

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 39/2021
[2021] NZSC 59

BETWEEN AHMED ALKAZAZ
Applicant
AND ENTERPRISE IT LIMITED
Respondent

Court: William Young, Glazebrook and Williams JJ
Counsel: Applicant in person
Judgment: 11 June 2021
Reissued: 16 August 2021

JUDGMENT OF THE COURT

- A The application for stay is dismissed.**
- B The application for an extension of time to file submissions is dismissed.**
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REASONS

Introduction

[1] Mr AlKazaz currently has an application before this Court for leave to appeal a decision of the Employment Court. He now applies for a stay of the Employment Court proceedings.

Procedural history

[2] In 2017, Mr AlKazaz succeeded in an unjustified dismissal claim against the respondent (EIT) in the Employment Relations Authority (ERA).¹ The Authority awarded him \$28,749.99 in lost wages and \$15,000 in compensation for injury to feelings.² However, the Authority reduced this award by 20 per cent for what it considered was Mr AlKazaz's own contribution to the situation that gave rise to his personal grievance.³ Neither party challenged the decision at the time.

[3] Eight months later, Mr AlKazaz applied to reopen the ERA's investigation. One of his concerns related to the ERA's finding of contribution. The ERA declined the application⁴ and awarded EIT costs of \$7,000.⁵

[4] Mr AlKazaz challenged the reopening decision in the Employment Court. A challenge to the ERA's separate costs decision was added by later amendment to the statement of claim. The reopening challenge proceeded first and was dismissed by the Employment Court in October 2020.⁶ The costs challenge has yet to be addressed by that Court.

[5] Mr AlKazaz then applied for leave to appeal to the Court of Appeal against the Employment Court's reopening decision. At the same time, he applied to the Employment Court for a stay of proceedings in that Court. Although the position is not entirely clear from his written submissions in this Court, it seems that Mr AlKazaz's concern related to the possible execution against him of the ERA's costs award. The application for leave to appeal was dismissed by the Court of Appeal in February this year.⁷ The application for stay in the Employment Court was dismissed in May.⁸

¹ *Alkazaz v Enterprise IT Ltd* [2017] NZERA Auckland 400.

² At [41] and [47].

³ At [66].

⁴ *Alkazaz v Enterprise IT Ltd* [2019] NZERA Auckland 560.

⁵ *Alkazaz v Enterprise IT Ltd* [2020] NZERA Auckland 332.

⁶ *Alkazaz v Enterprise IT Ltd* [2020] NZEmpC 171.

⁷ *Alkazaz v Enterprise IT Ltd* [2021] NZCA 13.

⁸ *Alkazaz v Enterprise IT Ltd* [2021] NZEmpC 62.

[6] Mr AlKazaz’s application to this Court for leave to appeal the Employment Court’s reopening decision has not been resolved. Submissions from the respondent are not yet due to be filed. We must, however, address Mr AlKazaz’s application to stay the Employment Court proceedings in the meantime.

The stay application

[7] Mr AlKazaz submits that a stay will not prejudice EIT because he has paid to the Employment Court \$41,000 as security for costs.

[8] Mr AlKazaz further submits that EIT is “in liquidation/acquisition by two companies”. He says that if he pays costs to a “fictitious company”, he will not be able to recover them in the event he is successful in his proposed appeal in this Court.

[9] Finally, Mr AlKazaz submits that he is pursuing his application for leave to appeal in this Court in good faith and that it raises novel questions as the principles for reopening ERA investigations are unclear and have not been considered by a senior court before.

Employment Court decision on stay

[10] Chief Judge Inglis dealt with Mr AlKazaz’s application for a stay relatively briefly: she did not consider that Mr AlKazaz’s appeal rights would be rendered ineffectual, or that he would be otherwise prejudiced.⁹ She considered that the overall interests of justice “weigh firmly in favour of the application for a stay being declined”.¹⁰

Analysis

[11] This Court has jurisdiction to stay a proceeding in which a decision has been given, or to stay execution of a decision.¹¹ The issue in this application is whether a stay is necessary to preserve Mr AlKazaz’s position pending determination of his leave application and, if we get that far, his appeal.

⁹ At [3].

¹⁰ At [4].

¹¹ Supreme Court Rules 2004, r 30(2).

[12] A stay is not necessary. The Employment Court's reopening decision merely dismissed his challenge; nothing in it would render nugatory his pursuit of an appeal to this Court.

[13] Mr AlKazaz does express concern that any costs paid to EIT now will not be recoverable if he wins in this Court, because EIT is in a precarious position. Mr AlKazaz has offered no evidence that EIT is at risk of liquidation, or indeed that it is in distress.

[14] It is unnecessary to hear from the respondent.

Extension of time

[15] Mr AlKazaz also applied for an extension of time to file submissions. As his submissions for his application for leave to appeal have already been filed, this application is now moot.

Result

[16] The applications are dismissed.