

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

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

**[2024] NZEmpC 178  
EMPC 256/2022  
EMPC 425/2022**

IN THE MATTER OF challenges to two determinations of the  
Employment Relations Authority

AND IN THE MATTER OF an application for stay of execution

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN BIGSON GUMBEZE  
Plaintiff

AND THE CHIEF EXECUTIVE OF  
ORANGA TAMARIKI – MINISTRY  
FOR CHILDREN  
Defendant

Hearing: On the papers

Appearances: D Fleming, counsel for plaintiff  
RM Butler and DT Smith, counsel for defendant

Judgment: 19 September 2024

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**INTERLOCUTORY JUDGMENT (NO 2)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for stay of proceedings)  
(Application for stay of execution)**

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[1] Judge Smith delivered a substantive judgment in these proceedings on 24 July 2024.<sup>1</sup> He reserved the issue of costs, providing the parties with an opportunity to agree an appropriate contribution. It appears that the parties were unable to reach

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<sup>1</sup> *Gumbeze v The Chief Executive of Oranga Tamariki – Ministry for Children* [2024] NZEmpC 133.

agreement and the plaintiff subsequently sought an order for costs by way of memorandum dated 21 August 2024.

[2] On 21 August 2024 the defendant filed in the Court of Appeal an application for leave to appeal against the Court's judgment. In parallel, the defendant filed an application in this Court for a stay of proceedings in respect of the determination of costs and a stay of execution of the orders made against it in Judge Smith's substantive judgment.

[3] Counsel have conferred and seek orders in respect of the two applications, by consent. I am satisfied that it is appropriate to make the orders sought.

[4] Accordingly, I make the following orders by consent:

- (a) The defendant will, within 28 days, pay the following monies into an interest-bearing account administered by Dentons Kensington Swan, to be held on trust until the appeal process has been concluded:
  - (i) the remedies awarded by the Employment Court in its substantive judgment of 24 July 2024;
  - (ii) costs of \$15,000 in respect of the Employment Relations Authority proceedings between the parties;
  - (iii) \$684.88 in respect of the Employment Relations Authority filing fees and investigation meeting fees incurred by the plaintiff;
  - (iv) costs of \$38,000 in respect of the interlocutory and substantive Employment Court proceedings;
  - (v) \$2,412.40 in respect of the Employment Court filing fees and hearing fees incurred by the plaintiff; and
  - (vi) costs of \$575 in respect of the plaintiff's costs application.

- (b) If the defendant is declined leave to appeal, or if the Court of Appeal upholds the decision of the Employment Court, the monies described above, together with any interest accrued, will be released to the plaintiff within 14 days (unless the defendant has indicated within that time that it intends seeking leave to appeal from the Court of Appeal to the Supreme Court).
- (c) In the event that the Court of Appeal overturns or substantially modifies the substantive decision of the Employment Court, further orders in regard to costs may need to be sought from this Court.

[5] No issue of costs arises in respect of the two applications.

Christina Inglis  
Chief Judge

Judgment signed at 8.45 am on 19 September 2024