

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

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

**[2025] NZEmpC 262
EMPC 321/2023**

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

AND IN THE MATTER OF an application for costs

BETWEEN SIMON MUTONHORI
Plaintiff

AND WAIROA DISTRICT COUNCIL
Defendant

Hearing: On the papers

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

Judgment: 5 December 2025

COSTS JUDGMENT OF JUDGE J C HOLDEN

[1] Having been successful in defending Mr Mutonhori's challenges, Wairoa District Council now seeks an order for costs.¹

[2] The amount sought by Wairoa District Council is \$37,045, which includes \$956 for costs in respect of the application for costs.

[3] Pursuant to an earlier judgment, the Court holds \$15,538.82, being \$15,000 paid by Mr Mutonhori as security for costs, plus accrued interest.² Security for costs

¹ *Mutonhori v Wairoa District Council* [2025] NZEmpC 44, [2025] ERNZ 595.

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

of \$15,000 was ordered balancing the interests of both parties, but recognising that, should Wairoa District Council win, it may well be entitled to a greater sum.³

[4] Mr Mutonhori opposes an order for costs. He says that the Court should only order payment of modest costs against a party in extreme circumstances, being if:

- (a) the Court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or
- (b) the Court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or
- (c) it was reasonably apparent to the party that their challenge had no reasonable prospects of success.

[5] He says an order for costs would otherwise defeat the course of justice, as it would discourage genuine litigants from using the courts as a means of civilised dispute resolution. He refers particularly to litigants with limited financial resources.

[6] He says his case was not without merit, and that the Wairoa District Council unnecessarily prolonged the hearing, calling a "huge entourage of irrelevant witnesses".

[7] Further, Mr Mutonhori says he is impecunious; he has withdrawn funds from his KiwiSaver account and sold his house to cover debt and his family's upkeep, including private school fees for his child.

[8] Wairoa District Council's calculation in respect of its claim for costs is based on the Employment Court's guideline scale for a category 2B proceeding, which was

³ At [20].

the categorisation identified by the Court at a directions conference with the parties in June 2024.⁴

[9] Counsel confirms that Wairoa District Council’s actual costs exceed the costs sought.

Costs are discretionary

[10] The Court has a broad discretion as to costs.⁵ That discretion must be exercised judicially in accordance with well-established principles. As a general rule, and contrary to the submissions of Mr Mutohori recorded above at [4](a) and (c), costs follow the event. The Court may have regard, however, to any conduct of the parties tending to increase or contain costs.⁶

[11] Costs on costs are not routinely awarded, but Wairoa District Council submits they are appropriate here as Mr Mutohori did not engage about costs, so an application was necessary.

An order is appropriate

[12] As Wairoa District Council was successful in defending the challenge brought by Mr Mutohori, it is entitled to costs.

[13] I do not accept that Wairoa District Council prolonged the hearing of this matter. Mr Mutohori raised several issues, and evidence was required to deal with those issues. Indeed, I agree with the submissions of Wairoa District Council that the proceedings were made over-long and complicated by Mr Mutohori, in particular because of his drafting and filing irrelevant pleadings and materials. No uplift is sought by Wairoa District Council, however, so I put that to one side.

[14] The amounts identified by Wairoa District Council are properly included in the calculation for costs and a modest amount is appropriate for the application for costs,

⁴ Employment Court of New Zealand “Practice Directions” (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

⁵ Employment Relations Act 2000, sch 3 cl 19.

⁶ Employment Court Regulations 2000, reg 68.

given an application was necessary. On balance, however, I allow a small discount to recognise Mr Mutohori's financial position.

[15] I arrive at a figure of \$33,000.

[16] The Registrar is directed to release to the Wairoa District Council the amount held on deposit in respect of security for costs. Taking that amount into account, the sum of \$17,461.18 is to be paid to the Wairoa District Council by Mr Mutohori by 30 January 2026.

J C Holden
Judge

Judgment signed at 3.15 pm on Friday 5 December 2025