

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("THE TRIBUNAL")

CASE NUMBER: CT013FEB2015

In the matter of:

CEDERBERG CELLAR (PTY) LTD

FIRST APPLICANT

CEDERBERG BREWERY (PTY) LTD

SECOND APPLICANT

and

CEDER BREW (PTY) LTD

RESPONDENT

Coram: PJ Veldhuizen, S Gounden, K Moodaliyar

Order delivered: 21 August 2015

ORDER & REASONS

1. THE APPLICATION

This is an interlocutory application filed by the Respondent wherein it seeks condonation for the late reply to the Applicants' Application which was brought in terms of Section 160 of the Companies Act No 71 of 2008. The parties shall be referred to as they are in convention.

2. ORDER

2.1. The Respondent's Application for Condonation is granted.

2.2. Costs of the Condonation Application stand over for later determination.

3. REASONS

3.1. The Tribunal is permitted to condone any technical irregularity arising in any of its proceedings¹.

3.2. The Respondent clearly intended to oppose the relief sought by the Applicant.

3.3. A refusal to permit the Respondent to place its evidence before the Tribunal weighed against any perceived or real prejudice that may be suffered by the Applicant would offend the rule of *audi alteram partem*.

3.4. The judgments of Tuchten J in the following cases are instructive and directed the Tribunal's decision:

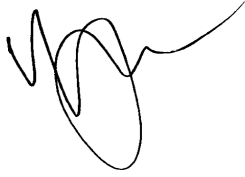
*“Procedural mechanisms are not an end in themselves but tools to achieve justice. A court should be slow, in my view, to interpret a statutory measure so as to unnecessarily abridge its own power to do justice.”*²

*“At the other end of that spectrum are those infractions of the rules which do not appear to have caused any prejudice and are raised for the most part for entirely tactical reasons. In my view, a court ought to be slow to lend its muscle to this kind of tactical maneuvering. The rules exist for the court, not the court for the rules. Each instance of non-compliance should be evaluated on its own facts...”*³

¹ Regulation 154(3)

² LA Sport 4x4 Outdoor CC & one other v Broadsword Trading 20 (Pty) Ltd and two others handed down 26 February 2015 under Case Number A513/2013

³ Balemi Civils (Pty) Ltd v Molefe Attorneys (A308/14) [2014] ZAGPPHC 704 handed down on 16 September 2014



PJ VELDHUIZEN
MEMBER OF THE COMPANIES TRIBUNAL
CAPE TOWN

K MOODALIYAR and S GOUNDEN
MEMBERS OF THE COMPANIES TRIBUNAL, concurring.