



Employment Court of New Zealand

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KAQ v Attorney-General [2021] NZEmpC 196 (12 November 2021)

Last Updated: 21 November 2021

**ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING
PARTICULARS OF THE PLAINTIFF
IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[\[2021\] NZEmpC 196](#)
EMPC 286/2021**

IN THE MATTER OF a declaration under [s 6\(5\)](#) of the
[Employment Relations Act 2000](#)
AND IN THE MATTER of an application to access Court
documents
BETWEEN KAQ by his litigation guardian, Joshua
Shaw Plaintiff
AND THE ATTORNEY-GENERAL sued on
behalf of the Ministry of Business,
Innovation and Employment, Labour
Inspectorate
First Defendant
AND HOWARD TEMPLE, FERVENT
STEDFAST, ENOCH UPRIGHT, SAMUEL
VALOR, FAITHFUL PILGRIM, NOAH
HOPEFUL AND STEPHEN STANDFAST
Second Defendants
AND FOREST GOLD HONEY LIMITED AND
HARVEST HONEY LIMITED
Third Defendants

Hearing: On the papers

Appearances: J L Shaw, counsel (litigation guardian) for
plaintiff J Catran and A Piaggi, counsel for first
defendant
S G Wilson, counsel for second and third
defendants

Judgment: 12 November 2021

KAQ by his litigation guardian, Joshua Shaw v THE ATTORNEY-GENERAL sued on behalf of the Ministry of Business, Innovation and
Employment, Labour Inspectorate [\[2021\] NZEmpC 196](#) [12 November 2021]

INTERLOCUTORY JUDGMENT (NO 4) OF CHIEF JUDGE CHRISTINA INGLIS

(Application to access Court documents)

Introduction

[1] An application has been made by an investigative producer for TV3 to access “all pleadings, affidavits, memorandums, briefings and documents relating to [the plaintiff]” held on the Court file.

[2] The file in question comprised a number of claims, now discontinued, brought by a former resident of the Gloriavale Christian Community (Gloriavale). Those claims included one seeking a declaration under s 6 of the [Employment Relations Act 2000](#) (the Act) that the plaintiff had been an employee of a number of persons and companies affiliated to Gloriavale; and another alleging that the Labour Inspectorate had breached its statutory duties by failing to enforce minimum standards at Gloriavale.

[3] Access is sought because of what is described as the significant public interest in the matter, including in light of investigations conducted by the Labour Inspector;¹ reported concerns raised by the Commissioner of Children about conditions for children at Gloriavale; and reports that the Police, Oranga Tamariki and the Teaching Council have active investigations on foot which are said to involve the Gloriavale community.

[4] I directed that the application be provided to those with an interest in it. The application is opposed on a number of grounds, which can be summarised as follows:

- The proceedings have now been discontinued and were at an early stage when this occurred.
1. The investigation resulted in a publicly available report which concluded that persons who worked at the Gloriavale community were volunteers - not employees - and accordingly unable to access minimum protections provided by a suite of employment legislation.
- The plaintiff is a minor.
 - A number of documents on the Court file contain sensitive personal information about the parties and others.
 - The documentation contains reference to a number of serious allegations which have yet to be tested.
 - A number of documents relate to a trial management matter and are not of direct relevance to the matters of issue in the proceedings.
 - Access to some of the documents would not be appropriate as they deal with matters to be dealt with in another forum and may circumvent statutory confidentiality provisions in that forum.

The framework for analysis

[5] The Act does not deal with access to documents held on the Court file, nor do the [Employment Court Regulations 2000](#). The [Senior Courts \(Access to Court Documents\) Rules 2017](#) (the Rules) have been applied by way of reference to reg 6 of the Regulations and/or by way of helpful analogy.²

[6] The Rules are made under the [Senior Courts Act 2016, Section 173](#) of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that court information includes the “formal court record, the court file, information relating to particular cases and electronic records of hearings.” The material sought in this case is on the court file. A person may ask to access any document under r 11.

[7] The principle of open justice is fundamental.³ The principle may need to be

2 *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

3. *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] in relation to the principle generally; and, in relation to access to Court documents, see the discussion in *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 [Berry HC] upheld on appeal in *Berry v Crimson Consulting Ltd* [2018] NZCA 460 [Berry CA].

departed from in certain circumstances, when it is in the interests of justice to do so.

[8] [Rule 12](#) of the Rules specifies a range of matters that must be considered when determining an application for access. It provides:

12. Matters to be considered

In determining a request for access under [rule 11](#), the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice:

...

(c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice:

(d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:

(e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):

(f) the freedom to seek, receive, and impart information:

...

(h) any other matter that the Judge thinks appropriate.

[9] [Rule 13](#) deals with the approach to balancing the matters to be considered under r 12:

13. Approach to balancing matters considered

In applying [rule 12](#), the Judge must have regard to the following:

(a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:

(b) during the substantive hearing, open justice has—

(i) greater weight than at other stages of the proceeding; and

(ii) greater weight in relation to documents relied on in the hearing than other documents:

(c) after the substantive hearing,—

(i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but

(ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

[10] As the rules make clear, access may be granted on a limited basis. In other words, the Court should not approach an application on an all-in or all-out basis.

