



Employment Court of New Zealand

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Kaukau t/a Sew & Sew v Hiri-Gualeni [2020] NZEmpC 217 (4 December 2020)

Last Updated: 10 December 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2020\] NZEmpC 217](#)

EMPC 8/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for security for costs
BETWEEN	MARIE KAUKAU TRADING AS SEW & SEW Plaintiff
AND	SOPHIE HIRI-GUALENI Defendant

Hearing: On the papers

Appearances: M Kaukau, in person
A Kersjes, advocate for
defendant

Judgment: 4 December 2020

INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE J C HOLDEN

(Application for security for costs)

[1] Ms Kaukau challenges a determination of the Employment Relations Authority (the Authority) that found Ms Hiri-Gualeni was her employee, was underpaid and unjustifiably dismissed. Wage arrears, penalties, lost remuneration, compensation and costs were ordered to be paid by the Authority.¹

[2] Ms Hiri-Gualeni now seeks an order for security for costs of \$5,000 and an order that the challenge is stayed pending payment of that sum.

¹ *Hiri-Gualeni v Marie Kaukau t/a Sew & Sew* [\[2019\] NZERA 714 \(Member Larmer\)](#).

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[3] No notice of opposition or other papers have been filed by Ms Kaukau despite the Court allowing her an extension of time, which expired on 29 September 2020.

[4] As there are no particular provisions relating to security for costs in the Employment Court, the Court looks to the provisions of the [High Court Rules 2016](#) pursuant to reg 6(2)(a)(ii) of the [Employment Court Regulations 2000](#).

[5] Under r 5.45, the Court has discretion to order the giving of security for costs if there is reason to believe that the plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in its proceeding.

[6] In exercising this discretion, the Court must consider all the circumstances and balance the interests of both the

plaintiff and the defendant.² An order may be made if it is just in all the circumstances.³

[7] Ms Hiri-Gualeni has provided an affidavit in support of her applications in which she has given evidence of the cost and emotional strain to her as a result of the challenge.

[8] She points to Ms Kaukau's lack of engagement both in the Authority and in relation to the debt now owing as a result of the Authority's determination. Ms Kaukau's lack of engagement has already been the subject of a judgment of this Court.⁴

[9] Ms Kaukau has acknowledged to the Court in the course of a directions conference that she has no money. Ms Hiri-Gualeni's advocate advises that a distress warrant issued against Ms Kaukau has been returned as it is said that Ms Kaukau has no means to satisfy it.

[10] Those matters demonstrate that it is likely Ms Kaukau would not be in a position to pay an award of costs should she be unsuccessful in the Employment Court proceedings.

² *A S McLachlan Ltd v MEL Network Ltd* [2002] NZCA 215; (2002) 16 PRNZ 747 (CA) at [15]–[16].

³ [High Court Rules 2016](#), r 5.45(2).

⁴ *Kaukau v Hiri-Gualeni* [2020] NZEmpC 77.

[11] An order for security for costs is just in the circumstances. The figure suggested by Ms Hiri-Gualeni of \$5,000 is appropriate.

[12] Accordingly, Ms Kaukau is ordered to pay the sum of \$5,000 as security for costs. That sum is to be paid into Court by 4 pm on Friday 15 January 2021 and, as soon as practicable thereafter, will be placed by the Registrar of the Employment Court on interest bearing deposit, until further order of the Court.

[13] Ms Kaukau's challenge is stayed until the payment is made or there is a further order of the Court.

[14] Costs are reserved.

J C Holden Judge

Judgment signed at 10.50 on 4 December 2020