

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

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

**[2025] NZEmpC 181
EMPC 321/2023**

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

AND IN THE MATTER OF an application for costs

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN SIMON MUTONHORI
Plaintiff

AND WAIROA DISTRICT COUNCIL
Defendant

Hearing: On the papers

Appearances: S Mutonhori, plaintiff in person
C McGuinness, counsel for the defendant

Judgment: 19 August 2025

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE J C HOLDEN
(Application for stay of proceedings)**

[1] As the successful party in the court, the Wairoa District Council has applied for costs.¹ Simon Mutonhori has applied for a stay of that application and this judgment resolves the application for a stay.

[2] The reason for the application for a stay essentially is because Mr Mutonhori has applied for leave to appeal the Court's substantive judgment, and he submits that the costs application should await the Court of Appeal's determination of the appeal.

¹ *Mutonhori v Wairoa District Council* [2025] NZEmpC 44.

The Court of Appeal advises that the application for leave will be dealt with on the papers on 13 October 2025.

[3] The Wairoa District Council opposes the application for a stay. It says that Mr Mutonhori has not set out any grounds for granting a stay. It notes that applying for leave to appeal does not operate as a stay of the Employment Court proceedings. It says further that there is no evidence that would support the suggestion that if no stay is granted, Mr Mutonhori's right of appeal will be rendered ineffectual.

[4] The Wairoa District Council points to Mr Mutonhori's history of unpaid costs awards and that he has not offered to increase the security for costs currently held by the Court, which is \$15,000 plus interest.² The amount currently sought by the Wairoa District Council for costs totals \$37,045 (which includes a sum for costs on the application for costs).

[5] The Wairoa District Council says that it would be injuriously affected by a stay as it will be denied the fruits of the judgment, pending the outcome of the application for leave to appeal, and the appeal itself (if leave is granted). It acknowledges, however, that it is a local authority and has income, but submits that it has a responsibility to ratepayers to seek the quickest and fastest resolution of this litigation.

[6] The Wairoa District Council also says that the application for leave to appeal is speculative at best, there are no novel or important issues that arise, and that the application for leave appears to be a challenge to the factual findings in the substantive judgment. It says further that there is no public interest in the proceedings.

[7] I acknowledge the points made by the Wairoa District Council. Nevertheless, the point remains that the Court of Appeal is dealing with the application for leave reasonably soon, which suggests a pragmatic approach is appropriate.

[8] I also take into account that the Wairoa District Council is able to withstand a small delay in respect of its application for costs, and that it has partial protection by

² *Mutonhori v Wairoa District Council* [2024] NZEmpC 43.

virtue of the payment into court following the previous judgment on the application for security for costs.

[9] In the particular circumstances of this case, I consider the best way to deal with the application is through granting the stay and amending the current timetable for submissions on costs.

[10] Accordingly, I grant a stay of the application for costs and amend the previous timetable for submissions on costs so that the following orders are made:

- (a) Mr Mutohori is to file and serve any submissions in response to the Wairoa District Council's application for costs within 14 days of the Court of Appeal judgment declining leave, or in the event that leave is granted, the judgment upholding the decision of the Employment Court;³ and
- (b) Any submissions in reply from the Wairoa District Council then are to be filed and served within a further seven days.

[11] In the event Mr Mutohori succeeds in the Court of Appeal, this timetable will have no effect.

[12] Costs on this application are reserved. The parties should address that issue in the submissions to be filed.

J C Holden
Judge

Judgment signed at 12.30 pm on Tuesday 19 August 2025

³ This is shorter than the 21 days provided for a response in the Court's original judgment (*Mutohori v Wairoa District Council*, [above n 1](#), at [99]) but reflects that Mr Mutohori has had the Wairoa District Council's application for costs since it was filed in April 2025.