

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2025] NZEmpC 144  
EMPC 453/2024**

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

AND IN THE MATTER OF leave to discontinue proceedings

BETWEEN ALEXIS ALLAN LÓPEZ  
Plaintiff

AND KĀRIKI PHARMA LIMITED (IN  
LIQUIDATION)  
First Defendant

AND ALEXANDRA LUCIE AIMER SETON  
Second Defendant

AND PAUL FREDERICK SETON  
Third Defendant

AND ANDREW LEONARD STEADSON  
Fourth Defendant

AND EAN MALCOLM ALEXANDER  
Fifth Defendant

Hearing: On the papers

Appearances: E Butcher and TA Preston, counsel for plaintiff  
S Langton and RL White, counsel for second and third defendants  
M Richards and D Fielding, counsel for fourth and fifth  
defendants

Judgment: 14 July 2025

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**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK  
(Leave to discontinue proceedings)**

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[1] This judgment resolves whether leave should be granted to the plaintiff to discontinue proceedings against the fourth and fifth defendants.

## **Background**

[2] This proceeding (EMPC 453/2024) and a related proceeding (EMPC 454/2024) involve non-de novo challenges to a determination of the Employment Relations Authority.<sup>1</sup>

[3] In this proceeding, the plaintiff seeks to challenge the findings of the Authority in relation to the payment of his salary by the first defendant for August, September and October 2020 and a claim for penalties against the second, third, fourth and fifth defendants.

[4] After filing his challenge on 14 November 2024, the plaintiff entered into a settlement agreement with the fourth and fifth defendants.<sup>2</sup>

[5] An amended statement of claim was filed on 3 February 2025, removing the fourth and fifth defendants as parties and seeking remedies only against the first, second and third defendants.

[6] On 12 February 2025, an amended statement of defence was filed by the second and third defendants. The first defendant has taken no steps.

[7] On 14 February 2025, a notice of discontinuance was filed against the fourth and fifth defendants.

[8] At a directions conference on 27 March 2025, counsel for the second and third defendants raised the issue of whether r 15.20(4) of the High Court Rules 2016 applied. This rule requires that where there is more than one defendant, the plaintiff may only discontinue proceedings with leave of the Court or with the written consent

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<sup>1</sup> *Lopez v Kariki Pharma Ltd* [2024] NZERA 626.

<sup>2</sup> A copy of the settlement agreement has been disclosed to the Court and the second and third defendants.

of every other defendant.<sup>3</sup> Leave was not sought in this instance, nor was consent given.

[9] In those circumstances, the Court sought to hear further from the parties on the following issues:<sup>4</sup>

- (a) Does r 15.20 apply?
- (b) If so, does that render the notice of discontinuance a nullity?
- (c) If it is a nullity, assuming that the leave of the Court is sought to discontinue, what do the parties say about whether such leave should be granted?

[10] After hearing from the parties, I determined that, despite sch 3 cl 18 of the Employment Relations Act 2000 (the Act),<sup>5</sup> r 15.20 likely applied pursuant to reg 6 of the Employment Court Regulations 2000.<sup>6</sup> I found that if r 15.20 does apply, an abuse of process or injustice will normally be required to deny leave,<sup>7</sup> consistent with the Court's inherent powers to protect its own processes. Further, even if r 15.20 does not apply, the Court would still have an inherent power to prevent discontinuance where it would cause an abuse of process or injustice.<sup>8</sup>

[11] However, other authorities suggest that leave would not be permitted under r 15.20 where a party should be joined for the purposes of r 4.56 of the High Court Rules.<sup>9</sup> Under that rule, a party may be joined where their presence may be necessary to adjudicate on and settle all questions involved in the proceeding.<sup>10</sup> Where the presence of a party may be required to resolve a proceeding, the Court will not usually permit discontinuance against them.

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<sup>3</sup> High Court Rules 2016, r 15.20(4).

<sup>4</sup> By minute to the parties dated 20 May 2025.

<sup>5</sup> Employment Relations Act 2000, sch 3 cl 18.

<sup>6</sup> Employment Court Regulations 2000, reg 6.

<sup>7</sup> *Justitiae Trustee Company Ltd v NZF Nominees Ltd* [2020] NZHC 471 at [34].

<sup>8</sup> See Employment Relations Act 2000, s 186(1).

<sup>9</sup> *Mayhew v Future Mobility Solutions Ltd* [2019] NZHC 3302 at [22]–[23]; but see *Justitiae Trustee Company Ltd v NZF Nominees Ltd*, above n 7, at [34].

<sup>10</sup> High Court Rules 2016, r 4.56.

