

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2022] NZEmpC 137  
EMPC 397/2019**

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN AHMED ALKAZAZ  
Plaintiff

AND ENTERPRISE IT LIMITED  
Defendant

Hearing: On the papers

Appearances: Plaintiff in person  
R Bryant, counsel for defendant

Judgment: 2 August 2022

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**INTERLOCUTORY JUDGMENT (NO 12)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for stay of proceedings)**

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**Background**

[1] Mr AlKazaz has applied for a stay of proceedings. The application is directed at a challenge to a costs determination of the Employment Relations Authority.<sup>1</sup>

[2] The stay was initially sought on the basis that Mr AlKazaz had other proceedings in the Court. It was said that the outcome of those proceedings might be relevant to the costs challenge and in these circumstances it may be preferable to defer

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<sup>1</sup> *AlKazaz v Enterprise IT Ltd* [2020] NZERA 332.

the challenge. Mr AlKazaz subsequently sought to pursue a private prosecution in the District Court in respect of alleged perjury committed by Enterprise IT Ltd and two witnesses who gave evidence in the Employment Relations Authority. This too was said to support the application for a stay.

[3] I issued a minute on 17 May 2022 advising the parties that I was proposing to deal with the application on the papers and providing an opportunity to file any further material in support of, or in opposition to, the application.

[4] Developments have occurred in the intervening period. The District Court has delivered a judgment declining to accept for filing charging documents for the perjury claim,<sup>2</sup> and a substantive judgment has now been delivered in the other proceedings in this Court.<sup>3</sup> It is evident from further documentation filed by Mr AlKazaz that he wishes to pursue the stay application on the basis that he is intending to take further steps in relation to the perjury matter.<sup>4</sup> The defendant company is opposed to the grant of a stay.<sup>5</sup>

[5] In pursuing the stay application, Mr AlKazaz notes that he has limited legal knowledge. He is concerned that the perjury issue may have a bearing on the current challenge “as it may relate to reasons giving rise to any costs and/or the justice of my case altogether,” but says that he is content to be guided by the Court. In this regard he notes that if the Court sees “no bearing of these two issues on the [Employment Relations Authority] costs, then [he is] content for the application to be dismissed on the merits, to avoid any additional complications and costs on either side.”

[6] The Court has discretion to order a stay if doing so is in the interests of justice. The factors generally considered relevant are well established. They include:<sup>6</sup>

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<sup>2</sup> *AlKazaz v Enterprise IT Ltd* DC Auckland, 20 June 2022.

<sup>3</sup> *AlKazaz v Enterprise IT Ltd* [2022] NZEmpC 74.

<sup>4</sup> As explained in his memorandum dated 30 June 2022 at [6]-[8].

<sup>5</sup> See the memorandum of counsel dated 25 July 2022; an earlier memorandum dated 6 May 2022 indicated that the defendant abided the decision of the Court on the application.

<sup>6</sup> *New Zealand Post Primary Teachers' Assoc v Attorney-General (on behalf of Ministry of Education)* (No 3) [1991] 3 ERNZ 708 (EmpC) at 709. See also *Z v Attorney-General* EmpC Wellington WRC 33/02, 22 July 2003 at [9].

- (a) if no stay is granted, whether the right to challenge will be rendered ineffectual;
- (b) whether the other party will be affected injuriously by a stay;
- (c) whether the challenge is being pursued in good faith; and
- (d) the novelty and importance of the questions involved in the case.

[7] It is not clear what steps, if any, Mr AlKazaz has taken or intends to take following the District Court Judge's decision. Nevertheless, I have reviewed the material before the Court relating to the perjury claim and have considered its potential interrelationship with the costs challenge. The possibility of the perjury claim, if it proceeds, impacting on the proceedings now before the Court appears to be remote and is itself dependent on a number of contingencies. The costs determination under challenge focused on the way in which Mr AlKazaz had advanced applications to reopen the Authority's substantive investigation and to remove it to the Court. The challenge is being pursued on a de novo basis. The point is that whether or not perjured evidence was given by some witnesses in the Authority's investigation leading to its substantive determination appears only weakly and tangentially relevant to the challenge that Mr AlKazaz wishes to advance.

[8] It follows that I am not satisfied that Mr AlKazaz's right of challenge would be rendered ineffectual if no stay was granted.

[9] In any event, I consider there to be broader administration of justice interests at play that weigh firmly against a stay being granted. The proceedings have been on foot for a considerable period of time and have taken many procedural twists and turns. It is desirable that the proceedings be brought to a conclusion.

[10] For completeness, I do not consider that the matters raised on the challenge engage issues of importance or novelty beyond the parties. In relation to the third factor, while I accept that the challenge is being pursued in good faith, I do not consider that to be of any particular relevance to my assessment.

[11] The application for stay is accordingly declined. I note that Mr AlKazaz has advised, in his memorandum of 30 June 2022, that if he does not succeed in bringing a successful prosecution against the two witnesses, he will withdraw the costs challenge “immediately”. Mr AlKazaz should promptly advise the Registry whether he intends to pursue the challenge.

[12] I do not understand any issue of costs on this application to arise. If I am wrong about that a memorandum ought to be filed by counsel for the defendant within 10 working days.

Christina Inglis  
Chief Judge

Judgment signed at 9.15 am on 2 August 2022