

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

Case Number: NCT/122491/2018/165

In the matter between:

**SEWATUMONG MICRO LENDING CC**  
**t/a SEWATUMONG CASH LOANS**

**APPLICANT**

And

**NATIONAL CREDIT REGULATOR**

**RESPONDENT**

Coram:

FK Manamela – Presiding member

---

**CONDONATION RULING**

---

**INTRODUCTION**

1. In this application for condonation:
  - 1.1. the Applicant is **SEWATUMONG MICRO LENDING CC**, a credit provider registered with the National Credit Regulator under registration number NCRCP952, and a registered Close Corporation under identity number or company registration number 2005/079427/23, trading under the name and style of **SEWATUMONG CASH LOANS** at Fancourt Office Park Building 12, First Floor, Northumberland and Fairstead Avenue, Northriding, Johannesburg (hereinafter, "the Applicant").
  - 1.2. the Respondent is the **NATIONAL CREDIT REGULATOR** ("the NCR"), a juristic person established in terms of section 12 of the National Credit Act, 2005 ("the NCA"), whose offices are situated at 127 Fifteenth Road, Midrand, Gauteng, (hereinafter, "the Respondent");

## BACKGROUND

2. On 26 January 2016, the NCR conducted a monitoring exercise on the Applicant after it received complaints from the South African Social Security Agency (SASSA) offices. The complaints alleged that the Applicant was retaining consumer instruments as a means of enforcing payment for credit that was extended to consumers. On 1 February 2016, and based on the findings during the compliance monitoring exercise, the NCR initiated an investigation into the conduct of the Applicant. The Applicant was alleged to have contravened the following provisions of the NCA:
  - 2.1. section 92(1) read with regulation 28(1)(a) and (b)- failing to provide pre-agreement statement and quotation;
  - 2.2. section 93(1) read with regulation 30- failing to provide credit agreements to consumers;
  - 2.3. section 170 read with regulation 55(1)(b)(v)- failing to maintaining proper records;
  - 2.4. section 81(2)(a)(ii) read with regulation 23A and 23A13- failing to take reasonable steps to assess the debt repayment, financial means, prospects and debt obligations of consumers;
  - 2.5. section 81(3) read with section 80(1)(2)- granting credit recklessly;
  - 2.6. section 100(1)(d), section 101(1)(d)(ii) read with regulation 42- charging of excess interest; and
  - 2.7. section 91(2) and section 133- using of consumers' instruments when collecting debt or enforcing credit agreement
3. The NCR filed an application to cancel the registration of the Applicant in terms of section 57 of the NCA. The NCR obtained judgment against the Applicant on a default basis after the Applicant failed to appear at the hearing. The order against the Applicant was issued on 31 August 2018, declaring the conduct of the Applicant *prohibited conduct; cancelling the Applicant's registration; directing the Applicant to appoint an auditor and effect refunds to the affected consumers and imposing an administrative fine of R1000 000-00 on the Applicant.*

## ISSUE TO BE DECIDED

4. I am required, in this condonation application, to decide whether or not the Applicant's application to condone the late filing of the main application (*"the application to vary or rescind an order cancelling the registration of a registrant, made in terms of section 57(1) of the NCA under reference number NCT/107809/2019/57(1)"*), should be granted. Section 57(1) reads as follows:

*"Subject to subsection (2), a registration in terms of this Act, may be cancelled by the Tribunal on request by the National Credit Regulator, if the registrant repeatedly-*

- (a) fails to comply with any condition of its registration;*
- (b) fails to meet a commitment contemplated in section 48(1), or*
- (c) contravenes this Act"*

## BRIEF FACTS

### The Applicant

#### *Lateness*

5. The Applicant deposed in the affidavit that it requests the Tribunal to condone its lateness in filing papers of its rescission application in respect of an order made by the Tribunal on 27 August 2018. The Applicant filed its condonation application on or about 18 December 2018. The Applicant asserts that there was no wilful delay on its part which caused the application to be brought outside of the prescribed twenty business days of the issuing the judgment. The Applicant further alleges that it was served with the section 57 application at the same time that the criminal trial against the Applicant's conduct of retaining consumer instruments to enforce debt, was heard by the Magistrates Court. This is one of the reasons, according to the Applicant, for not attending the section 57 hearing by the Tribunal, leading to default judgment being recorded against the Applicant. According to the Applicant, this caused confusion, as the Applicant was erroneously under the impression that the matters were one and the same, as the NCR was the one who laid charges against the Applicant at the Thohoyandou police station. The Applicant alleges that it was a *bona fide* mistake in the midst of a very stressful time. The Applicant further alleges that the section 57 application was delivered at its Thohoyandou branch, and not the head office in Mamaila village.

#### *Prospects of success*

6. The Applicant states that the NCR proceeded to obtain judgment in its absence without first attempting to resolve the issues, or even issuing a compliance notice. The Applicant further asserts that another forum would have found differently, had it been granted the opportunity to be heard. According to the Applicant,

the effect of the judgment obtained against its operations, has caused the Applicant to close down its operations; caused serious prejudice to its employees; and the rural communities the Applicant serves around the villages in Limpopo. The Applicant admits though, that its conduct contravened the NCA.

