



# Employment Court of New Zealand

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## QDA v EKD [2021] NZEmpC 41 (31 March 2021)

Last Updated: 7 April 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 41](#)

EMPC 352/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	an application for variation of an order of stay
BETWEEN	QDA Plaintiff
AND	EKD Defendant

Hearing: On the papers

Appearances: D Erickson, counsel for plaintiff  
Defendant in person

Judgment: 31 March 2021

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL:

**(Application for variation of order of stay)**

[1] On 21 January 2021,<sup>1</sup> Judge Smith granted an order of stay wherein execution of a determination of the Employment Relations Authority was stayed on terms.<sup>2</sup> These were:

a. The amount of \$9,071.56 was to be paid to the Registrar.

<sup>1</sup> *QDA v EKD* [\[2021\] NZEmpC 1](#).

<sup>2</sup> *EKD v QDA* [\[2020\] NZERA 433 \(Member Doyle\)](#).

*QDA v EKD* [\[2021\] NZEmpC 41](#) [31 March 2021]

- b. That money was to be held in an interest-bearing account and was not to be disbursed except by order of the Court or following agreement by the parties in writing.
- c. Leave was reserved to either party to apply to amend or vary the order.
- d. Costs were reserved.

[2] EKD has now applied for a variation of that order, seeking a payment of \$4,500 from the fund paid into Court.

[3] EKD originally said the fund is needed for business purposes and to meet medical needs. In a recent document filed by him, he states his medical needs have abated.

[4] In a further elaboration, EKD says the monies are required to purchase machinery for a viticulture and horticultural business.

[5] When Judge Smith heard the application for stay, the primary factor which persuaded him to grant the order of stay was the prospect of the challenge being rendered ineffectual if payment of the subject sum was made to EKD. This was because QDA had established a bona fide concern about the ability of EKD to repay those funds if the challenge subsequently succeeded. The concerns of the Court were expressed in this passage:

[20] EKD did not provide any information to satisfy me that he would be able to repay QDA if its challenge succeeds. In his submissions he emphasised that the money now owed to him could be applied to help develop and operate his business to meet necessary expenses such as leasing a vehicle. He also alluded to satisfying other financial obligations arising from circumstances outside of his employment. During his submissions EKD also suggested that a compromise might be appropriate where (say) half of the amount ordered by the Authority could be held by the Registrar and the rest paid to him so that it could be used in his business. Despite those submissions details of his earnings, assets, or the potential for his business to provide adequate funds in future were noticeably missing from his response to the application.

[21] QDA's concerns about EKD's financial circumstances, and the candid acknowledgement by him that the money would be applied in the ordinary course of his business without saying how it would be repaid, supports what has been applied for.

[6] As is now submitted for EKD, the Court is still in the position where there is no reliable information from which the Court could be satisfied that the contested monies would subsequently be repaid, if need be.

[7] No evidence of an appropriate business case for EKD's intended viticulture or horticulture operation has been provided. Nor has any evidence been provided as to the viability of alternatives, such as hiring the equipment when needed and meeting the rental cost from income thereby obtained.

[8] In short, the concerns expressed by Judge Smith remain.

[9] In those circumstances, and applying the same tests as were explained by Judge Smith in his judgment, I am not satisfied that the interests of justice would be met by now varying the order made on the earlier occasion.

[10] I reserve costs.

B A Corkill Judge

Judgment signed at 2.30 pm on 31 March 2021