

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

CASE NUMBER: NCT/403973/2025/148

In the matter between:

BRAAI BLOCK (PTY) LTD

Appellant

and

NATIONAL CONSUMER COMMISSION

Respondent

Coram:

Ms N Maseti: Presiding Tribunal member

Mr S Mbhele: Tribunal member

Mr CJ Ntsoane: Tribunal member.

Date of hearing: 12 January 2026

Date of judgment: 24 August 2026.

APPEAL JUDGMENT

PARTIES

1. The appellant is Braai Block (Pty) Ltd (the appellant), a supplier as defined in section 1 of the Consumer Protection Act 68 of 2008 (the CPA). Adv Fritz Geyer, instructed by Steenkamp Attorneys, appeared for the appellant.
2. The respondent, the National Consumer Commission (the NCC), is a statutory body established in terms of section 85 of the CPA to protect and enforce consumer rights and ensure fairness in the marketplace. The respondent's legal advisor, Ms Imraam Magoro, appeared for the respondent.

NATURE OF THE APPEAL

3. This is an appeal in terms of section 148(1) of the National Credit Act 34 of 2005 (the NCA) against the ruling of a single member of the Tribunal dated 18 June 2025 refusing condonation for the late filing of an application to

rescind (the rescission application) the Tribunal's order in case number NCT/341406/2024/73(2)(b) (the main matter). The rescission application was brought under section 165(a) of the NCA.

4. The appeal concerns two questions: first, whether the condonation process was procedurally unfair because the application was determined in chambers without prior notice of the date of determination or oral attendance by the appellant. Second, whether the single member erred in finding that the appellant had not shown good cause under rule 34 for its failure to file the rescission application within the 20 days prescribed by rule 24A.¹

BACKGROUND

5. On 10 December 2024, the Tribunal made an order against the appellant in the main matter, finding contraventions of sections 26(3)(a) and 26(3)(b) of the CPA and imposing an administrative fine of R1 million. The appellant was present and legally represented at that hearing.
6. On 20 March 2025, the appellant filed the rescission application. Upon being informed that the rescission application was outside the prescribed period, the appellant filed a supplementary affidavit and a condonation application. The condonation application was unopposed. Nevertheless, the NCC filed an answering affidavit on 7 May 2025 opposing the rescission application.
7. On 18 June 2025, the condonation application was considered in chambers by a single Tribunal member and refused because the explanation for the delay was insufficient. The appellant filed its notice of appeal on 8 July 2025. The NCC filed an answering affidavit opposing this appeal on 30 July 2025, and the appellant filed a reply on 30 August 2025.

THE PARTIES' SUBMISSIONS

8. The appellant submitted that the single member acted unfairly by determining condonation without notifying the appellant of the date of determination and without affording it an oral hearing. It accepted that matters may, in appropriate circumstances, be dealt with in chambers, but maintained that the absence of notice and attendance denied it the opportunity to be heard. It further submitted that the NCC did not oppose the condonation application.

¹ Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal, 2007.

9. On the merits of condonation, the appellant relied on rule 34 and submitted that good cause principally required a satisfactory explanation for the delay and a bona fide defence. It relied on *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) (*Grootboom*). Still, it contended that, in this matter, the Tribunal should essentially focus on the explanation and the existence of a bona fide defence. It attributed the delay to difficulties with the previous attorney, the need to obtain advice from counsel, counsel's availability only towards the end of January 2025, and the volume of financial, banking and other documents that had to be considered. It stated that the relevant errors were appreciated only during the first week of March 2025. During oral argument, it additionally referred to the Christmas holiday period.
10. The NCC opposed the appeal. It submitted that condonation may lawfully be determined on the papers; that the appellant had filed the application and supporting affidavits on which its case had to stand or fall; and that it suffered no procedural prejudice. The NCC further submitted that the appellant's chronology shifted. At one point, it suggested that it only became aware of the relevant error in February 2025, yet no exact date was supplied. It argued that the central question remained whether good cause had been shown for non-compliance with the 20 days prescribed in rule 34.

