



Employment Court of New Zealand

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Tupuanga v Auckland Meat Processors Limited [2020] NZEmpC 1 (28 January 2020)

Last Updated: 5 February 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 1](#)

EMPC 277/2019

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	KUKYI TUPUANGA Plaintiff
AND	AUCKLAND MEAT PROCESSORS LIMITED Defendant

Hearing: On the papers

Appearances: R Towner, counsel, and S Audeau, advocate for plaintiff BR Edwards and MO Lister, counsel for defendant

Judgment: 28 January 2020

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

(Application for security for costs)

[1] Mr Tupuanga has filed a challenge to a substantive determination of the Employment Relations Authority dismissing his claim of unjustified dismissal,¹ and a subsequent costs determination ordering costs against him.² The challenge is being pursued on a de novo basis. Auckland Meat Processors Ltd (the company) seeks an order for security for costs. The application is opposed.

¹ *Tupuanga v Auckland Meat Processors Ltd* [\[2019\] NZERA 471](#).

² *Tupuanga v Auckland Meat Processors Ltd* [\[2019\] NZERA 515](#).

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[2] The Court has a broad discretion to order security for costs.³ In exercising its discretion, the Court must consider all the circumstances and balance the interests of the plaintiff and the defendant.⁴

[3] The company's application is based squarely on Mr Tupuanga's alleged financial circumstances. While the Court may order security for costs where there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding, the overarching consideration will always be whether such an order is just in all of the circumstances. One of the things the Employment Court will be wary of in considering an application for security for costs is cutting a plaintiff off at the knees, particularly where any impecuniosity has been caused by the loss of employment which the plaintiff wishes to take issue with. The [Employment Relations Act 2000](#) provides litigants with challenge rights which should not be interfered with lightly. More generally, access to the

Employment Court for the ventilation of genuine employment disputes is important for broad public policy reasons, and it should not readily be compromised.

[4] In the event, the company has failed at the threshold hurdle. While the company asserts that Mr Tupuanga would be unable to pay costs if he does not succeed on his challenge, it appears from the evidence before the Court that he owns a number of assets, including a home, and his wife is in paid employment. And, contrary to the company's expressed understanding, the costs order made by the Authority has been satisfied. In short, I am not satisfied that there is reason to believe that Mr Tupunaga will be unable to pay the costs of the company if he is unsuccessful in his challenge.

[5] For completeness, I note that while it is difficult to assess where the relative merits of a challenge might lie, particularly when it is being pursued on a de novo basis, it is clear that Mr Tupunaga intends to call a number of additional witnesses who did not give evidence in the Authority, including individuals who are said to have been present at the time the events which gave rise to the grievance took place. I accept too

3. Pursuant to reg 6(2)(a)(ii) of the [Employment Court Regulations 2000](#) the Court looks to the provisions of the [High Court Rules 2016](#) when dealing with applications for security for costs. Under r 5.45(1)(b) 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 the plaintiff's proceeding.

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

that the challenge is being pursued in good faith - Mr Tupuanga was dismissed after more than 31 years with the company and seeks reinstatement. Finally, if an order for security for costs were made against Mr Tupuanga, it would likely pose significant difficulties for him in terms of coming up with the substantial amount of money sought on behalf of the company by way of payment into Court.

[6] The application is dismissed. Mr Tupuanga is entitled to costs on the application. Ordinarily an interlocutory application such as this would attract costs calculated according to category 2B of the Court's guideline scale.⁵ However, increased costs might be appropriate in this case. In the circumstances the parties are encouraged to agree costs. If that does not prove possible, I will receive memoranda.

Christina Inglis Chief Judge

Judgment signed at 1 pm on 28 January 2020

5. Employment Court Practice Directions at 16 (<www.employmentcourt.govt.nz/legislation-and-rules>).

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