

was dismissed by the Employment Court.² The applicant then applied out of time for leave to appeal from that decision to the Court of Appeal. The Court of Appeal declined to grant the application for an extension of time.³ Although the Court did not grant the non-publication orders sought by the respondent, the Court did anonymise its judgment. The applicant now seeks leave to appeal to this Court from that decision.⁴

[2] In support of the application for leave, the applicant advances numerous grounds of challenge to the non-publication orders including issues which, the applicant says, arise from the Employment Court judgment which the Court of Appeal did not address and the operation of the Employment Relations Act 2000 with other legislation such as the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987. We see the substance of the complaint, however, as largely resting on the earlier publication and the undermining effect on the operation of the court system which it is said has flowed from keeping the non-publication orders in place. The applicant also challenges the Court of Appeal's assessment of the significance of the publication and says there is no legislative authority for the approach taken or for the anonymisation of the parties' names.

[3] The respondent, in opposing leave, submits that if successful on the proposed appeal the applicant seeks to disseminate material the subject of final compliance orders which are based on agreed confidentiality. In these circumstances, the respondent says there is no countervailing public interest that would warrant any amendment to the non-publication orders. The respondent supports the Court of Appeal's assessment of the effect of the judgment which identified the parties and says there is inherent jurisdiction to anonymise the parties' names.

[4] The proposed appeal would essentially have this Court re-visit arguments addressed by the Court of Appeal. In declining to grant the application for an extension of time, the Court of Appeal did not find the applicant's explanation for the "considerable" delay persuasive, but said that the delay had not caused particular

² *ITE v ALA* [2019] NZEmpC 93 (Judge Corkill).

³ *B (CA671/2020) v ALA* [2021] NZCA 229 (Miller and Clifford JJ) [CA judgment].

⁴ The notice of application refers to s 214A of the Employment Relations Act 2000. However, that section applies to direct appeals from the Employment Court so is not applicable in this case.

prejudice to the respondent.⁵ The application was nonetheless dismissed because the Court considered that the proposed appeal had no merit. In this respect, the Court took the view that the significance of the publication of the identifying material was “limited” given the various other judgments in the proceedings were anonymised.⁶ Nor did the Court consider the publication had any impact on the effect of the non-publication orders, as was apparent by this Court’s reference to the orders in declining the applicant leave to appeal from the decision of the Employment Court granting the non-publication orders.⁷

[5] In determining that an extension of time should not be granted, the Court of Appeal applied settled principles.⁸ There is no challenge to those principles. Rather, the challenge is ultimately to the way in which those principles have been applied to the particular factual situation. No question of general or public importance accordingly arises.⁹ The key question in considering the merits of the proposed appeal was the weight to be attached to the publication of the identifying material. The Court of Appeal made a considered assessment of that question. Nothing raised by the applicant gives rise to the appearance of a miscarriage of justice in that assessment.¹⁰

[6] For these reasons, the application for leave to appeal is dismissed.

[7] The applicant must pay the respondent costs of \$2,500. To maintain the confidentiality orders, we have anonymised the names of the parties in the intituling to this judgment.¹¹

⁵ At [10].

⁶ At [15].

⁷ *B (SC 18/2017) v ALA (SC 18/2017)* [2017] NZSC 51.

⁸ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]–[39].

⁹ Senior Courts Act 2016, s 74(2)(a).

¹⁰ Section 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.

¹¹ There can be no issue in the Court of Appeal’s decision to follow that course.