

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

Case Number: NCT/103657/2018/141(1)

In the matter between:

ANDRE DANIEL CRONJE

FIRST APPLICANT

And

SANDRA ANN CRONJE

SECOND APPLICANT

And

STANDARD BANK OF SA LTD

RESPONDENT

Coram:

FK Manamela – Presiding member

CONDONATION RULING

INTRODUCTION

1. In this application for condonation:
 - 1.1. the Applicants are Andre Daniel Cronje and Sandra Ann Cronje, a married couple who reside at Seaview Terrace, Port Alfred, Eastern Cape, (hereinafter, “the Applicants”)
 - 1.2. the Respondent, is the Standard Bank of South Africa Limited, a company incorporated in terms of the company laws of the Republic, and also a financial services provider registered in terms of the National Credit Act, 34 of 2005 under registration number NCRCP15, with its principal place of business being Simmonds Street, Johannesburg, (hereinafter, “the Respondent or Standard Bank”);

BACKGROUND

2. On 13 July 2016, the Applicants approached the National Credit Regulator (“the NCR”) to lodge a complaint against Standard Bank, by alleging amongst others, that Standard Bank:
 - 2.1. is engaged in reckless credit granting by extending credit to the Applicants without conducting proper affordability assessments, in contravention of the National Credit Act, (“NCA”);

- 2.2. entered into credit agreements with the Applicants without their consent, thereby rendering such agreements null and void; and
 - 2.3. failed to comply with section 129 of the NCA, by instituting legal proceedings against the Applicants while their case was still under investigation by the Ombudsman for Banking Services and the National Credit Regulator.
3. On 19 October 2017, the NCR issued a notice of non-referral in terms of section 139 (1) (a) of the NCA, after explaining to the Applicants that their allegations against Standard Bank had no merit. Upon receipt of the non-referral notice, the Applicants indicated their intent to approach the Tribunal to launch an application for leave to refer the complaint directly to the Tribunal.
 4. The Applicants had twenty business days (*from the date of the issuing of the non-referral notice*), within which to lodge their application for leave to refer directly to the Tribunal, but failed, hence this condonation application.

ISSUE TO BE DECIDED

5. I am required to decide in this condonation application, whether or not the Applicants' application to condone the late filing of the main application ("the leave to refer application") should be granted.

BRIEF FACTS

The Applicant

Lateness

6. The First Applicant submitted in his very brief affidavit that he requests the Tribunal to hear his complaint because the NCR has, over a period of more than a year, made two findings and none of those findings has addressed all the points listed in his complaint to the NCR. The Applicant further alleges that his complaints have substance, and relate certainly to contraventions of the law.

Prospects of success

7. The Applicant states that his complaints have substance, and relate certainly to contraventions of the law. Further that he seeks the assistance of the Tribunal to hear his complaint and adjudicate on it, so that justice can be served.

Prejudice

8. The Applicants seek the assistance of the Tribunal to hear their case, so that justice could be served.

The Respondent

9. The Respondent did not oppose the condonation application.

LEGAL PRINCIPLES

10. In order to determine the merits of this application, there are relevant statutory and regulatory provisions, as well as the case law governing this condonation application, which need some consideration.
11. Rule 34 (1) (a) of the Tribunal rules, provides that, a "*party may apply to the Tribunal in Form TI r.34 for an order to condone the late filing of a document or application*". Rule 34 (2) states that, "*the Tribunal may grant the order on good cause shown*".
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*"¹. It can also be defined to mean "*overlook or forgive (wrongdoing)*"².
13. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*³ it was held that the standard for determining an application of this nature is the interests of justice.
14. 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 a 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.⁴
15. In *Melane v Santam Insurance Company Limited*⁵ 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

¹Oxford English Dictionary, Second Edition at pg 151.

²Collins English Dictionary and Thesaurus, Fourth Edition 2011, at pg170.

³2003 (11) BCLR 1212 (CC) at para[11].

⁴*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.

⁵1962 (4) SA 531 (A) at 532C-E.

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...

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

CONSIDERATION OF THE MERITS

17. In consideration of the merits of this application, one has a judicious discretion to exercise, in deciding whether or not it is in the interests of justice to condone the late filing of the main application for leave. In order to arrive at a positive outcome in favour of the Applicant, the party seeking condonation must show good cause in order to persuade the Tribunal that it is entitled to such indulgence.

Lateness

18. The one Applicant, Andre Daniel Cronje, served the application papers in the main matter on the Respondent and filed with the Tribunal on 20 March 2018. This is five months after the NCR issued a notice of non-referral on 19 October 2017. This renders the filing of the documents late by about five months. The First Applicant then deposed to an affidavit in support of the condonation application on 23 March 2018;
19. The First Applicant states in the affidavit, the grounds for condonation as having filed the documents under a wrong section (section 137) after he was informed by the Tribunal staff to file under the correct section of the NCA (section 141 and Rule 34) - in order to process his application. According to him the initial filing, albeit under a wrong section, was on 7 December 2017. The Applicant states further that he believed that he followed the right procedure of ADR (alternative dispute resolution) when he approached the Ombudsman for Banking Services, who allegedly failed to advise him to approach the Tribunal; and later the NCR who issued the notice of non-referral. According to the First Applicant, the wrong filing under reference number NCT/94911/2017/137(3), was then withdrawn and substituted with a new application under section 141 together with the condonation application, thereby rendering the application being "on time", even after the withdrawal of the wrong application.

20. I am satisfied that the Applicant has not provided a reasonable explanation for the delay. This is also compounded by the absence of probable prospects of success in the main application, as would appear in paragraph 22 below.

Prejudice

21. The Respondent did not oppose this condonation application. Having taken that into account, I am satisfied that the Applicants will not suffer prejudice if they are denied the opportunity to be heard by the Tribunal, for the simple reason that the allegations levelled against Standard Bank bear no basis for a remedy under the NCA.

Prospects of success and importance of the main application

22. The NCR has fully addressed every allegation the Applicants have made against Standard Bank, and has given the reasons for each finding it has arrived at, in a 10-page document titled: *"Notice of non – referral issued by the National Credit Regulator in terms of section 139(1)(a) of the National Credit Act 34 of 2005"*. The close reading of the NCR's reasons for non-referral points to a diligent conclusion that the Applicants' allegations against Standard Bank, have no merit, and consequently, the main application would not yield any reasonable prospects of success.

CONCLUSION

23. I am persuaded, by reason of the afore-going that the Applicants have not shown good cause, and that it is in the interests of justice that this condonation application be refused.

ORDER

24. Accordingly, the Tribunal makes the following order:

24.1. the late filing of the main application under section 141 is NOT condoned; and

24.2. there is no order as to costs.

DATED ON THIS 11th DAY OF JUNE 2018

FK MANAMELA

PRESIDING MEMBER

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