**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA411/2023**
**[2024] NZCA 194**

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| BETWEEN | AHMED ALKAZAZ<br>Appellant |
| AND | DELOITTE LIMITED<br>First Respondent |
| AND | CAREY WONG<br>Second Respondent |
| AND | MICHAEL ENDERBY<br>Third Respondent |

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| Hearing: | 5 March 2024 |
| Court: | Courtney, Dunningham and Moore JJ |
| Counsel: | Appellant in person<br>S A Armstrong for Respondents |
| Judgment: | 30 May 2024 at 10.30 am |

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**JUDGMENT OF THE COURT**

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**A The appeal is dismissed.**

**B The appellant must pay the respondent costs for a standard appeal on a band A basis and usual disbursements.**

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**REASONS OF THE COURT**

(Given by Dunningham J)

## Introduction

[1] This is an appeal from a decision striking out the defamation proceeding brought by the appellant, Mr AlKazaz, against Deloitte Ltd (Deloitte) and two former Deloitte employees, Mr Wong and Dr Enderby.[1]

[2] The proceeding was struck out because the claim was commenced outside the two-year limitation period provided for in s 15 of the Limitation Act 2010.

[3] Mr AlKazaz raises three grounds of appeal. First, he argues the filing of his statement of problem in the Employment Relations Authority on 31 July 2018, and/or his challenge to the Employment Relations Authority's determination in the Employment Court in May 2019, was sufficient to constitute the commencement of the defamation claim against the respondents for the purpose of the Limitation Act.

[4] Second, he says the High Court erred by allowing the exchange of further affidavit evidence and, in particular, a supplementary affidavit dated 28 April 2023, after the respondents had filed their affidavit in reply dated 16 February 2023.

[5] Finally, Mr AlKazaz claims that his self-representation and limited English proficiency, coupled with the alleged procedural irregularity referred to above, served to disadvantage him within the legal process and also warrant allowing the appeal.

## Background

[6] Mr AlKazaz was employed by a Deloitte subsidiary, DeloitteAsparona Ltd from September 2013. After his employment was affected by a restructuring process, he and DeloitteAsparona Ltd entered into a record of settlement on 7 July 2016. The employment relationship came to an end on 29 August 2016. During that process Mr AlKazaz was legally represented and the agreement was signed off by a mediator in accordance with the Employment Relations Act 2000.

[7] On 20 April 2018, a recruitment agency retained by Mr AlKazaz, Halcyon Knights, forwarded his CV to Deloitte for consideration for another position.

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1 *AlKazaz v Deloite Ltd & Ors* [2023] NZHC 1592 [High Court judgment].

Halcyon Knights sent an email to Mr Carey Wong, senior recruitment adviser at Deloitte, saying:

> Please find Ahmed's Cv attached for the Technical Consultant role in Auckland. Ahmed comes well recommended from our network and has indicated an interest in Deloitte & requested for his details to be presented to you.
>
> …
>
> Would you be keen to see him?

[8] Mr Wong then conferred with Dr Michael Enderby, a senior specialist employed in Deloitte's Oracle practice. Dr Enderby indicated that Mr AlKazaz's CV did not accurately reflect the work Mr AlKazaz performed during the time they worked together at DeloitteAsparona. He sent an email to Mr Wong saying simply: "No interest in progressing with Ahmed. Do not proceed further." Mr Wong then replied to Halcyon Knights: "No thank you, the team has declined to proceed."

[9] Halcyon Knights responded to Deloitte:

> Thanks Carey,
>
> Would be helpful to get some intel around where they thought he was lacking? As much for him as to help me get it right on the next profile.

