

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

Case Number: **NCT/263206/2023/75(1) – Rule 34**

In the matter between:

SHEHNAAZ AHMED VALLY

APPLICANT

and

SID FORMAN JEWELLERS

RESPONDENT

Coram:

Mr Selwyn Hockey – Presiding Tribunal member

Date of consideration (in chambers) - 3 July 2023

Date of ruling - 3 July 2023

CONDONATION RULING AND REASONS (LATE FILING OF APPLICATION FOR LEAVE)
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INTRODUCTION

1. This is an application to condone the late filing of an application for leave to refer the applicant's matter to the National Consumer Tribunal (the Tribunal) for adjudication in terms of section 75(1)(b) of the Consumer Protection Act, 2008 (the CPA). The application is made under rule 34 of the rules¹ which regulate the proceedings before the Tribunal.

¹ The Regulations for matters relating to the functions of the Tribunal and the Rules for the conduct of matters before the National Consumer Tribunal, published in GN in 789 in GG 30225 of 28 August 2007.

2. The applicant is Shehnaaz Ahmed Vally (the applicant), a consumer as defined in section 1 of the CPA.
3. The respondent is Sid Forman Jewellers (the respondent), conducting business as a retailer from Shop BC 36B, Banking Level 5, Sandton City, Cnr of Rivonia Road and 5th Street, Sandton, Johannesburg.

TERMINOLOGY

4. A reference to a section in this ruling refers to a section of the CPA.
5. Reference to a rule refers to the rules.

BACKGROUND

6. On 24 June 2022, the applicant purchased a pendant from the respondent for a purchase price of R50 343.00 (the pendant). A sapphire had fallen off the pendant within two weeks of the purchase.
7. The applicant returned the pendant to the respondent's shop. The person who assisted the applicant requested her to choose another item from the store. The applicant decided not to do so but instead elected to take another item from the respondent's Rosebank store. The assistant issued the applicant with a credit note of R50 343.00.
8. A few days later, the applicant spoke to Mr David Forman of the respondent, who told her that she had deliberately damaged the pendant and that it no longer had a lifetime guarantee. The respondent refused to refund the applicant, despite her having a credit note for the pendant's value.

9. On 23 August 2022, the applicant referred a dispute to the National Consumer Commission (the Commission), who, after assessing the complaint, issued a notice of non-referral based on a finding that the complaint did not allege any facts which, if true, would constitute grounds for a remedy under the CPA.
10. Not happy with the Commission's conclusion, the applicant referred her matter to the Tribunal on 17 December 2022. After not hearing from the Tribunal, the applicant enquired and was informed by the Tribunal that the referral was not accepted as it failed to meet the necessary requirements. The applicant was told that an email was sent to her, but she denied receiving such an email. As a result, the Tribunal sent a further email to the applicant on 26 January 2023 with a copy of the T1.r30A and T173(3) and 75(1)(b) and (2) forms.
11. According to the applicant, she immediately started completing the above forms and brought an application for the condonation of the late referral of her matter. According to the Tribunal's record, the present application was filed on 10 March 2023.

THE APPLICABLE LEGAL PRINCIPLES.

12. Rule 34(1)(a) provides that a party may apply to the Tribunal for an order to condone the late filing of a document or application. In terms of rule 34(2), the Tribunal may grant the order on good cause shown.
13. In terms of the rules, the applicant had to file her application in terms of section 75(1)(b) within 20 business days of the notice of non-referral or within a longer period permitted by the Tribunal.
14. In determining whether good cause has been shown for the granting of condonation, our courts often refer to the paragraph enunciated by Holmes AJ

in *Melane v Santam Insurance Co. Ltd*², where it was stated:

“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, is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success, and the importance of the case. Ordinarily these facts are inter-related; they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion ...”

15. It is trite that the interest of justice is critical in determining whether condonation should be granted. In *Van Wyk v Unitas Hospital and Another*³, the Constitutional Court stated:

“This Court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry 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 . . . and the prospects of success.”

EVALUATION

16. After the commission issued its non-referral notice, the applicant attempted to file her referral to the Tribunal but failed to comply with the rules. The initial referral attempt was within 20 business days after the notice of non-referral.

² 1962 (4) SA 531 (A) at 532 C – F.

³ 2008 (2) SA 472 (CC) at para 20.

17. When the applicant did not hear anything about her defective referral, she contacted the Tribunal to find out about the application. The relevant application forms were sent to her, which she duly completed and submitted to the Tribunal. It cannot be said that she wilfully disregarded the Tribunal's rules.
18. The delay in filing this application is not excessive.
19. The Tribunal considers the importance of fairness and adherence of the principles of natural justice. The applicant has a bona fide dispute with the respondent. There may be factual disputes between the parties, but this must be resolved by granting both parties an opportunity to file papers for the Tribunal to consider.
20. For the reasons stated above, it is in the interest of justice that the late filing of the applicant's application in terms of section 75(1)(b) be condoned.

ORDER

21. The following order is made:

21.1. The application to condone the late filing of the application for leave to refer is granted.

21.2. There is no order as to costs.

[SIGNED]

S Hockey (Tribunal member)

Authorised for issue by The National Consumer Tribunal
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