

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

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

**[2025] NZEmpC 253
EMPC 408/2024**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application to access court documents

BETWEEN FERETI FUIMAONO
 Plaintiff

AND RITCHIES MURPHY TRANSPORT
 SOLUTIONS LIMITED
 Defendant

Hearing: On the papers

Appearances: E Sooula, counsel for plaintiff
 P Swarbrick, counsel for defendant
 D Long, for Stuff Ltd

Judgment: 28 November 2025

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE M S KING
(Application to access court documents)**

[1] The substantive proceedings involve a challenge to a determination of the Employment Relations Authority (the Authority) in which the Authority dismissed Mr Fuimaono’s personal grievance for unjustified dismissal.¹ On 7 October 2025 I issued an interlocutory judgment granting the defendant’s application for security for costs and staying the proceeding until security had been paid.²

¹ *Fuimaono v Ritchies Murphy Transport Solutions Ltd* [2024] NZERA 563.

² *Fuimaono v Ritchies Murphy Transport Solutions Ltd* [2025] NZEmpC 217.

[2] An application has been made by Mr Long, a journalist for Stuff Limited, to access CCTV footage held on the court file. The CCTV footage shows a recording of various angles from inside and outside of the bus. The recording shows the plaintiff and members of the public, both in and outside of the bus. The recordings span a time period over which there is an altercation involving members of the public and one member of the public is seriously injured.

[3] Access is sought on the basis that the journalist wishes to ensure fair and accurate reporting of the proceedings and to aid readers.

[4] I directed that the application be provided to the parties. The defendant has no objection to the application and will abide the decision of the Court. The plaintiff opposes the application on a number of grounds, which can be summarised as follows:

- (a) Providing media access to the CCTV footage would adversely impact on the privacy, future employment prospects, health and wellbeing of the plaintiff and members of the public captured by the recording.
- (b) Providing media access to the CCTV footage would have adverse cultural impacts on the plaintiff.
- (c) The plaintiff's rights to privacy and natural justice outweigh the principle of open justice in employment disputes.

Analysis

[5] The approach to applications of this sort is now well established and can be summarised as follows. The Employment Relations Act 2000 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.³

³ *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160; and *KAQ v Attorney-General* [2021] NZEmpC 196.

[6] The Rules are made under the Senior Courts Act 2016 (the Act). Section 173 of that Act provides that “[a]ny person may have access to court documentation 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 in relation to particular cases and electronic records of hearings. The materials sought in this case are on the court file. A person may ask to access the materials under r 11 of the Rules.

[7] The principle of open justice is fundamental. However, it may need to be departed from in certain circumstances when it is necessary to serve the ends of justice to do so.⁴

[8] Rule 12 specifies the 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:
...

⁴ *MW v Spiga Ltd* [2024] NZEmpC 147, [2024] ERNZ 678 at [30], [33], [39], [45] and [87]; applying *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2].

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

[9] Rule 13 specifies the approach to balancing the matters to be considered under r 12.

[10] Approach to balancing matters considered:

13 Approach to balancing matters to be 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.

[11] The first point is that the proceedings are at an early stage. The substantive proceedings in the Court have been stayed and are yet to be heard. The Court is yet to consider the claims of the parties and test the CCTV footage and related evidence filed by the parties. I am concerned that granting the application at this stage of the proceeding may result in the plaintiff being subject to trial by news media. I consider that it is in the interests of orderly and fair administration of justice that the parties be entitled to conduct their litigation without scrutiny by non-parties. I consider the timing of the application strongly weighs against the granting of access for the reasons given in *Sanofi-Aventis Deutschland GMBH v AFT Pharmaceuticals Ltd*.⁵

⁵ *Sanofi-Aventis Deutschland GMBH v AFT Pharmaceuticals Ltd* [2012] NZHC 1051, (2012) 21 PRNZ 130.

[12] The second point is that I consider that the CCTV footage, in its present unredacted form, contains footage of matters that are personal and sensitive to members of the public. In particular it shows a member of the public who appears to be subject to an assault and who has either previously sustained, or is sustaining, serious injuries while the footage is being recorded. I consider that these members of the public are entitled to the protection of confidentiality and privacy within reasonable limits given that they are not parties and have had no choice on whether the footage is aired publicly as part of this litigation. Granting this application for access would adversely impact on the privacy interests of the members of the public who are captured in the footage and are not involved in this proceeding.

[13] The plaintiff has filed medical evidence in support of his claim that he has medical conditions that he submits would be adversely affected if the application was granted. The medical evidence does not demonstrate a causal link between allowing the application and an effect on the plaintiff's health. I do not find this argument persuasive.

[14] Similarly, there is insufficient evidence to support the plaintiff's claim that there would be adverse consequences to his future employment prospects or to him on a cultural ground. The Authority determination is public, and there is an interlocutory judgment which has been delivered by the Court, both of which are publicly available; they name the plaintiff and discuss the defendant's grounds for terminating the plaintiff's employment. This points to a degree of public airing of the dispute having already occurred, and it is a matter of public record that the proceedings were brought, who they involved, and what they generally related to. I do not find this argument persuasive.

Result

[15] Standing back and considering the matters in rr 12 and 13, and the authorities I have referred to, I consider that it would not be in the interests of justice to grant the application for access to the court file. I do not consider that the public interest in fair and accurate reporting of the proceedings outweighs the right to privacy by members

of the public captured in the CCTV footage and the plaintiff's right to natural justice. These factors outweigh the principle of open justice in the circumstances.

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

M S King
Judge

Judgment signed at 3.45 pm on 28 November 2025