[10] Mr Wong responded with a link to a media article on a case that Mr AlKazaz had, in 2017, successfully brought against another employer:

> https://stuff.co.nz/business/100186473/it-worker-sacked-under-90-day-rule-wins-36k-for-unjustified-dismissal
>
> Not with us, but the information on CV is inaccurate

[11] A few days later, on 26 April 2018, Mr AlKazaz made a request for any personal information held by Deloitte about him under the Privacy Act 1993. On 2 July 2018, Deloitte responded to that request and provided Mr AlKazaz with a copy of Deloitte's feedback email (amongst other documents), though Mr Wong's details were redacted to protect his personal information in accordance with the Privacy Act 1993.

[12] When he received that email Mr AlKazaz immediately took issue with its content and sent an email to Deloitte the same day. He sent a further email two days later, in which he made it clear he believed his reputation had been harmed by it.

[13] On 31 July 2018 Mr AlKazaz filed a statement of problem in the Employment Relations Authority making a range of complaints against Deloitte. In the High Court, Associate Judge Gardiner set out the complaints as follows:[2]

> (a) breaches of the Privacy Act 1993 and the Human Rights Act 1993;
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> (b) unjustified coercion of him to sign the record of settlement;
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> (c) failure to comply with sections 63, 143 and 68 of the Employment Relations Act 2000;
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> (d) failure to provide all his personal information as requested under the Privacy Act 1993;
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> (e) unjustified dismissal of him; and
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> (f) breaches of cl 5 of the record of settlement by making derogatory comments about him.

Mr AlKazaz specifically complained about Deloitte sending the media link to Halcyon Knights and stating that his CV was inaccurate.

[14] The Employment Relations Authority issued a determination on 11 April 2019, dismissing all Mr AlKazaz's complaints.[3] In respect of the claimed breach of the Record of Settlement, the Employment Relations Authority found that Mr AlKazaz did not have an employment relationship with Deloitte and, while the statements made in the 20 April 2018 email were disparaging, the statements were made by Deloitte, not DeloitteAsparona, and Deloitte was not bound by the record of settlement.[4]

[15] Mr AlKazaz challenged the determination in the Employment Court. On 15 September 2022, the Employment Court issued a judgment confirming that DeloitteAsparona, not Deloitte, was Mr AlKazaz's employer and that the record of settlement resolved all issues between Mr AlKazaz and DeloitteAsparaona.[5]

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2 High Court judgment, above n 1, at [14].
3 *Alkazaz v Asparona Ltd* [2019] NZERA 215.
4 At [32], [45] and [49].
5 *AlKazaz v Deloitte (No. 3) Ltd* [2022] NZEmpC 171 [Employment Court judgment].

[16] The Court concluded that the statement by Dr Enderby to Mr Wong and from Mr Wong to Halcyon Knights was derogatory and would have been a breach of the Record of Settlement if it was made by DeloitteAsparona, but neither Mr Wong nor Dr Enderby were employees of DeloitteAsparona when they made those statements.[6]

[17] On 20 October 2022, Mr AlKazaz commenced this defamation proceeding in the High Court, seeking damages of $360,000 against Deloitte and against Mr Wong and Dr Enderby personally. The defendants applied to strike out the proceeding on the grounds the claim was statute barred and Mr AlKazaz had not pleaded any facts that might support a "late knowledge period" under s 15 of the Limitation Act.

[18] In her judgment dated 26 June 2023, Associate Judge Gardiner ordered that Mr AlKazaz's claim be struck out on the grounds that the claims were either time-barred or did not meet the requirements of s 37 of the Defamation Act 1992. It is that decision which is now being appealed.

