

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

Case Number: **NCT/130744/2019/Section 56 (1)**

In the matter between

**MARK JAMES FULTON**

**APPLICANT**

and

**THE NATIONAL CREDIT REGULATOR**

**RESPONDENT**

Coram:

Prof Tanya Woker – Presiding member

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**CONDONATION JUDGMENT**

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**INTRODUCTION**

1. The Applicant is Mark James Fulton a debt counsellor registered with the National Credit Regulator (NCR) in terms of the National Credit Act, 2005 ( "the Applicant").
2. The Respondent is the NCR a juristic person established by section 12 of the National Credit Act, 2005 (NCA) tasked with the responsibility of *inter alia* monitoring registrants in the consumer credit market to ensure that prohibited conduct is prevented or detected and prosecuted<sup>1</sup> ("the Respondent" or "the NCR").

**BACKGROUND**

3. On 8 May 2019 the Applicant received a Notice of Compliance in terms of section 55 of the Act from the NCR ("the notice"). The notice stated that an investigation by the NCR had revealed that the Applicant was contravening certain provisions of the Act and he was required to take certain steps in order to address the said areas of non-compliance.
4. The NCA provides that any person who is issued with such a notice may apply to the National Consumer Tribunal ("the Tribunal") in the prescribed manner or form to review the notice within

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<sup>1</sup> See section 15 (d) of the NCA.

15 days of having received that notice;<sup>2</sup> or such longer period as may be allowed by the Tribunal on good cause shown.<sup>3</sup>

5. On 13 May 2019 the Applicant informed the Respondent that he disputed the allegations contained in the notice and that he would be submitting an objection to the notice to the Tribunal.
6. On 29 March 2019 the Applicant forwarded an NCR Form 14 which is headed *National Credit Regulator, Objection to the Notice in terms of section 56* to the Respondent and the Tribunal.
7. On 2 April 2019 the Tribunal informed him via an emailed letter that his objection did not comply with the Tribunal rules<sup>4</sup> because certain documents (as required by the rules) needed to accompany the NCR Form 14.
8. The Applicant then set about ensuring that he complied with the rules. He received consent from the Respondent on 10 April 2019 to file all documents relating to the Tribunal process by email. He then filed the required documents with the Respondent on or about 16 April 2019 and he filed this application for an extension of time together with the required documents with the Tribunal and the Respondent on 24 April 2019.

#### ISSUE TO BE DECIDED

9. The issue I am required to decide is whether the Applicant's late filing of certain documents (required by the Tribunal rules) to accompany his application for a review of a notice should be condoned. This judgment is concerned with that issue only

#### THE APPLICANT'S SUBMISSIONS

10. The Applicant believed that he had filed his application for a review timeously within the 15 business day period because he was under the impression that all he had to do was file the NCR Form 14. He only became aware of the fact that the Tribunal rules required the filing of further documents when he received the letter from the Tribunal.
11. Once he received this letter he immediately commenced drafting the required documents including an affidavit in support of his application for a review.

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<sup>2</sup> See section 56 (1) (a).

<sup>3</sup> See section 56 (1) (b).

<sup>4</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.

## THE RESPONDENT'S SUBMISSIONS

12. The Respondent has not opposed this application and has already filed its answering affidavit.

## LEGAL PRINCIPLES

13. The NCA provides in section 56 (1) (b) that the Tribunal may grant an extension of time in which to file an application for review "on good cause shown". Further, the Tribunal rules provide that a party may apply to the Tribunal for an order to condone the late filing of a document<sup>5</sup> and the Tribunal may grant condonation "on good cause shown".<sup>6</sup> Hence, it can be seen that both the NCA and the Tribunal rules make provision for late filing under these circumstances provided good cause is shown.
14. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*<sup>7</sup> it was held that the standard for considering an application of this nature is the interests of justice. Whether it is in the interests of justice to grant an extension of time depends on the facts and circumstances of each case. Factors that are relevant include but are not limited to:
- a. the nature of the relief sought;
  - b. the extent and cause of the delay;
  - c. the effect of the delay on the administration of justice and other litigants;
  - d. the reasonableness of the explanation for the delay;
  - e. the importance of the issue to be raised in the intended application; and
  - f. the prospects of success.<sup>8</sup>
15. Similar facts were also discussed by the court in the earlier case of *Melane v Santam Insurance Company Limited*<sup>9</sup> where it was pointed out that a court has a discretion that should be exercised judicially upon consideration of all the facts.

## CONSIDERATION OF THE MERITS

16. The Applicant filed the NCR Form 14 within the required 15 day period. This is a relatively simple document which supplies some basic general information. This general information states that the notice and supporting documentation (*if any*) (my emphasis) must be submitted to the Tribunal and the NCR. It does not state that supporting documentation is in fact required. The Tribunal rules however provide that certain documentation is required and must accompany the NCR Form 14. It is this documentation that the Applicant failed to supply within the 15 day period.

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<sup>5</sup> Rule 34 (1).

<sup>6</sup> Rule 34 (2).

<sup>7</sup>2003 (11) BCLR 1212 (CC) at para[11].

<sup>8</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>9</sup>1962 (4) SA 531 (A) at 532C-F.

17. Section 56 provides that the Applicant may apply to the Tribunal in *the prescribed manner and form* (my emphasis) which is a clear indication that there will be (in all likelihood) a process that needs to be followed. The Applicant is a registered debt counsellor and as such he should familiarise himself with the rules and processes of the Tribunal.
18. However, the Respondent has not opposed the application for an extension of time and has in fact simply filed its answering affidavit. It is clear from this that there will be no prejudice to the Respondent should the application be granted by the Tribunal.
19. In addition, the Respondent responded within a reasonable time after receiving the letter from the Tribunal indicating the documents he was required to file. Included in these documents is an affidavit in which he sets out those factors which he requires the Tribunal to consider when it reviews his objection to the notice of compliance.
20. In my view it is in the interests of justice that the Tribunal should consider the reasons why the Applicant objects to the notice he received from the NCR.

#### ORDER

21. Accordingly, for the reasons set out above, I make the following order:-

- (1) The application for condonation is granted; and
- (2) There is no order as to costs.

22. As the Respondent has already filed its answering affidavit, the normal time periods for the filing of a replying affidavit by the Applicant will apply from the date on which this judgment is issued by the Tribunal.

DATED ON THIS 21 day of May 2019

(signed)

T Woker

**Authorised for issue by National Consumer Tribunal**

**Case Number:** NCT/130744/2019/56(1)

Presiding Member

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