

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA652/2020
[2021] NZCA 13**

BETWEEN AHMED ALKAZAZ
 Applicant

AND ENTERPRISE IT LIMITED
 Respondent

Court: Miller and Goddard JJ

Counsel: Applicant in person
 R J Bryant for Respondent

Judgment: 15 February 2021 at 10.00 am
(On the papers)

JUDGMENT OF THE COURT

- A The application for leave to appeal to this Court is declined.**
- B Mr Alkazaz must pay costs to Enterprise IT Ltd for a standard application on a band A basis with usual disbursements.**
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REASONS OF THE COURT

(Given by Goddard J)

The application before this Court

[1] Mr Alkazaz seeks leave to appeal to this Court from a judgment of the Employment Court.¹ The Employment Court dismissed a challenge to a determination

¹ *Alkazaz v Enterprise IT Ltd* [2020] NZEmpC 171 [Employment Court decision].

of the Employment Relations Authority (the Authority) declining Mr Alkazaz's application to reopen an investigation.²

Background

[2] In 2017 the Authority held that the dismissal of Mr Alkazaz by the respondent, Enterprise IT Ltd (Enterprise IT), was unjustified. The Authority ordered that Enterprise IT pay Mr Alkazaz lost wages, compensation for humiliation, loss of dignity and injury to feelings, and a penalty for a breach of his employment agreement.³ The lost wages and compensation awarded by the Authority were reduced by 20 per cent due to Mr Alkazaz's contributory conduct.⁴

[3] Neither party pursued a challenge against the Authority's substantive decision under s 179 of the Employment Relations Act 2000. However, more than a year after that decision was delivered, Mr Alkazaz sought an order that the Authority's investigation be reopened. Mr Alkazaz sought to challenge the Authority's findings in relation to contributory conduct, and the resulting reduction in the compensation awarded to him. The Authority declined to reopen its investigation.⁵

[4] Mr Alkazaz brought a challenge to the Authority's reopening decision in the Employment Court on a de novo basis. The Employment Court was required to make a fresh decision on his application. After carefully reviewing the background to the application, and the issues raised by Mr Alkazaz, Chief Judge Inglis was not satisfied that there had been an actual miscarriage of justice, or that a real or substantial possibility or risk of a miscarriage of justice had been made out. Nor did she consider that granting the application would be consistent with the interests of justice. The challenge was therefore dismissed.⁶

² *Alkazaz v Enterprise IT Ltd* [2019] NZERA 560 [Authority reopening decision].

³ *Alkazaz v Enterprise IT Ltd* [2017] NZERA Auckland 400 [Authority substantive decision].

⁴ At [66].

⁵ Authority reopening decision, above n 2, at [53].

⁶ Employment Court decision, above n 1, at [26].

Relevant leave provision

[5] Mr Alkazaz's application for leave to appeal to this Court is made under s 214 of the Employment Relations Act, which provides:

214 Appeals on question of law

(1) A party to a proceeding under this Act who is dissatisfied with a decision of the court (other than a decision on the construction of an individual employment agreement or a collective employment agreement) as being wrong in law may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision; and section 56 of the Senior Courts Act 2016 applies to any such appeal.

...

(3) The Court of Appeal may grant leave accordingly if, in the opinion of that court, the question of law involved in that appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

...

Grounds of application

[6] Mr Alkazaz summarises the questions of law he wishes to raise on appeal as follows:

- a. Shall the Appellant lack of legal knowledge and English being his secondary language be used in his favour to be granted leave to reopen the Authority or get granted an alternative remedy as leave to challenge his determination by the Employment Court as for the Appellant the Provision of the Employment Relations Act seemed more open ended than what was identified in the Employment Court's judgement.
- b. Shall the law's provision lack of clarity regarding what constitutes valid ground for reopening the Authority's investigation be a ground for the Appellant to be granted leave to Appeal on question of law.
- c. Shall the Perjury committed by the Defendant's witnesses at the Employment Relations Authority be examined by way of cross examination and accordingly the Plaintiff would be able to call these witnesses as hostile witnesses while the Court's perception of the law led it to judge otherwise and set aside all summonses.
- d. Is it lawful practice for the Employment to disregard over 99% of the evidence of Perjury detailed in the Appellant's Affidavit that was presented to the Employment Court in more details and further elaboration during the hearing, to be disregarded due to Mr Speers who wasn't even witness of any these events, or even was there at the Employment Relations Authority's investigation for his evidence to

count in favour of the Appellant's evidence that was supported of relevant documentation. There was definitely error in practicing the law in this regard.

- e. How the law was practiced to digest the evidence presented to the court and accordingly wishes to bring his Appeal forward to have this evidence examined with proper scrutiny by the Court of Appeal and further review of the law practices in this case.

[7] Enterprise IT opposes the application, on the basis that:

- (a) Mr Alkazaz has not identified any question of law. He accepts the law as applied by the Chief Judge.
- (b) No question of law that ought to be considered by this Court arises from the Employment Court decision.
- (c) Mr Alkazaz has failed to provide the Court with any evidential foundation justifying the grant of leave.
- (d) The application is an attempt to reopen factual issues and introduce more evidence that, with the benefit of hindsight, Mr Alkazaz wishes he had introduced in the Employment Court.
- (e) There is no basis on which to disturb the Employment Court decision.
- (f) The application is misconceived and without merit.

[8] Enterprise IT seeks costs and usual disbursements against Mr Alkazaz in relation to the application.

Analysis

[9] None of the issues identified by Mr Alkazaz is a question of law in respect of which leave could be granted under s 214 of the Employment Relations Act. In particular, Mr Alkazaz has not identified any question of law in relation to the test for reopening an investigation that he says was incorrectly decided by the Employment Court. We accept that Mr Alkazaz may have been confused about the

appropriate procedure to follow. But neither that confusion nor the fact that English is Mr Alkazaz's second language gives rise to any relevant question of law for the purposes of s 214 of the Act. The only question of law that might arise from the concerns expressed by Mr Alkazaz relates to the grounds for reopening an Authority investigation (though his concerns appear to focus on the difficulty he experienced in understanding those grounds, rather than on the content of the test articulated by the Employment Court). But that issue is well settled: it is not an issue of general or public importance, or one that otherwise merits consideration by this Court.

[10] Nor has Mr Alkazaz identified any question of law arising out of the evidence before the Authority or the Employment Court, or the new documentation obtained by Mr Alkazaz from a third party. The matters identified by Mr Alkazaz are not questions of law. Rather, they relate to the way in which the Employment Court applied the law in the particular factual circumstances of his case. These are not issues in respect of which leave to appeal to this Court can be granted under s 214 of the Employment Relations Act.

[11] As the successful party in respect of this application, Enterprise IT is entitled to costs as prescribed by r 53G of the Court of Appeal (Civil) Rules 2005, for a standard application on a band A basis (which amounts to \$956), with usual disbursements.

Result

[12] The application for leave to appeal to this Court is declined.

[13] Mr Alkazaz must pay costs to Enterprise IT Ltd for a standard application on a band A basis, with usual disbursements.

Solicitors:
Aspiring Law Ltd, Wanaka for Respondent