**Relevant legal principles**

[19] To succeed in striking out a cause of action on limitation grounds the defendant must satisfy the Court that the plaintiff's cause of action is so clearly statute-barred that the claim can properly be regarded as frivolous, vexatious or an abuse of process.[7] The test has also been expressed as that the Court should be satisfied "[t]here must be no reasonable possibility that the [claim] was brought within time".[8]

[20] The limitation period for defamation claims is two years after the alleged defamatory statement, or two years after the claimant has late knowledge of the claim.[9] The onus is on the claimant to establish late knowledge.[10]

[21] The Limitation Act expressly sets out the criteria for when a defendant has a limitation defence. For defamation claims, if the defendant proves the "date on which

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6 At [110], [112], [119] and [124].
7 *Murray v Morel & Co* [2007] NZSC 27, [2007] 3 NZLR 721 at [33].
8 *Commerce Commission v Carter Holt Harvey Ltd* [2009] NZSC 120, [2010] 1 NZLR 379 at [39].
9 Limitation Act 2010, ss 11 and 15.
10 Section 14(2).

the claim is filed" is at least two years after the date of publication (or the date on which the plaintiff has late knowledge of the claim), that is a complete defence.[11]

[22] The phrase, "date on which the claim is filed" is defined in the Limitation Act to mean the date on which "a statement of claim, or any other initiating document, that contains the claim [is filed with the] specified court or tribunal in accordance with rules of court or other laws relating to the claim".[12] The Employment Court is encompassed by the definition of a "specified court or tribunal" in that Act, but the Employment Relations Authority is not.[13]

**The High Court's decision**

[23] In the High Court Mr AlKazaz advanced a number of reasons why his claim should not be struck out. These were summarised by the Associate Judge as follows:[14]

> [26] Mr AlKazaz says that he was unaware of the Limitation Act 2010 until the defendants filed their interlocutory application. He says that he was unaware of the legal concept of defamation, or the Defamation Act 1992 until the Employment Court delivered its judgment. He then received legal advice and realised he needed to bring a claim for defamation in this Court for the April 2018 statements and other statements he believes Dr Enderby has made about him. He says that he thought he had taken the correct legal action in the Authority and then the Employment Court. He says his claim that Deloitte breached the Record of Settlement by making disparaging remarks about him was in substance a claim for defamation. He asks that the Court overlook his procedural confusion, exercise its discretion and treat his action in the Authority and the Employment Court as reasonable notice to the defendants of his defamation claim against them. Mr AlKazaz emphasises that he is a litigant in person and an immigrant for whom English is a second language.

[24] The Associate Judge observed that she had no discretion to permit a cause of action to proceed if it has been brought outside the statutory limitation period.[15] She acknowledged that Mr AlKazaz was not legally represented through the proceedings in the Employment Relations Authority and the Employment Court, but observed that

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11 Sections 11 and 15.
12 Section 6(1).
13 Section 4 definition of "specified court or tribunal", para (b).
14 High Court judgment, above n 1.
15 At [27] referring to *ISP Consulting Engineers Ltd v Body Corporate 89408* [2017] NZCA 160, (2017) 24 PRNZ 81 at [13].

"[u]nfortunately, his ignorance of the law does not justify the Court disapplying the Limitation Act 2010 and nor does the Court have jurisdiction to do so."[16]

[25] She rejected the possibility that Mr AlKazaz' complaint to the Employment Relations Authority and subsequent appeal to the Employment Court were sufficient to have satisfied the requirements of bringing a claim in defamation. She said:[17]

> …[t]his defamation proceeding is a discrete proceeding in a different forum. The proceeding includes different parties and the cause of action, while relying in part on the same underlying facts, has a different legal foundation.

[26] The Associate Judge confirmed with Mr AlKazaz that the specific statements by the defendants which he took issue with were:[18]

(a) Mr Wong's email to Halcyon Knights on 20 April 2018; and

(b) Dr Enderby's verbal statement(s) and email to Mr Wong that preceded Mr Wong's email to Halcyon Knights.

