



Employment Court of New Zealand

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Alkazaz v Enterprise IT Limited [2021] NZEmpC 43 (31 March 2021)

Last Updated: 7 April 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2021\] NZEmpC 43](#)

EMPC 397/2019

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority
AND IN THE MATTER OF an application to strike out counsel
for the defendant
AND IN THE MATTER OF an application to strike out
application to strike out counsel for
the defendant
AND IN THE MATTER OF application for further security for
costs
BETWEEN AHMED ALKAZAZ
Plaintiff
AND ENTERPRISE IT LIMITED
Defendant

Hearing: On the papers

Appearances: Plaintiff in person
R Bryant, counsel for
defendant

Judgment: 31 March 2021

INTERLOCUTORY JUDGMENT (NO 8) OF CHIEF JUDGE CHRISTINA INGLIS

(Applications to strike out counsel for defendant, to strike out application to strike out counsel for defendant and further security for costs)

[1] Mr AlKazaz was employed by Enterprise IT Ltd for a period of just less than three months (12 September 2016 to 9 December 2016). He was dismissed and pursued a claim against the company. The Employment Relations Authority upheld Mr AlKazaz's claim, found that he had been unjustifiably dismissed and awarded him lost wages and compensation. The Authority also penalised the company for failing to pay Mr AlKazaz

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in lieu of notice on termination of his employment. Mr AlKazaz filed an application to re-open the investigation, which was declined by the Authority. He then filed a challenge to the Authority's determination declining to re-open its original investigation.

[2] I dismissed the challenge on 22 October 2020.1 Mr AlKazaz had also challenged a costs determination. That challenge was to be dealt with after my substantive judgment. Mr AlKazaz had, by this stage, applied for leave to appeal to the Court of Appeal. Mr AlKazaz applied for a stay of the costs challenge pending the outcome of the appeal process. The company filed a notice of opposition to the application for a stay. Mr AlKazaz raised concerns about the basis on which the opposition was advanced. The company was directed to file an affidavit in support of its opposition. Mr AlKazaz then filed an application to strike out counsel for the company. The company responded to the application to strike out counsel by filing a notice of

opposition and an application to strike out the application to strike out counsel. Mr AlKazaz opposes the company's strike out application. The company coupled its strike out application with an application for further security for costs. That application is also opposed.

[3] As will be apparent, the procedural route that this matter is taking is less than straightforward. It is time consuming; and no doubt costly.

[4] I deal with each application in turn.

Application to strike out counsel

[5] The application to strike out counsel is essentially based on an assertion that Mr Bryant is without instructions. The defendant describes the application as frivolous and vexatious. I agree there is no evidential basis to support the suggestions being made by Mr AlKazaz. Indeed, the evidence that is before the Court by way of affidavit sworn by the company's managing partner, Mr Speers, firmly undermines the position being advanced.

[6] The application to strike out Mr Bryant as counsel is accordingly dismissed.

1 *Alkazaz v Enterprise IT Ltd* [2020] NZEmpC 171.

Application to strike out strike out application

[7] A strike out application would generally be met simply with a notice of opposition. In this case I have already dismissed the strike out application advanced by Mr AlKazaz, and so there is no need to deal with the company's application to strike out Mr AlKazaz's strike out application.

Security for costs

[8] The company has applied for an order of further security for costs against Mr AlKazaz. It is said that the order previously made is insufficient in terms of quantum; that Mr AlKazaz remains resident overseas; there is reason to believe that he will be unable to pay the company's costs if his costs challenge fails; his most recent applications lack merit; and it is likely that the way in which Mr AlKazaz will pursue matters will unnecessarily increase the company's costs.

[9] Mr AlKazaz has filed an affidavit in support of his opposition to the company's application. While he accepts that he is currently residing overseas, he says that he is returning to New Zealand with his family by July 2021; that he complied with previous security for costs orders; and (by inference) there is no reason to believe that he would not comply with a costs order if ultimately made against him; that the company is in liquidation and no consent has been obtained to continue with the proceedings; and the costs allegedly being incurred by the company are extravagant and inflated.

[10] The Court has jurisdiction to order a party to pay security for costs and to stay proceedings until that is attended to.² I previously ordered Mr AlKazaz pay a sum into Court by way of security for costs.³ The question is whether further security ought to be ordered.

[11] While Mr AlKazaz is intending to travel to New Zealand with his family in July this year, there is nothing to suggest that the move will be a permanent one. His usual or ordinary place of residence remains Dubai.

2 [Employment Court Regulations 2000](#), reg 6(2)(a)(ii); [High Court Rules 2016](#), r 5.45.

3 *Alkazaz v Enterprise IT Ltd* [2020] NZEmpC 42.

[12] There is an interest in the company being protected against a barren costs award in the event that costs are ordered against Mr AlKazaz. That interest needs to be balanced against Mr AlKazaz's right of access to the courts. Ultimately the Court must be guided by the overall interests of justice.

[13] I am satisfied that it is in the overall interests of justice to order a further sum be paid by way of security for costs. An important consideration relates to party conduct. Mr AlKazaz is representing himself and some latitude is required. But even allowing for this, the way in which the litigation is being advanced suggests that seeing it through to its ultimate conclusion is likely to be unnecessarily complicated, protracted and costly for the company. I accept too that the company will likely face difficulties with any costs recovery. That is informed by the fact that Mr AlKazaz resides overseas, and there may well be difficulties with enforcement, but is bolstered by the difficulties that the company appears to have had with enforcing the \$956 order for costs made against him in the Court of Appeal.⁴ These are referred to in Mr Speers' affidavit. He says that issues relating to Mr Bryant's authority to act and the company's status have been raised as a basis for declining payment.

[14] While the substantive challenge has been dealt with, there are two active matters before the Court, namely Mr AlKazaz's application for a stay of the costs challenge and the costs challenge itself (a further application advanced by Mr AlKazaz in relation to the company's status will be dealt with, as necessary, after the stay application is determined). In my view there is a real prospect that the plaintiff's conduct will inflate the costs that the defendant might otherwise expect to incur bringing these two matters to a close. I do not however accept the company's submission that further security in the sum of \$36,136.80 is appropriate. I agree that costs calculated according to the Court's Guideline Scale are unlikely to be an accurate reflection of the costs likely to be incurred. Standing back, I consider that a further order for security in the sum of \$10,000 is appropriate.

[15] The company seeks a stay of proceedings until further security is paid. However, it is desirable that the application for a stay of the costs challenge be dealt

4 *AlKazaz v Enterprise IT Ltd* [2021] NZCA 13.

with without further delay. Accordingly the timetabling orders previously made to progress that matter through to a hearing on the papers will be adjusted so that both parties file and serve submissions by 4pm 14 April 2021.

Summary

[16] The following orders are accordingly made:

- (a) The application for an order striking out Mr Bryant as counsel is dismissed.
- (b) The application for an order striking out the application for strike out does not need to be dealt with given the order made ([16](a)).
- (c) The plaintiff is to pay security for costs of \$10,000 into Court within 10 working days of the date of this judgment.
- (d) Such amount is to be held by the Registrar on interest-bearing deposit, pending further order of a Judge.
- (e) The timetabling directions for the application for a stay of proceedings (costs challenge) are adjusted. The parties are to file and serve written submissions no later than 4pm 14 April 2021.

[17] Costs on this application are reserved.

Christina Inglis Chief Judge

Judgment signed at 4.10 pm on 31 March 2021