

IN THE FINANCIAL SERVICES TRIBUNAL

CASE NUMBER: FSP14/2019

In the matter between:

MK KULA

Applicant

And

THE STANDARD BANK OF SOUTH AFRICA

Respondent

Tribunal: Mr. JM Damons (chair), Mr. E Piyega and Mr. L Makhubela

For the Applicant: Mr. C De Beer

For the Respondent: Mr. D Cithi

Hearing: 05th September 2019

Decision: 10th September 2019

Summary: Application for reconsideration of a decision in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("FSRA") – application to reconsider the debarment decision – Condonation for the late filing of reconsideration application – appellant has not shown good cause for the late filing of the reconsideration application – no prospects of success in the main matter – condonation denied

DECISION

1. INTRODUCTION

1.1 In this matter the applicant applied for reconsideration of the debarment decision dated 07th December 2018¹. Subsequent the debarment decision the applicant filed an application for the reconsideration of a decision in terms of section 230(1) of the FSRA.

1.2 The applicant in this matter is Mr. Malibongwe Kenneth Kula (Mr. Kula) a former Financial Services Representative (FSR) of Standard Bank South Africa an authorized Financial Services Provider (FSP) and the Respondent in this matter.

1.3 The reconsideration application was filed with this Tribunal on the 10th April 2019. The Respondent expressed its intention to oppose this application on the 14th May 2019². Mr. Kula did not file any heads of argument despite a directive from the secretariat to do so. However, Standard Bank did file the heads of argument as per the directive. This matter is thus considered on the written and oral submission presented by the parties.

2. FACTUAL BACKGROUND AND COMPLAINT

2.1 The gist of the matter concerns an incident wherein it was alleged that Mr. Kula forged a client's signature in a loan application form. Standard Bank instituted a disciplinary hearing which resulted in his dismissal.

2.2 In the disciplinary hearing, Mr. Kula pleaded guilty to the charges. However, after the hearing, the chairperson imposed a sanction of a dismissal. Standard Bank used the chairperson's report as a basis for the debarment of Mr. Kula. Mr. Kula was afforded an opportunity to make representation as to why he

¹ See record of proceedings part A page 4 and 5

² See record of proceedings part B page 2 - 45

should not be debarred but failed to do so. Standard Bank then proceeded with the debarment. The debarment was noted on the 07th December 2018.

2.3 After being notified of the debarment decision Mr. Kula then filed this reconsideration application on the 10th April 2019³. The reconsideration application is thus out of time.

2.4 After the hearing of the argument relating to the application for condonation this Tribunal denied the application and dismissed the application for reconsideration. What follows are the reasons for the decision.

3 CONDONATION APPLICATION

3.1 Mr. Kula did make a condonation application for the late filing of the reconsideration application. Standard Bank opposed the condonation application and accordingly filed heads argument in this regard⁴. Mr. Kula's attorney also filed heads of argument as per the directive of this Tribunal.

3.2 Rule 9(b) of the Financial Services Tribunal Rules⁵

- "9 An application for reconsideration must be made:**
- (a) if the applicant requested reasons in terms of section 229 of the Act, within 30 days after the statement of reasons was given to the applicant; or**
 - (b) in all other cases, within 60 days after the applicant was notified of the decision, or such longer period as may on good cause be allowed."**

3.3 A clear reading of this rule dictates that an affected person must file a reconsideration application within 60 days from the date on which that person became aware of the decision. If the affected person fails to adhere to this time frame, he/she must show good cause why this Tribunal should hear his/her application despite same having been filed outside the prescribed time frames.

³ See record of proceedings part A at pages 7 to 23

⁴ See Respondent arguments at page 7 to 10

⁵ Rule 9(b) of the FSCA rules

3.4 Mr. Kula's debarment decision was noted on the 07th December 2018. However, Mr. Kula stated that he only received the notification of the debarment on the 11th December 2018. The reconsideration application was only filed with this tribunal on the 10th April 2019. Even if it to be accepted that he only received the notification on the 11th December 2018 the application was filed late.

