

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 9  
EMPC 381/2021**

IN THE MATTER OF            an application for judicial review

AND IN THE MATTER OF    an application for costs

AND IN THE MATTER OF    an application for stay of proceedings

BETWEEN                      ALLAN GEOFFREY HALSE  
                                         Applicant

AND                              EMPLOYMENT RELATIONS  
                                         AUTHORITY  
                                         First Respondent

AND                              TE WHATU ORA – HEALTH NEW  
                                         ZEALAND (IN RESPECT OF THE  
                                         FORMER BAY OF PLENTY DISTRICT  
                                         HEALTH BOARD)  
                                         Second Respondent

AND                              CULTURES SAFE NEW ZEALAND  
                                         LIMITED (IN LIQUIDATION)  
                                         Third Respondent

AND                              ANA SHAW  
                                         Fourth Respondent

Hearing:                      3 February 2023  
                                         By telephone

Appearances:                Applicant in person  
                                         No appearance for first respondent (excused)  
                                         M Beech counsel for second respondent  
                                         No appearance for third respondent  
                                         No appearance for fourth respondent

Judgment:                    7 February 2023

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**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK**  
**(Application for adjournment and extension of time)**

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[1] These proceedings were the subject of a telephone directions conference with the parties on 3 February 2023.

[2] As noted in my minute of 30 November 2022, the current position with regard to these proceedings is that the Court has received an application for a stay from Mr Halse, together with a supporting affidavit. It is an application to stay the determination of the issue of costs (that being the only outstanding issue). The basis of the application is that it is necessary to prevent a further miscarriage of justice occurring pending the resolution of an appeal that is yet to be filed.

[3] The second respondent filed a notice of opposition and memorandum in support.

[4] While counsel for the second respondent considered that the matter was ready for hearing then and could be dealt with on the papers, Mr Halse considered that he would be prejudiced if the matter was to proceed without the documentation that he intended to file in the Court of Appeal, being before this Court.

[5] Mr Halse advised the Court that the appeal would be filed by 31 January 2023 at the latest.

[6] On that basis, it was agreed that the hearing of the stay application would be set down for a half-day in Auckland in the week of 7 February 2023. It is currently scheduled for 9.30 am on 10 February 2023.

[7] Orders were made by consent that the applicant would file in this Court and serve on the first and second respondents a copy of all documentation filed in the Court of Appeal on or before 4 pm on 31 January 2023.

[8] No further documentation was filed by the applicant either in the Court of Appeal or this Court as at today's date.

[9] Given the scheduled hearing for Friday 10 February 2023, a conference was convened to ascertain how to proceed.

[10] During the directions conference, Mr Halse applied for an extension of time to file his documentation until 28 February 2023, and also asked for an adjournment of the hearing set down on 10 February 2023 on the basis that the hearing should not proceed until such documentation had been received.

[11] Mr Beech, for the second respondent, opposes the extension of time and adjournment.

[12] Mr Halse explains that the reason he has been unable to file the documentation is that while he and his legal team have been working on preparing it, it is taking longer than anticipated due to his heavy workload and the Christmas break. He says that his team has not yet fully developed the argument for the Court of Appeal and that they are currently honing such legal argument. He considers it essential that this Court hear the fully developed argument before making a decision in relation to the application for a stay. He further advised that he anticipated that it would be filed before 28 February 2023, which is the date that had been agreed to by the Court in other (unrelated) proceedings.

[13] I had understood the appeal to be filed related to the decision of this Court to strike out the proceedings.<sup>1</sup> However, Mr Halse has confirmed that he is not appealing that decision and the documentation that the applicant intends filing in the Court of Appeal does not relate to these proceedings. He says, however, that it relates to what he considers to be identical proceedings. He says that any Court of Appeal decision in relation to those proceedings would impact the case at hand and the decision of the Court in relation to the costs application (which is yet to be determined).

[14] Mr Beech, for the second respondent, submits that the matter should proceed on Friday 10 February 2023. He says there is no merit to an application for stay – he argues that the proceedings were struck out in August 2022 and as there is no appeal filed and none intended to be filed, in those circumstances there is no impediment to

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<sup>1</sup> *Halse v Employment Relations Authority* [2022] NZEmpC 149.

determining the application for costs. He argues that the application for a stay is misconceived.

[15] Given that the documentation Mr Halse intends to file in the Court of Appeal does not relate to the proceeding at hand, it must only be able to form the basis for legal argument in this case.

[16] While Mr Halse says that he requires more time to hone such legal argument and that it is not yet fully developed, that does not amount to sufficient grounds for an adjournment. The application for a stay was filed on 2 November 2022, there has been ample time for Mr Halse to file any further documentation and refine or finalise his legal argument in support of such application.

[17] It is not in the interests of justice that this matter be delayed any further, and accordingly the application for an extension of time and adjournment is declined. The hearing of the applicant's stay application will take place on 10 February 2023 as currently scheduled.

[18] Given the nature of the submissions likely to be made as set out in the documentation previously filed by the applicant, counsel for the first respondent is requested to attend.

[19] Leave is reserved for any party to apply to the Court for further directions or orders on reasonable notice.

[20] Costs are reserved.

Kathryn Beck  
Judge

Judgment signed at 3 pm on 7 February 2023