APPLICABLE LAW

11. Section 148(1) of the NCA permits a participant in a hearing before a single member to appeal that member's decision to a full panel. Rule 27 provides that an appeal panel is not restricted to the record before the single member; it may call for additional documentation and representations and may take steps reasonably necessary for the just and effective determination of the appeal.
12. Section 150(e) empowers the Tribunal to condone non-compliance with its rules and procedures on good cause shown. Rule 34(1)(a) permits an application to condone the late filing of a document or application, and rule 34(2) provides that the Tribunal may grant condonation on good cause shown. Rule 24A requires an application for variation or rescission to be made within 20 days of the date on which the applicant became aware of the relevant order, ambiguity, error, omission or common mistake, or within such longer period as the Tribunal permits.
13. The governing principles are set. In *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F, the court held that the discretion must be exercised judicially on an objective conspectus of all the facts, including the degree of lateness, the explanation, prospects of success and importance of the case. In *Grootboom*, at paras 22-23 and 50-51, the Constitutional Court held that condonation is not for the mere asking: an applicant must

give a full and reasonable explanation for non-compliance, and the ultimate enquiry is the interests of justice. Relevant factors include the length and cause of the delay, prospects of success, the importance of the issues, prejudice and the effect of delay on the administration of justice. The factors are interrelated and not ordinarily individually decisive.

14. The fact that a condonation application is unopposed does not relieve the applicant of the burden of establishing good cause. Nor does *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) convert undisputed allegations into a legal entitlement to condonation. The Plascon-Evans principle concerns the resolution of factual disputes on affidavit. Here, the decisive question is whether, even accepting the appellant's chronology, where it is undisputed, the facts provide an adequate explanation and sufficient prospects to justify the indulgence sought.
15. The appellant was also required to make its case in its affidavits. Motion proceedings are determined on the facts properly raised in the papers; a material gap cannot ordinarily be cured by a new factual explanation advanced for the first time in heads of argument or from the bar. This principle was applied in *Minister of Land Affairs and Agriculture v D & F Wevell Trust* 2008 (2) SA 184 (SCA) at paragraph 43. The oral reference to the Christmas holiday period may therefore provide context, but it cannot substitute for a complete explanation in the condonation papers.

PROCEDURAL FAIRNESS

16. The Tribunal accepts that procedural fairness is fundamental. Section 142(1) requires that Tribunal hearings be conducted publicly, expeditiously, informally, inquisitorially, and in accordance with natural justice. Section 142(3)(c), however, expressly assigns functions concerning the permitting of late filing to a single member. Rule 34 itself does not prescribe an oral hearing as a precondition to determine a condonation.
17. The Constitutional Court in *Barnard NO and Another v National Consumer Tribunal and Another* [2026] ZACC, at paragraph 23, emphasised the importance of a Tribunal hearing within the statutory scheme and held, in the context of section 148, that participation in a hearing requires participation in the convened hearing, not merely the filing of papers. The present case is procedurally different; the impugned decision was an interlocutory condonation ruling considered by a single member on the applicant's own papers, not the determination of the substantive prohibited conduct complaint by a full panel. It is therefore unnecessary for this panel to decide, in the abstract, whether every rule 34 application requires a separately convened oral hearing.

18. Even assuming in the appellant's favour that prior notice of the date of determination should have been given, the appeal can succeed on procedural unfairness only if the irregularity was material to the outcome or caused cognisable prejudice. The appellant exercised its section 148(1) appeal before a full panel, filed further papers and was afforded oral argument on the very matters it says it wished to place before the single member. Rule 27 expressly empowers this panel to receive and consider such additional representations. No factual explanation capable of curing the material gaps in the original chronology emerged at the appeal hearing. The alleged procedural defect, therefore, does not provide a basis to grant condonation.