[12] Accordingly, I considered that there were two issues that needed to be determined:

- (a) Would the proposed discontinuance constitute an abuse of process or injustice?
- (b) Is there a possibility that the presence of the fourth and fifth defendants may be required to adjudicate on and settle all questions involved in the proceeding?

[13] Further submissions from the parties were sought and have been received.

[14] In order to assess whether there is an injustice or abuse of process, or whether the fourth and fifth defendants' presence is required, it is helpful to consider the issues to be determined in the substantive proceeding if the fourth and fifth defendants are removed.<sup>11</sup> Those have been agreed as:

- (a) Was the Authority correct to decline to award Mr López salary for August, September and October 2020 due to the agreement between Mr López and Kāriki Pharma Ltd for Mr López to receive shares as remuneration for those months?
- (b) With regard to Mr López's claim for penalties against Ms Seton and Mr Seton:
  - (i) Is this claim time barred?
  - (ii) If not, did either Ms Seton or Mr Seton incite, instigate, aid and/or abet a breach by Kāriki Pharma Ltd of its employment agreement with Mr López?

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<sup>11</sup> The fourth and fifth defendants in this proceeding are not named parties in the related proceeding (EMPC 454/2024).

## The arguments

[15] The plaintiff and the fourth and fifth defendants argue that the discontinuance is not an abuse of process or injustice; nor are the fourth and fifth defendants required as named parties.

[16] The second and third defendants submit that their ability to oppose the discontinuance is compromised by the plaintiff's failure to follow a formal application for leave. However, I do not accept this for reasons that will be elaborated on below.<sup>12</sup>

[17] I consider that the second and third defendants were sufficiently on notice of any matters raised by other parties and have had a full and fair opportunity to respond or to raise their own concerns.

[18] The issues for consideration set out at [12] above were also contained in the 20 May 2025 minute. Therefore, the parties were on notice of the issues. If the second and third defendants consider there is injustice or an abuse of process, or the fourth and fifth defendants' presence is required, they are able to set out the reasons for that view. While they were timetabled to file their submissions first, they were also able to and did respond to the submissions filed by the plaintiff and the fourth and fifth defendants. I note that they effectively had the last word.

[19] I now turn to the consideration of these issues.

*Would allowing the discontinuance result in an abuse of process or injustice?*

[20] The plaintiff and fourth and fifth defendants rely on *Justitiae Trustee Company Ltd v NZF Nominees Ltd*.<sup>13</sup> They submit that this supports the proposition that a plaintiff has a prima facie right to discontinue proceedings against a party, and that leave should only be denied where there is clearly an established abuse of process or injustice. In that case, the Court permitted discontinuance against a party whose involvement was peripheral and where no substantive prejudice or procedural unfairness would result.

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<sup>12</sup> See below at [22]

<sup>13</sup> *Justitiae Trustee Company Ltd v NZF Nominees Ltd*, above n 7.

[21] They claim that, as in *Justitiae Trustee Company Ltd v NZF Nominees Ltd*, the fourth and fifth defendants' involvement is now peripheral. Their continued participation as parties will not assist in resolving the remaining issues and will only impose unnecessary cost and complexity. They distinguish the case from *Mayhew v Future Mobility Solutions Ltd* where discontinuance was refused due to the risk of duplicative proceedings and inconsistent findings.<sup>14</sup> They submit that from the plaintiff's perspective, the claims against the fourth and fifth defendants have been fully resolved, and there is no risk of fragmentation or procedural unfairness.

[22] The fourth and fifth defendants argue that they have not sought to avoid liability or frustrate the Court processes. They say they have resolved the matter with the plaintiff in a manner that promotes the efficient use of judicial resources and aligns with the objectives of the Employment Relations Act 2000, one of which is to reduce the need for judicial intervention.<sup>15</sup>

[23] The second and third defendants primarily object to the discontinuance on procedural grounds. They have submitted that the plaintiff's failure to file a separate interlocutory application and affidavit seeking leave is a substantial issue as it did not put the second and third defendants on notice.

[24] However, there is no requirement to formally file a standalone application for leave in all the circumstances, particularly given that r 15.20 does not specify how leave should be sought. While the plaintiff improperly filed a notice of discontinuance, the substantive issue was not negated by the failure to comply with r 15.20. Further, the 20 May 2025 minute to the parties stated that the plaintiff's actions thus far were to be taken as an application for leave to discontinue, if such an application were required. Leave of the Court is necessary in order to grant the discontinuance itself where consent of the parties cannot be obtained, as in the present case. However, the Court determines whether to grant leave by inviting the parties to make submissions on the merits, which it has done in this instance.

