



# Employment Court of New Zealand

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## KAQ v Attorney-General [2022] NZEmpC 68 (21 April 2022)

Last Updated: 28 April 2022

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

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

[\[2022\] NZEmpC 68](#)  
EMPC 286/2021

IN THE MATTER OF	a declaration under <a href="#">s 6(5)</a> of the <a href="#">Employment Relations Act 2000</a>
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

Judgment: 21 April 2022

INTERLOCUTORY JUDGMENT (NO 5) OF CHIEF JUDGE CHRISTINA INGLIS

**(Application to access Court documents)**

KAQ BY HIS LITIGATION GUARDIAN, JOSHUA SHAW v THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE [\[2022\] NZEmpC 68](#) [21 April 2022]

### Introduction

[1] An application has been made by a journalist for Stuff Ltd to access the Court file.

[2] The file in question comprises 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](#) that the plaintiff had been an employee of a number of persons and companies affiliated with Gloriavale; and another alleging that the Labour Inspectorate had breached its statutory duties by failing to enforce minimum standards at

Gloriavale.

[3] Access is advanced for the stated purpose of writing a fair and balanced report on the proceedings, and to better understand why the case did not proceed to a hearing.

[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.
  - Access could undermine the non-publication order made by the Court and result in the plaintiff (who was a minor at the time the proceedings were filed) being identified.
  - 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 not been tested in these proceedings.
  - A number of documents relate to a trial management matter and are not of direct relevance to the matters at issue in the proceedings.
- Access to some of the documents would not be appropriate as they deal with matters being dealt with in another forum; access would undermine statutory confidentiality provisions applying in that forum.

### Framework for analysis

[5] The [Employment Relations 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.<sup>1</sup>

[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.” As the Rules make clear, the Court may adopt a range of procedures for dealing with a request and any objections, including on the papers, which is the approach I consider appropriate in this case.<sup>2</sup>

[7] The Rules provide a general right of access to the formal Court record;<sup>3</sup> there is no general right of access to other documents held on the Court file – a request must be advanced under r 11.4 Rule 11(2) sets out the requirements for requests. It provides that the person seeking access must:

- Identify themselves and give their address.
  - Set out sufficient particulars of the document to enable it to be identified.
  - Give reasons for asking to access the document, which must set out the purpose for which access is sought.
  - Set out any conditions of the right of access that the person proposes as

<sup>1</sup> *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

<sup>2</sup> Rule 14.

<sup>3</sup> Rule 8(1).

4. Noting that the rules relating to access do not affect the Court’s inherent power to control its own proceedings: r 5(1).

conditions they would be prepared to meet were a Judge to impose those conditions (for example, conditions that prevent or restrict the person from disclosing the document or contents of the document, or conditions that enable the person to view but not copy the document).

[8] A Judge may grant a request for access in whole or part, and may impose any conditions considered appropriate.<sup>5</sup>

[9] A request may be refused solely for the reason that the request does not comply with any of the requirements set out above.<sup>6</sup>

[10] The principle of open justice is recognised as being fundamental to the common law system of justice.<sup>7</sup> The principle may need to be departed from in certain circumstances when it is in the interests of justice to do so.<sup>8</sup>

[11] 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

5 Rule 11(7)(a).

6 Rule 11(8).

7. *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2]; *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 upheld on appeal in *Berry v Crimson Consulting Ltd* [2018] NZCA 460, [2019] NZAR 30.

8. See the discussion in *Schenker AG v Commerce Commission* [2013] NZCA 114, (2013) 22 PRNZ 286; referred to in *Crimson Consulting Ltd v Berry* [2018] NZCA 460, [2019] NZAR 30 at [32]. See too [33].

(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.

[12] 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:

(b) 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:

(c) 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:

(d) 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.

### Application of framework to this case

[13] I have previously dealt with a similar application on behalf of another media outlet. While I have considered this application on its own merits, I have reached the same conclusions for substantially the same reasons. What follows involves a degree of repetition.

[14] The claim was discontinued at an early stage, and well before the substantive hearing was scheduled to take place. That weighs against the grant of access. As the Court of Appeal observed in *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petróleo*:<sup>9</sup>

[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. ...

[15] Some of the material falling within the scope of the application relates to personal and sensitive matters, and allegations which were not tested because the claim was discontinued. While the applicant has said that they would be mindful of the fact that the claim did not result in a judgment, I consider that providing access to the documents held on the Court file may give an incomplete and potentially inaccurate picture in the circumstances. That would not be consistent with encouraging fair and accurate reporting.<sup>10</sup>

[16] As r 12(d) makes clear, I must have regard to the protection of confidentiality and privacy interests when considering the application. Such interests are at play, including for the plaintiff. I accept that the fact that non-publication orders have been made, and which the applicant has confirmed they would comply with, goes some way to protecting the identified interests.

[17] I accept too that there is a public interest in the proceedings, despite the fact that they were discontinued, including because of the identity of the defendants to the claim (the Labour Inspector and Gloriavale, a faith-based organisation) and the nature of the allegations made against those parties (breach of statutory duty for failure to take steps to protect the plaintiff; employment rather than volunteer status).<sup>11</sup>

9. *Greymouth Petroleum Holdings Ltd v Empresa Nacional Del Petróleo* [2017] NZCA 490, [2017] NZAR 1617 at [25]. See too *GFD I LLP v Melview (Kawarau Falls Station) Investments Ltd (in rec)* [2012] NZHC 677, (2012) 21 PRNZ 125; *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.

<sup>10</sup> Rule 12(e); see too *Berry HC*, above n 7, at [24].

<sup>11</sup> See *KAQ v Attorney-General* [2021] NZEmpC 196 at [16].

[18] As the applicant makes clear, the central focus of the inquiry is on understanding why the claim was discontinued by the plaintiff. However, and as Mr Wilson, counsel for the Gloriavale defendants, points out, the reasons why the plaintiff discontinued the claim are personal to them. Nor is there a general requirement, when discontinuing a claim, to identify the reasons for that.

[19] Certain documentation held on the Court file is subject to scrutiny (and statutory restrictions) in another forum. It is not appropriate to grant access to these documents.

[20] There is also documentation held on the Court file which relates to an issue of trial management, which prompted the filing of memoranda by counsel for the Attorney-General. I agree with the objections raised by counsel that no access should be granted to those documents.

## Conclusion

[21] 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.

[22] 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 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.

[23] 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 above. The proceeding was at an early stage when it was discontinued and much of the material held on the Court file is sensitive, was untested in these proceedings and may give an unbalanced impression of the issues involved.

Christina Inglis Chief Judge

Judgment signed at 10.30 am on 21 April 2022