3.5 It is trite that in an application for condonation, the applicant must fully explain all the aspects of the delay. In other words, condonation is not there for the taking. The principles and factors to be considered in a condonation application were set down in **Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A)** at **532B-E**. In that matter, the Court held that "the factors that should be considered in an application for condonation are interrelated and not individually decisive. The weight to be attached to any one of these factors may vary from case to case. What is needed is an objective conspectus of all the facts. A slight delay and good explanation may help to compensate for prospects of success which are not strong, or the important of the issue and strong prospects of success may tend to compensate for the long delay".

3.6 In this matter, Mr. Kula was aware of the debarment decision from the 11th December 2018. In terms of the rules, he had 60 days to file his reconsideration application. His application was only filed on the 10th April 2019. The 60 days, period for which Mr. Kula should have filed his application expired on the 09th February 2019. The reconsideration application is therefore 57 days late.

3.7 It is trite that in delaying with condonation, one must consider the reasons for lateness, degree of lateness, prospects of success and prejudice to the other party⁶. Having considered Mr. Kula's submissions, this Tribunal is of the view that the degree of lateness is excessive. A delay of 57 days is not easily excusable. The delay can only be excusable if the applicant can provide a good reason for the delay. Mr. Kula stated that he contacted his attorney on the 08th March 2019. He further gave instructions to the said attorney on the 27th March

⁶ See in this regard **Melane v Sanlam Insurance Company Limited 1962 (4) SA 531 (A)**

2019⁷. He stated that his attorneys started to prepare the application on the 04th April 2019.

3.8 It is important to note from Mr. Kula's own version, when he consulted with his attorneys on the 08th March 2019 he was already outside the time frames as provide for by the rules. In this regard, he and his attorney should have acted speedily to ensure that they do not delay the matter any further. Mr. Kula also stated that on the 27th March 2019 he gave full instructions to his attorney. Again, even after the full instructions were given, the applicant and his attorney still delayed in filing the reconsideration application. According to Mr. Kula, his attorney only started preparing the application on the 04th April 2019. There is no explanation as to why the attorneys did not commence with preparing the reconsideration application from the 27th March 2019 after receiving the full instructions. This Tribunal is of the view that Mr. Kula's reason for the delay is unreasonable and unacceptable. If Mr. Kula was serious about prosecuting this matter, he could have instructed his attorneys to start with drafting the application as from the 08th March 2019. Moreover, there is no explanation as to what the applicant did from the 08th March to the 27th March 2019 to ensure that he priorities and timeously prosecute this matter.

3.9 Again, as from the 27th March 2019, the attorneys were given full instructions which enabled them to start drafting the reconsideration application. For some unknown reason, the attorneys only started drafting the application on the 04th April 2019. This Tribunal does not see any reasons why the attorneys could not start with the application as from the 27th March 2019. It is the view of this Tribunal that the explanation for the delay leaves much to be desired. Mr. Kula had ample time to prosecute this matter but failed to do so. The explanation for the delay cannot be accepted in the circumstances.

3.10 In opposing the condonation, the respondent referred to **Grootboom v National Prosecuting Authority and Another 2014 (2) SA 68 (CC)**⁸ wherein the Constitutional Court reinforced the principle that condonation is not there for the

⁷ See record of the proceedings part A at page 20 para 35

⁸ See Respondent hears of arguments at page 7 para 25

the delay. Over and above that, Mr. Kula also does not have reasonable prospects of success in the main matter and thus this application should fail.

4 This Tribunal is of the view that Mr. Kula failed to show good cause for the late filing of the reconsideration application. The reconsideration application should thus fail on the ground that the applicant filed the reconsideration application late. This Tribunal thus makes the following orders:

4.1 The application for condonation is denied;

4.2 The main application is dismissed; and

4.3 No order as to costs

Signed at PRETORIA on the 10th day of September 2019 on behalf of the Tribunal.



**CHAIRPERSON
JM DAMONS**