilate their respective cases before the Tribunal.

**ORDER**

29. Accordingly, the Tribunal orders that:

- 29.1. The condonation application for the late filing of the Answering Affidavit is granted;
- 29.2. The NCR must file its Replying Affidavit within 10 days of receipt of this ruling; and
- 29.3. There is no order as to costs.

Thus handed down; in **Centurion**; this **19<sup>th</sup>** Day of **April 2019**

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**H DEVRAJ**  
**PRESIDING MEMBER**