

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 39/2021
[2021] NZSC 101

BETWEEN AHMED ALKAZAZ
Applicant

AND ENTERPRISE IT LIMITED
Respondent

Court: William Young, Glazebrook and Williams JJ

Counsel: Applicant in person
R J Bryant for Respondent

Judgment: 16 August 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is dismissed.**
 - B The application for recall of this Court’s judgment of 11 June 2021 (*AlKazaz v Enterprise IT Ltd* [2021] NZSC 59) is allowed only to make the corrections identified at [8] below.**
 - C The [2021] NZSC 59 judgment is reissued with those corrections.**
 - D The applicant must pay the respondent costs of \$2,500.**
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REASONS

Leave application

[1] Mr AlKazaz applies for leave out of time to appeal directly against a decision of the Employment Court dismissing his challenge against the Employment Relations Authority’s (ERA’s) refusal to reopen a prior investigation (the Employment Court

reopening decision).¹ The investigation related to a decision in which Mr AlKazaz succeeded in an unjustified dismissal claim against the respondent, although the ERA reduced his award by 20 per cent for contributory conduct (the original ERA decision).² Mr AlKazaz ultimately wishes to dispute the finding of contribution.

[2] Mr AlKazaz says that the exceptional circumstances justifying a leapfrog appeal are that he cannot obtain further employment in New Zealand unless the ERA's investigation is reopened or challenged. His explanations for bringing the application out of time seem to be that he is a litigant in person whose first language is not English, and that he was following the standard process by first seeking leave to appeal to the Court of Appeal.

[3] Mr AlKazaz also refers to two other decisions under the heading "Particulars of the decision against which the Plaintiff wishes to Appeal":

- (a) a decision of the Court of Appeal refusing leave to appeal against the Employment Court reopening decision (the Court of Appeal leave decision);³ and
- (b) a single decision of the Court of Appeal dismissing his applications for recall of the Court of Appeal leave decision, for stay of execution of the costs order, and for a declaration that the respondent's representation was "invalid".⁴

[4] This Court does not have jurisdiction to hear an appeal against the Court of Appeal leave decision.⁵ Nor does it have jurisdiction to hear an appeal against a Court of Appeal decision refusing to recall a judgment declining leave to appeal.⁶ There are no submissions addressing the refusal for stay and no evidence supporting the allegation against the respondent's representation.

¹ *AlKazaz v Enterprise IT Ltd* [2020] NZEmpC 171 (Chief Judge Inglis).

² *Alkazaz v Enterprise IT Ltd* [2017] NZERA Auckland 400.

³ *Alkazaz v Enterprise IT Ltd* [2021] NZCA 13 (Miller and Goddard JJ).

⁴ *Alkazaz v Enterprise IT Ltd* [2021] NZCA 132 (Miller and Goddard JJ).

⁵ Senior Courts Act 2016, s 68(b).

⁶ *Ngahuia Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC) at [3].

[5] The application for leave to appeal against the Employment Court reopening decision is well out of time. Mr AlKazaz has now also applied to the Employment Court for an extension of time to bring a late challenge against the original ERA decision. In those circumstances, it is not necessary in the interests of justice to extend time for leave to appeal to this Court.

[6] In any event, even if the application had been made in time, the leave criteria are not met. Mr AlKazaz has not raised any question of law⁷ and there are no exceptional circumstances justifying a direct appeal.⁸ Any appeal would be no more than a challenge to the Employment Court's assessment of the facts relating to the application to reopen the ERA's investigation.

Recall application

[7] Mr AlKazaz has also applied to recall this Court's earlier refusal to stay proceedings in the Employment Court.⁹ It is unnecessary to deal with this matter in any detail in light of our refusal to extend time for Mr AlKazaz to bring his application for leave to appeal. It is sufficient to note that the applicant pointed out some minor factual errors in this Court's stay decision which it is appropriate to correct by means of recall. These have no material effect on the result. The substantive matters raised by the applicant in his recall application are now moot.

[8] The stay judgment is therefore recalled and reissued with the following corrections:

- (a) At [3], delete the words "Over a year" and replace with "Eight months".
- (b) At [7], delete the words "been 'ordered to pay'" and replace with "paid".
- (c) At [7], delete the words "It is unclear what case this order relates to, or whether he has paid this sum into the Court."

⁷ Employment Relations Act 2000, s 214A(1).

⁸ Employment Relations Act, s 214A(4); and Senior Courts Act, s 75.

⁹ *AlKazaz v Enterprise IT Ltd* [2021] NZSC 59.

- (d) At [13], delete the words “Even more to the point, Mr AlKazaz has not suggested that EIT is currently pursuing its costs award against him.”

Costs

[9] The applicant must pay the respondent costs of \$2,500 in respect of the leave application.

[10] There is no costs order in respect of the recall application.

Result

[11] The application for an extension of time to apply for leave to appeal is dismissed.

[12] The application for recall of this Court’s judgment of 11 June 2021 is allowed only to make the corrections identified above at [8]. That judgment is reissued with those corrections.

[13] The applicant must pay the respondent costs of \$2,500.

Solicitors:
Aspiring Law Ltd, Wanaka for Respondent