#### *Prejudice*

7. The Applicant seeks the assistance of the Tribunal to rescind the order made in default, so that the Applicant's version could be heard by the Tribunal, and that justice could be served.

#### **The Respondent**

8. The Respondent opposed the condonation application on the following grounds:

- 8.1 that the Applicant was advised by the Registrar's office that the ruling dated 31 August 2018 had been finalised, and that it should be appealed at the High Court;
- 8.2 that the Applicant failed to provide sufficient grounds for the lengthy delay in bringing the condonation application;
- 8.3 that the Applicant has no prospects of success in launching the application; and
- 8.4 that the Applicant does not have a defence to the contraventions listed in the section 57(1) application.

#### **LEGAL PRINCIPLES**

9. I will, in determining the merits of this application, consider the relevant statutory provisions, as well as the case law governing this condonation application.
10. Rule 34 (1) (a) of the Tribunal rules, provides that, a "*party may apply to the Tribunal in Form T1 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*".

11. 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>1</sup>. It can also be defined to mean "overlook or forgive (wrongdoing)"<sup>2</sup>.
12. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*<sup>3</sup> it was held that the standard for determining an application of this nature is the interests of justice.
13. 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.<sup>4</sup>
14. In *Melane v Santam Insurance Company Limited*<sup>5</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"*

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

---

<sup>1</sup>Oxford English Dictionary, Second Edition at pg 151.

<sup>2</sup>Collins English Dictionary and Thesaurus, Fourth Edition 2011, at pg170

<sup>3</sup>2003 (11) BCLR 1212 (CC) at para[11].

<sup>4</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>5</sup>1962 (4) SA 531 (A) at 532C-E.

## CONSIDERATION OF THE MERITS

16. In consideration of the merits of this application, one has a judicious discretion to exercise. The question is: *whether or not it is in the interests of justice to condone the late filing of the main application*. 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

17. The Applicant deposed to an affidavit in support of the condonation application on 1 November 2018, ten days after the cancellation order was issued and made known to the Applicant. The Registrar's staff had advised the Applicant that the section 57 application was finalised and that the condonation application to launch a rescission order may not be the correct procedure for the Tribunal to consider. The Applicant also alleged that the NCR served documents at a branch instead of the main office; coupled with the confusion this caused, of the criminal charges and the NCA contravention allegations running concurrently, and causing delays.
18. I am not satisfied that the Applicant has provided a reasonable explanation for the delay. The Applicant was at all material times assisted by an attorney<sup>6</sup>, who may have advised otherwise. The issue of lateness becomes an irrelevant point to consider for the purposes of this ruling, because it lacks practical significance, considering the merits of this application.

### Prejudice

19. The NCR opposed this application for the simple reason that the section 57 application has been finalized. I am satisfied that the NCR's application to cancel the registration of the Applicant was intended to prevent consumers who were affected by the Applicant's conduct, from suffering more harm and prejudice. The attempt by the Applicant to obtain condonation, thwarts the Respondent's course to find recourse for the affected consumers in terms of the order made in August 2018. This matter is, without doubt, important to the NCR, and the consumers it represents.

### Prospects of success and the importance of the main application

20. The Applicant states that the NCR's application to cancel its registration was unjustified in that the NCR had the opportunity to issue a compliance notice, and would have afforded the Applicant the opportunity

---

<sup>6</sup> Majang Incorporated Attorneys

to make good of the contraventions. There is no provision in the NCA that requires the NCR to provide the registrant with the opportunity to rectify certain aspects of their businesses, in order to comply with the NCA. Cases of contravention of the NCA differ, and the approach by the NCR would equally differ, due to the gravity of the matter. The NCR will take appropriate steps if it deems fit. The Applicant had the opportunity to challenge the cancellation application, but failed to do so. The Applicant's defence to the contraventions listed in the section 57 application, lacks substance and has no merit. In that regard, there are no prospects of the Applicant ever succeeding in the main application. The matter, rightly so, is appealable at the High Court, should the Applicant choose to pursue it.

## CONCLUSION

21. The Applicant has failed to show good cause, that it is in the interests of justice for this application to be granted. On the converse, the Applicant was found by the Tribunal to have caused serious injustice to consumers by contravening the provisions of the NCA. This finding is recorded in the judgment delivered by the Tribunal in August 2018. The Applicant's application is without merit, has no prospect of succeeding, and accordingly fails.

## ORDER

22. Accordingly, the Tribunal makes the following order:

22.1. The application to condone the late filing of a rescission application is refused; and

22.2. there is no order as to costs.

**DATED ON THIS 12th DAY OF MARCH 2019**

  
FK MANAMELA  
PRESIDING MEMBER

Authorised for issue by National Consumer Tribunal

Case Number: NCT/122491/2018/165

Date: 2019 / 04 / 29  
CCYY / MM / DD

National Consumer Tribunal  
Ground Floor, Building B  
Lakefield Office Park  
272 West Avenue, Centurion, 0157  
www.thenct.co.za

