

**NOTE: NON-PUBLICATION ORDERS MADE IN [2024] NZERA 385 REMAIN
IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 38/2026
[2026] NZSC 68**

BETWEEN SHALINEE DOWLUT
Applicant
AND AURECON NEW ZEALAND LIMITED
Respondent

Court: Williams, Kós and Miller JJ
Counsel: Applicant in person
M G Lawlor and J L Gray-Smith for Respondent
Judgment: 28 May 2026

JUDGMENT OF THE COURT

- A The application for leave to appeal against the decision of the Court of Appeal is dismissed.**
 - B We grant an extension of time to apply for leave to appeal against the decision of the Employment Court.**
 - C The application for leave to appeal against the decision of the Employment Court is dismissed.**
 - D The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicant, Ms Dowlut, seeks leave to appeal two judgments. The first is a decision of the Employment Court ordering that she pay security for costs in the sum of \$5,200.¹ In relation to this judgment, Ms Dowlut also requires an extension of time.

¹ *Dowlut v Aurecon New Zealand Ltd* [2024] NZEmpC 231 (Judge Corkill) [EmpC judgment].

The second judgment is the Court of Appeal’s refusal to grant leave to appeal the decision of the Employment Court.²

Background

[2] Ms Dowlut was formerly an employee of Aurecon New Zealand Ltd (Aurecon). As a result of Aurecon’s 2023 performance review process, Ms Dowlut was given a low performance rating.³ She rejected that assessment, alleging racism and bullying.⁴ Aurecon attempted to implement a performance improvement process, but Ms Dowlut refused to engage and matters escalated.⁵ Aurecon removed Ms Dowlut from a major project.⁶ After that, Ms Dowlut experienced a medical incident and was admitted to hospital.⁷ Aurecon then commenced a disciplinary process and proceeded with it despite Ms Dowlut raising concerns that her health impacted her ability to participate.⁸ Aurecon ultimately dismissed Ms Dowlut on 22 September 2023 after she did not attend disciplinary meetings and provided only limited written feedback.⁹

[3] Ms Dowlut filed a statement of problem with the Employment Relations Authority (Authority) alleging unjustifiable dismissal and other personal grievances. The Authority dismissed all of Ms Dowlut’s claims.¹⁰

[4] Ms Dowlut then brought a challenge to the Authority’s determination in the Employment Court.¹¹ Ms Dowlut also filed a second challenge “in respect of [the Authority’s] dismissal of frivolous or vexatious proceedings”.¹² Aurecon applied for security for costs in the sum of \$10,000 but the Court set security in the sum of \$5,200 instead.¹³

² *Dowlut v Aurecon New Zealand Ltd* [2026] NZCA 20 (Courtney and Thomas JJ).

³ *Dowlut v Aurecon New Zealand Ltd* [2024] NZERA 385 (Member Szeto) at [2].

⁴ At [19], [23] and [26].

⁵ At [22], [29]–[32] and [62]–[65].

⁶ At [33] and [66].

⁷ At [34].

⁸ At [35]–[43].

⁹ At [44]–[46].

¹⁰ At [138].

¹¹ EmpC judgment, above n 1, at [6].

¹² At [8].

¹³ At [70].

[5] In doing so, the Employment Court also recorded that Ms Dowlut’s second challenge was unsustainable.¹⁴ The Authority had not dismissed Ms Dowlut’s claim as frivolous or vexatious and, in any event, Ms Dowlut’s claim would be heard de novo in the Employment Court. The Court invited Ms Dowlut to withdraw the second challenge.¹⁵ The respondent says this has not yet happened.

Proposed appeal against Court of Appeal judgment

[6] This Court does not have jurisdiction to hear an appeal against the Court of Appeal’s refusal to grant leave to appeal to that Court.¹⁶ The application for leave to appeal the Court of Appeal’s refusal to grant leave to appeal the fixing of security for costs in the Employment Court must therefore be dismissed.

Proposed appeal against Employment Court judgment

[7] This Court does however have jurisdiction in exceptional cases to entertain a direct appeal against the Employment Court’s decision. In that respect, s 214A of the Employment Relations Act 2000 relevantly provides as follows:

214A Appeals to Supreme Court on question of law in exceptional circumstances

(1) A party to a proceeding under this Act who is dissatisfied with a decision of the court ... as being wrong in law may, with the leave of the Supreme Court, appeal to the Supreme Court against the decision.

...