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<sup>14</sup> *Mayhew v Future Mobility Solutions Ltd*, above n 9, at [15]–[16].

<sup>15</sup> Employment Relations Act 2000, s 3(a)(vi).

[25] On the substantive issues, the second and third defendants submit that the Court will be unable to adjudicate on and settle all questions in the proceeding if the fourth and fifth defendants are not parties. They argue that the Authority's finding that all defendants were found to be involved in the breach and liable for arrears, as well as the plaintiff's settlement, would adversely impact them. In essence, the second and third defendants' objections to discontinuance appear to be concerns with the apportioning of liability and the extent of each defendant's potential involvement in the breaches. From the perspective of the second and third defendants, allowing discontinuance would result in injustice, as the proper adjudication of the proceeding requires the presence of all defendants.

[26] However, I do not consider that there is any abuse of process or injustice to the second and third defendants in this instance, particularly once the deed of settlement was disclosed. The second and third defendants are aware of what has been paid to the plaintiff and on what basis. Accordingly, there can be no double dipping.

[27] The substantive issues in this proceeding are also narrow.<sup>16</sup>

[28] In relation to the first issue, the claim for three months' pay, the remedy sought is in relation to any "unpaid amount",<sup>17</sup> and is sought against the first defendant. It is also not impacted by the presence or otherwise of the fourth and fifth defendants. In any event, there is no impact on the interests of the second and third defendants as the claim for three months' pay is against the first defendant company, and not them personally. There can be no injustice to them in these circumstances.

[29] The second issue, relating to whether a claim can be brought against the second and third defendants for penalty, is also not impacted by the presence of the fourth and fifth defendants. In the event that the plaintiff was successful, any consideration of penalty against the second or third defendants would be on an individual basis. Any remedies would depend on the individual's conduct and culpability; the absence of the

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<sup>16</sup> See above at [14].

<sup>17</sup> It must therefore take into account any payments received by the plaintiff from the fourth and fifth defendants for the period.

fourth and fifth defendants as parties does not give rise to any abuse of process or result in any injustice to the second and third defendants.

**Are the fourth and fifth defendants required as named parties?**

[30] The fourth and fifth defendants acknowledge that they may be called as witnesses and confirm their willingness to provide evidence if required. They argue that their continued presence as parties is not necessary to resolve the remaining issues in the proceedings as the plaintiff's claims against them have been resolved and no further relief is sought against them.

[31] They submit that the law supports the principle that a plaintiff has a prima facie right to discontinue against a party, and that leave should only be denied where there is an established abuse of process or injustice. They say they are no longer central to the dispute and their involvement is now peripheral. They argue that their removal will not affect the Court's ability to adjudicate the remaining issues.

[32] The second and third defendants submit that the pleadings determine the issues before the Court and what is central to them. They say that the plaintiff's claims and remedies engage the fourth and fifth defendants, and any finding of the Court will have adverse consequences against them. They maintain that because all the defendants were found to be involved in the breaches in the Authority, any finding of liability of the second and third defendants also affects the fourth and fifth defendants. They argue that the removal of those defendants will affect the proper disposition of the matters before the Court. While findings of liability have adverse consequences for defendants generally, it is unclear how discontinuance itself would generate adverse findings against the second and third defendants. To reiterate, the remedies sought in this proceeding would be determined solely on an individual basis and the removal of the fourth and fifth defendants does not shift the burden of liability onto the second and third defendants.

[33] I agree that provided the fourth and fifth defendants are available to give evidence, there is no requirement for them to be present or named as parties. Remedies are no longer sought against them.

## **Memorandum of further submissions by the second and third defendants**

[34] On 10 July 2025, the second and third defendants filed a further memorandum raising, inter alia, submissions on the issue of discontinuance. They reiterate that if leave is granted, it would result in adverse findings against the second and third defendants. However, they note that they will abide the Court's decision on discontinuance, but request that the Court reserve its decision on costs due to the plaintiff's failure to amend his pleading at the earliest opportunity.

### **Outcome**

[35] Taking into account the findings above, and the purpose of the Act to reduce judicial intervention, it is appropriate that leave be granted to the plaintiff to discontinue proceedings against the fourth and fifth defendants.

[36] Leave is granted accordingly.

[37] The plaintiff and the fourth and fifth defendants have been successful but the second and third defendants have raised legitimate issues that should have been addressed by the plaintiff at the outset. Accordingly, my preliminary view is that costs should lie where they fall but I will receive memoranda within 14 days of the date of this judgment.

Kathryn Beck  
Judge

Judgment signed at 2 pm on 14 July 2025