



# Employment Court of New Zealand

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## Alkazaz v Enterprise IT Limited [2021] NZEmpC 227 (16 December 2021)

Last Updated: 21 December 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 227](#)

EMPC 100/2021

IN THE MATTER OF	an application for leave to extend time to file a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to adduce further evidence during court proceedings
BETWEEN	AHMED ALKAZAZ Applicant
AND	ENTERPRISE IT LIMITED Respondent

Hearing: On the papers

Appearances: A AlKazaz, applicant in person  
R Bryant, counsel for respondent

Judgment: 16 December 2021

INTERLOCUTORY JUDGMENT (NO 6) OF JUDGE J C HOLDEN

### (Application to adduce further evidence during court proceedings)

[1] Mr AlKazaz has applied for leave to extend the time for filing a challenge. He filed two affidavits in support of his application, one from himself and one from his wife, Nagham ElDemiri.

#### Mr AlKazaz wishes to give oral evidence

[2] Generally, applications for leave to extend time are dealt with on the papers. The Court has already agreed that it will hear oral submissions.

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[3] Mr AlKazaz now applies for leave to provide further evidence orally. He proposes that he and his wife give that evidence, which he anticipates would be brief.

[4] The further evidence Mr AlKazaz wishes to provide is about two issues. First, he wants to give more evidence around his assertion that the witnesses for Enterprise IT Ltd (Enterprise IT) committed perjury during the Employment Relations Authority investigation meeting. Second, Mr AlKazaz wishes to provide further evidence in relation to events surrounding the birth of his first child, which he submits would be better expressed orally.

[5] Enterprise IT opposes the application. It says that the application has come late and there is no reason to depart from

the ordinary position that applications of this nature are heard on the papers. It also says, as the application to extend time is a preliminary matter, the Court will not be thoroughly assessing the asserted facts of the substantive case. It says that it would be significantly prejudiced if Mr AlKazaz or his wife were allowed to give evidence at the hearing; Enterprise IT would not be able to prepare any evidence to rebut or comment on any evidence given, or to adequately prepare any cross-examination. Enterprise IT says too that, in light of Mr AlKazaz's previous appearances as a witness, it is likely that his evidence would be lengthy, despite his assurances to the contrary.

### **Mr AlKazaz's proposed challenge is significantly out of time**

[6] The determination that Mr AlKazaz wishes to challenge is dated 22 December 2017.<sup>1</sup> The application for leave to extend the time for filing a challenge was filed on 19 March 2021, so significantly outside the time within which his challenge ought to have been filed.

<sup>1</sup> *AlKazaz v Enterprise IT Ltd* [2017] NZERA Auckland 400 (Member Craig).

[7] The overarching consideration in dealing with applications for leave to extend time is the interests of justice.<sup>2</sup> The specific factors the Court generally considers are:<sup>3</sup>

- (a) the reason for the omission to bring the case within time;
- (b) the length of the delay;
- (c) any prejudice or hardship to any other person;
- (d) the effect on the rights and liabilities of the parties;
- (e) subsequent events; and
- (f) to a limited extent, the merits of the proposed challenge.

[8] The Court may also consider whether there is any public interest in the proceeding.

### **Limited oral evidence is permitted**

[9] Mr AlKazaz has already given affidavit evidence about both the issues he raises. I do not accept that further evidence, let alone oral evidence on the first issue, will assist the Court. Further, I accept the point made by Enterprise IT that it would be unfairly disadvantaged in Mr AlKazaz giving such evidence orally, for the reasons it has given.

[10] In relation to Mr AlKazaz's other issue, I accept that giving oral evidence about emotional events may assist in demonstrating the impact of those events. Further, I consider such evidence can be given by Mr AlKazaz relatively briefly, probably with little cross-examination.

[11] With that in mind, I grant leave to Mr AlKazaz to give short evidence concerning the matters surrounding the birth and early life of his first child. He is to supply a brief of evidence of no more than two pages (in standard font and excluding

<sup>2</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

<sup>3</sup> *An Employee v An Employer* [2007] ERNZ 295 (EmpC) at [9]-[10]; *Almond v Read*, above n 2, at [38]-[39].

the intituling) which he then would read at the hearing with a view to him being in a position to answer any cross-examination or questions from the Court. Mr AlKazaz's brief is to be filed and served no later than 4 pm on Friday 21 January 2022. If the brief is more than two pages, I direct the Court Registry to refer it back to Mr AlKazaz for him to refile it in accordance with the Court's direction.

[12] Mr AlKazaz's application is otherwise unsuccessful. Once the evidence is completed, the Court will set a timetable for the filing of submissions in advance of the hearing of this matter.

[13] Costs are reserved.

J C Holden Judge

Judgment signed at 3.30 pm on 16 December 2021