(4) This section is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

[8] The effect of these provisions is that to obtain leave to bring a direct appeal, the appeal must relate to a question of law and there must be exceptional circumstances justifying the grant of leave. These requirements apply in addition to the ordinary “interests of justice” criterion for leave to appeal to this Court.¹⁷

¹⁴ At [9].

¹⁵ At [10].

¹⁶ Senior Courts Act 2016, s 68(b).

¹⁷ Section 74(1).

[9] Since the Employment Court’s decision was delivered on 27 November 2024, Ms Dowlut’s application for leave to appeal it is now well out of time.¹⁸ She therefore also requires an extension.

[10] Ms Dowlut submits that Judge Corkill erred in ordering security for costs. She advances a number of arguments in this respect. First, Judge Corkill is said to have relied as evidence of Ms Dowlut’s impecuniosity on the witness statement of one particular Aurecon employee “without further evidence”.

[11] Second, Ms Dowlut submits that Judge Corkill failed to appreciate that security for costs should be exceptional in the Employment Court context. She says the cases relied on by the respondent in applying for security for costs are distinguishable from her circumstances, such that the exceptional threshold was not met. Ms Dowlut points in particular to the health issues she experienced in the course of her employment with Aurecon as militating against there being circumstances justifying an order for security for costs.

[12] Third, Ms Dowlut criticises comments made by the Judge about medical evidence before him, which she calls “bias[ed] and offensive”. The Judge’s comments related to the fact that Ms Dowlut’s general practitioner had relied on self-reported symptoms and Ms Dowlut’s clinical record in producing an initial report recommending that further stress in the workplace should be minimised as much as possible.¹⁹ Ms Dowlut refers to a body of accident compensation jurisprudence for the proposition that Judges are not entitled to “draw any independent medical conclusions”. Ms Dowlut also makes a number of essentially evidential submissions to the effect that her medical condition at the time of her dismissal was such that the dismissal was improper. In fact, Ms Dowlut submits that the respondent’s conduct was such as to give rise to criminal liability under the Health and Safety at Work Act 2015 and the Crimes Act 1961. Liability under the latter is said to arise in respect of

¹⁸ The Employment Relations Act 2000 does not specify a timeframe in which applications to appeal an Employment Court decision to the Supreme Court must be brought. Consequently, the default time limit, 20 working days after the date of the Employment Court decision, applies: Supreme Court Rules 2004, r 11.

¹⁹ EmpC judgment, above n 1, at [56].

the offences in ss 174 and 175, which relate to counselling or attempting to procure murder and conspiracy to murder respectively.

[13] Fourth, Ms Dowlut says the Judge erred by failing to consider “circumstances that could lead to [Ms Dowlut’s] death” in awarding security for costs against her. She notes in this respect that there is no case in which security has been awarded in these circumstances.

[14] Addressing the high threshold for leave to appeal directly to this Court, Ms Dowlut submits that an exceptional circumstance is present in her case. This is that she had a “near death” medical incident at work. She attributes this incident to “bullying and harassment” experienced in the course of her employment with Aurecon.

[15] The respondent opposes the application for leave to appeal. It submits the application raises no question of law, let alone one that could justify leave under ss 214A of the Employment Relations Act and 75 of the Senior Courts Act. The respondent also notes that no reasons have been given to explain Ms Dowlut’s late filing.

Assessment

[16] Because Ms Dowlut’s application for leave to appeal to this Court was filed timeously following delivery of the Court of Appeal’s judgment, it is appropriate to allow an extension of time in relation to the application for leave to appeal the Employment Court decision.²⁰

[17] That said, Ms Dowlut has not been able to identify a question of law for the consideration of this Court. Nor has she identified exceptional circumstances sufficient to justify bringing a direct appeal to this Court. Rather, her submissions

²⁰ The Court of Appeal’s judgment was delivered on 13 February 2026. Ms Dowlut attempted to file an application for leave to appeal it to this Court on 6 March 2026. This application was not accepted for filing given the jurisdictional bar in s 68(b) of the Senior Courts Act. After an exchange with a Deputy Registrar, a compliant notice of application was subsequently filed on 18 March 2026.

demonstrate that her argument is fundamentally about the application of settled principles to the facts in this case.

Result

[18] The application for leave to appeal against the decision of the Court of Appeal is dismissed.

[19] An extension of time to apply for leave to appeal against the decision of the Employment Court is granted.

[20] The application for leave to appeal against the decision of the Employment Court is dismissed.

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

Solicitors:
Duncan Cotterill, Auckland for Respondent