

## SUMMARY

On or about **05 August 2017**, Dawid Fredrik Mostert (herein referred to as the “**Applicant**”) entered into a pawn agreement with a registered credit provider, being Erf 261 Nylstroom Beleggings CC trading as Cash Concerters Modimolle (hererin referred to as the “**Respondent**”). In terms of the aforementioned pawn agreement, the Respondent advanced an amount of R300.00 (**three hundred Rand**) to the Applicant as credit (the “**Pawn Agreement**”). As means of security, the Respondent took possession of the Applicant’s gold ring, for the credit advanced.

In terms of the Pawn Agreement, the Applicant had an obligation to pay the Respondent an amount of R403.00 (**four hundred and three Rand**) (the “**Settlement Value**”) by (or before) **04 September 2017** (the “**due date**”), being the date on which the Pawn Agreement would come to an end. Upon the Applicant’s full payment of the outstanding amount by (or before) the stipulated due date, the Respondent would return the Applicant’s gold ring in the same condition that it was received.

On the due date, the Applicant attended at the Respondent’s premises in order to effect payment of the Settlement Value and take possession of his gold ring. Upon arrival at the Respondent’s premises, the Applicant claimed that he was notified by the Respondent that the Respondent’s premises had been broken into and the Applicant’s gold ring was subsequently stolen. The Respondent advised the Applicant to approach the National Consumer Tribunal (the “**Tribunal**”) in order to obtain the necessary relief. Notwithstanding the Respondent’s advises, the Applicant was unaware of the prescribed time period permitted in approaching the Tribunal for relief, being that same had to be approached within 20 (**twenty**) business days of settling the settlement value.

It is important to note that the Respondent did not oppose the Applicant’s late filing of his application to the Tribunal (the “**Condonation Application**”). Thus, the Tribunal was only tasked with determining whether to grant the Applicant’s Condonation Application by considering several factors.

## LEGAL PRINCIPLES APPLICABLE TO SUCH A CASE

In terms of Rule 34(1) of the Tribunal Rules it stipulates that a party to a matter may apply to the Tribunal for an order to, inter alia, condone the late filing of documentation or an application. The

Tribunal may grant an order of condonation, provided that good cause is shown.

In terms of Part1A of Table 2 of the Schedule to the Tribunal Rules (as found in the Rules for the Conduct of Matters before the National Consumer Tribunal, Government Gazette No. 30225 of 28 August 2007), an application for compensation from a pawn broker in lieu of property must be filed within 20 (**twenty**) business days of paying the settlement value stipulated in the agreement or within a period as permitted by the Tribunal.

### **FACTORS SHOWING ‘GOOD CAUSE’ CONSIDERED BY THE TRIBUNAL**

The Tribunal turns to legal jurisprudence in determining what is meant by ‘good cause’. The case of *Mofokeng v Attorney General OFS 1958 (4) SA O* held that ‘good cause’, essentially has the same meaning as ‘sufficient cause’, in other words, the Applicant must demonstrate good reason/s for non-compliance in order for the Tribunal to grant the condonation. In *Melane v Santam Insurance Company Limited 1962 (4) SA 531 (A)* it was illustrated that the various factors which ought to be considered are as follows:

1. Degrees of lateness;
2. The explanation thereof;
3. The prospects of success; and
4. The importance of the case.

In order for the Tribunal to act fairly in determining whether to grant the condonation or not, all factors should be considered objectively and in an inter-related manner, rather than viewing each factor in isolation. Thus, a slight delay and a good explanation may outweigh prospects of success which are weak, or where the importance of the case and strong prospects of success may override an Applicant’s long delay.

### **HELD**

#### **DEGREE OF LATENESS**

Bearing in mind that the Applicant approached the Respondent on the said due date in order to

pay the stipulated Settlement Value and being notified by the Respondent that the Applicant’s golden ring was subsequently stolen, the Applicant had until **03 October 2017** to lodge an application for compensation (in terms of the Pawn Agreement) with the Tribunal. The Applicant, failing to lodge same within the prescribed 20 (**twenty**) business days, instead lodged the application 3 (**three**) months later (on or about **15 January 2018**). The degree of lateness is considered to be excessive, however this would be considered against the Applicant’s reasons for the delay as well as the relevant prospects of success.

### **THE APPLICANT’S REASONS FOR DELAY**

The Applicant advanced that he was not aware of the prescribed 20 (**twenty**) business day period in which he had to approach the Tribunal in order to obtain relief. The Tribunal held that whilst ignorance should never be an excuse, the Applicant (at the time in which the Applicant should have approached the Tribunal) never had legal representation who would have advised him accordingly. Therefore, it is likely that the Applicant was uninformed of the Tribunal Rules and requirements.

### **PROSPECTS OF SUCCESS**

The Tribunal considered section 99(2) of the National Credit Act, No 34 of 2005 (the “**NCA**”) which stipulates that where a credit provider fails to deliver any property to the consumer as required in subsection (1)(c) and the consumer brings about an application, the Tribunal may order that the credit provider pay the consumer. Further, the Pawn Agreement entitled the Applicant to approach the Tribunal in the instance where there is loss or damage to the security provided, as is the case with the Applicant’s golden ring. Per the Pawn Agreement, the Respondent advised the Applicant accordingly in obtaining relief from the Tribunal. In this regard, the Applicant’s prospects of success against the Respondent appeared to be strong.

### **IMPORTANCE OF THE MATTER TO THE APPLICANT**

The Applicant’s gold ring, which was pawned to the Respondent as security, was important to the Applicant as it was an engagement ring, which strengthens the Applicant’s reason to seek compensation for it.

### **TRIBUNAL’S CONCLUSION**

Whilst the Applicant’s degree of lateness was excessive, the Tribunal accepted the Applicant’s late filing of the condonation given the Applicant’s reasons provided by the Applicant. Thus, the Applicant’s prospects of success in the main application are strong and the Applicant should be heard in the interests of justice. In this regard, the Tribunal ordered that the Applicant’s condonation application be granted.

### **VALUE**

In the instance where a credit provider fails to deliver any property to the consumer as required in section 99(1)(c) of the National Credit Act, No. 34 of 2005 and the consumer brings about an application, the Tribunal may order that the credit provider pay the consumer.

Written by Katya Oberzhitsky and supervised by Jennifer Stoler, 22 October 2018

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