Application of framework to this case

[11] The proceedings were at an early stage when the request was made on 26 October 2021,⁴ and a notice of discontinuance has since been filed. The fact that the proceedings had yet to be heard, and will not now be heard, weighs against the grant of access for the reasons set out by the Court of Appeal in *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petróleo*:⁵

[25] ... prior to and after the substantive hearing, the importance of public scrutiny is less, as the court is not hearing and resolving the dispute. Prior to the hearing there is no guarantee that the case will go to hearing at all. Therefore, open justice has less weight. The parties are entitled to the protection of confidentiality and privacy within reasonable limits, given that they have not at that point aired the dispute in public. ...

[12] Some of the material falling within the scope of the application relates to personal and sensitive matters, and allegations which have not been tested. I also accept that providing access to the full raft of documents held on the Court file may give an incomplete and potentially inaccurate picture in light of the fact that the

4 Further information in support of the request was provided by the applicant on 27 October 2021.

5. *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petróleo* [2017] NZCA 490 at [25]. See too *GFD I LLP v Melview (Kawarau Falls Station) Investments Ltd (in rec)* [2012] NZHC 677; *BNZ Investments Ltd v Commissioner of Inland Revenue* (2009) 20 PRNZ 311 (HC); *Hawkes Bay Regional Council v Herbert Construction Company Ltd* [2015] NZHC 1060.

allegations have not been, and now will not be, tested (at least in these proceedings).

That would not be consistent with encouraging fair and accurate reporting.⁶

[13] The plaintiff is a minor. As r 12(d) makes clear, I must have regard to the protection of the plaintiff's confidentiality and privacy interests when considering the application. Mr Shaw, litigation guardian, says that allowing access may undermine any non-publication order that might be made. This concern is largely addressed by the applicant's assurance that the plaintiff will not be named and the fact that a permanent non-publication order has now been made, prohibiting publication of the plaintiff's name and identifying details. Also notable is that this application was filed prior to the non-publication order being made, so the applicant is already aware of the plaintiff's identity.

[14] It will be apparent that I see some strength in the concerns raised on behalf of the plaintiff and second and third defendants. The Court must however assess whether such concerns outweigh the public interest involved and the presumption of open justice. It is these broader interests that I now turn to.

[15] Counsel for the Attorney-General does not take a position on access to any documents on the Court file other than memoranda relating to a trial management issue. The other two defendants oppose the application, primarily on the basis that the material on the Court file contains sensitive and untested claims against them. I have already referred to this as a relevant factor to weigh in the mix. The pertinent point at this stage of the analysis is the identity of the defendants and the nature of the allegations against each of them, including the way in which the second and third defendants are said to have dealt with the plaintiff and their compliance or otherwise with various alleged statutory obligations.

[16] The first defendant is the Attorney-General sued on behalf of the Labour Inspector in the exercise of their statutory functions; the second and third defendants are part of the Gloriavale faith-based organisation. There is a public interest in legal proceedings taken against such defendants, even where those proceedings do not

⁶ [Rule 12\(e\)](#); see too *Berry HC*, above n 3, at [24].

progress to hearing. The public interest is heightened in this case in light of reported investigations being undertaken by other agencies and reported concerns raised by the Children's Commissioner.

[17] It is also relevant that, while the allegations against the defendants are untested and will remain so insofar as these proceedings are concerned, a number of interlocutory applications have been dealt with and judgments delivered, which are publicly available. The point is that a degree of public airing of the dispute has already occurred; it is a matter of public record that the proceedings were brought, who they involved, and what they generally related to.

[18] There are two particular categories of documents which I now turn to. The first relate to matters which will now be subject to scrutiny in another forum. The parties are agreed that no access should be granted to those documents. I do not consider it appropriate that the applicant have access to those documents.

[19] The second is a category of documents which relates to an issue of trial management, which prompted the filing of memoranda by counsel for the Attorney-General. The parties are agreed that no access should be granted to those documents. Those documents do not relate specifically to the plaintiff and likely fall outside the scope of the application. However, I record for completeness that I do not consider it appropriate that the applicant have access to those documents.

Result

[20] Standing back and considering the matters in rr 12 and 13, and the authorities I have referred to, I consider it to be in the interests of justice to grant limited access to the Court file. Access is granted to the primary pleadings, namely the statements of claim. I record that no statements of defence were filed by the time the notice of discontinuance was filed, and so no statement of defence or substantive response to the statements of claim is held on the Court file. I also record that the amended statement of claim refers to two individuals as plaintiffs who were never formally joined. The application for joinder was opposed and the notice of discontinuance was filed before the application had been dealt with. In these circumstances I

consider it appropriate to redact the two names. More generally in relation to the statements of claim, I consider that the privacy and confidentiality issues identified, particularly in respect of the plaintiff, can be ameliorated by the orders of non-publication that have now been made and the assurances given by the applicant. To the extent that the identified concerns of the parties are not addressed via these means, they are outweighed by the broader interests of justice.

[21] I consider that there are sufficiently good reasons to decline the request insofar as it covers access to other documents on the Court file, including affidavits, memoranda and the documentation referred to at [18] and [19] above. The proceeding was at an early stage when it was discontinued and much of the material held on the Court file is sensitive, untested and may give an unbalanced impression of the issues involved in these proceedings.

[22] The applicant is reminded of the non-publication order that has been made in respect of the name and identifying details of the plaintiff.

[23] I do not understand any issue of costs to arise.

Christina Inglis Chief Judge

Judgment signed at 3.30 pm on 12 November 2021

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