GOOD CAUSE

19. The delay was material when measured against the prescribed period of 20 days. The appellant was aware of the adverse order in December 2024 and knew that a substantial administrative fine of R1 million had been imposed. The appellant's case concerns the adequacy of the defence presented by its former attorney. New legal advice was being pursued by January 2025. These facts called for a clear, date-specific account of what was done from knowledge of the order until 20 March 2025.
20. That account is not furnished. The papers state that counsel was unavailable until late January 2025; that substantial documentation had to be gathered and considered; and that the appellant only appreciated the alleged errors in late February or the first week of March 2025. But the affidavits do not identify with sufficient precision when counsel was first approached, when consultation occurred, what work was undertaken during February, why a protective rescission and condonation application could not have been lodged earlier, or why the application then took until 20 March 2025. The explanation, therefore, does not cover the whole period of default with the degree of particularity required by Grootboom.
21. The appellant's shifting formulation also weakens the explanation. If the 20 days only began once it became aware of a specific error in February or March 2025, the exact error and the date of awareness had to be pleaded because rule 24A(1) calculates time from awareness of the relevant statutory trigger. The appellant could not provide an exact date. Conversely, if the relevant trigger was awareness of the December 2024 order, the application was plainly late and required a full explanation from that point. On either formulation, the evidential gap remains.
22. The reference to the festive season does not materially improve the position. Courts and tribunals recognise practical realities, but a general assertion that "not much happens" over Christmas is not a substitute for evidence of the steps taken. Moreover, the appellant was facing a final order and a substantial penalty. The seriousness

of the consequences reasonably called for expedition once the order and dissatisfaction with the earlier representation were known.

PROSPECTS OF SUCCESS

23. The appellant's submission that prospects of success are not essential to the rule 34 enquiry is inconsistent with *Melane and Grootboom*. Prospects are not a rigid jurisdictional requirement in every condonation case, but they are an important component of the overall interests-of-justice assessment. Where the underlying remedy is legally untenable, there is little purpose in condoning a late application merely to permit it to fail.
24. Section 165(a) of the NCA permits the Tribunal to rescind or vary an order "erroneously sought or granted in the absence of a party affected by it". The statutory requirements are conjunctive: the order must have been erroneously sought or granted, and it must have been sought or granted in the absence of the affected party. The authorities treating section 165(a), which closely resembles rule 42(1)(a) of the Uniform Rules, confirm that absence is an integral jurisdictional element of this ground of rescission.
25. On the stated facts, the appellant was not absent from the main hearing on 10 December 2024. It was present and represented by an attorney. Its complaint is rather that the attorney failed to present a sufficiently strong defence and that further research and documentation later revealed matters that should have been advanced. That may, depending on the facts, establish some other competent remedy. Still, it does not convert a hearing at which the appellant participated through its legal representative into an order granted "in the absence" of the appellant for purposes of section 165(a).
26. This is decisive for prospects under the rescission provision invoked. The appellant cannot use condonation to expand section 165(a) into a rehearing of the merits simply because it later obtained different legal advice or additional evidence. Its reliance on an alleged incorrect citation or on facts said to show no contravention may be relevant only if they fit within one of the statutory rescission grounds. In the case presently pleaded under section 165(a), they do not overcome the absence requirement.

INTERESTS OF JUSTICE

27. The Tribunal has considered the matter as a whole. The R1 million administrative fine makes the underlying dispute important to the appellant, and the absence of opposition to condonation reduces any claim of direct forensic prejudice at that stage. These considerations favour a substantive determination where the statutory

test is otherwise met. They cannot, however, displace the need to show good cause or create prospects of success where the chosen rescission ground is inconsistent with the undisputed fact that the appellant was present and represented when the order was made.

28. The deficient explanation is therefore not a technical defect. It leaves material periods unaccounted for and is compounded by weak prospects under section 165(a). The single member's conclusion that good cause had not been shown was consequently justified. To the extent that the appellant complains about the absence of notice or oral attendance during the chambers process, the full appeal process has afforded it a fair opportunity to place its case before a three-member panel and has disclosed no additional matter that would justify a different result.
29. The Plascon-Evans principle does not alter that conclusion. The Tribunal accepts the appellant's undisputed factual allegations where appropriate; it simply finds that those facts, taken at their highest, do not amount to a full and reasonable explanation and do not establish sufficient prospects of success. Condonation is an indulgence granted in the interests of justice, not an automatic consequence of non-opposition.

ORDER

30. For these reasons, the Tribunal makes the following order:
- 30.1 The appeal is dismissed.
- 30.2 There is no order as to costs.

Ms N Maseti - Presiding Tribunal member

Tribunal members Mr S Mbhele and Mr CJ Ntsoane concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

Ground Floor, Building B

Lakefield Office Park

272 West Avenue, Centurion, 0157

www.thenct.org.za

national consumer tribunal