[27] She then turned to consider when Mr AlKazaz became aware of these statements. In respect of the 20 April 2018 email by Mr Wong, she said "[i]t is indisputable, on the evidence, that Mr AlKazaz knew of the 20 April 2018 email by 2 July 2018 at the latest, when he was sent a copy by Deloitte in response to his Privacy Act 1993 request".[19] The email was part of his "complaint to the Employment Relations Authority".[20] For that reason, she was satisfied that Mr AlKazaz' claims against Mr Wong and Deloitte concerning this email were time-barred and were struck out.[21]

[28] In terms of Dr Enderby's statements to Mr Wong, Mr AlKazaz claimed he had not become aware of this until 22 October 2020, when Mr Wong filed his brief of evidence in the Employment Court. As he filed his proceeding on 20 October 2022 he says his claim in relation to these statements is not out of time.

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16 High Court judgment, above n 1, at [29].
17 At [28].
18 At [34].
19 At [40].
20 At [40].
21 At [41].

[29] The affidavit attached documents which demonstrated that Mr AlKazaz was aware that Dr Enderby was the maker of the statements he complained about.[22] These included an email exchange between Mr AlKazaz and the Registrar of the Employment Court, between 8 and 10 July 2019, where Mr AlKazaz asked that Dr Enderby be required to produce any documents that relate to:

> The disparaging comments you made to third parties and/or Deloitte employees. … The grounds of your comments against Mr AlKazaz's CV and its accuracy. … Any information you received about Mr AlKazaz that could have in any way led to your disparaging comment made to third parties.

[30] Furthermore, the documents showed that Mr AlKazaz served a notice dated 9 August 2019 on DeloitteAsparona requiring it to produce, amongst other things, documents concerning:

> 10) The grounds of [sic] which Mr Mike Enderby made his disparaging comments to third parties and/or Deloitte employees and the nature of those comments in details [sic].
>
> 11) The grounds of Mr Enderby['s] comments against Mr AlKazaz's CV and its accuracy.
>
> 12) Mr AlKazaz's internal CV copies while working with Deloitte and/or DeloitteAsparona.
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> 13) Any documents that shows [sic] engagement and any work history between Mr AlKazaz and Mr Enderby.
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> 14) Any information Mr Enderby received about Mr AlKazaz that could have in any way led to your disparaging comment made to third parties.

[31] Finally, on 14 October 2019, Mr AlKazaz emailed the Registrar asking that the issue of missing documents be raised with Judge, including documents concerning:

> The grounds of [sic] which Mr Mike Enderby made his disparaging comments to third parties and/or Deloitte employees and the nature of those comments in details [sic].

[32] Mr AlKazaz explained in the High Court that in these emails he was simply "exploring" the circumstances surrounding the April 2018 emails and that he was not certain at that stage that Dr Enderby was the person who made the statement about his CV to Mr Wong. However, the Judge considered that this explanation was inconsistent

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[22] The decision to allow this further affidavit is the subject of Mr AlKazaz' second ground of appeal.

with the documents and it was clear on their face that in July 2019 Mr AlKazaz understood that Dr Enderby had made comments about his CV being inaccurate to Deloitte employees and possibly third parties.[23] The Judge therefore concluded that the late knowledge date for his defamation claim as it concerned Dr Enderby's 20 April 2018 statements, was July 2019.

[33] The Judge also referred to Mr AlKazaz's brief of evidence for the Employment Court hearing.[24] In it, Mr AlKazaz expressly referred to the 20 April 2018 email from Dr Enderby to Mr Wong and he provided this document when he served and filed his brief of evidence in September 2020. It was apparent that this document was disclosed to him by Deloitte in August 2020 as a document referenced "CB 51".

[34] Relying on this evidence the Judge also concluded that when Mr AlKazaz gave evidence in the Employment Court on 24 September 2020, he considered that Dr Enderby had made defamatory statements about the accuracy of his CV, including to Mr Wong in April 2018.[25] This was further evidence demonstrating Mr AlKazaz had knowledge of Dr Enderby's statement more than two years before filing his defamation claim in the High Court.

[35] Accordingly, this part of Mr AlKazaz's claim was also struck out on limitation grounds.

[36] Finally, Mr AlKazaz claimed in his statement of claim that there may be other subsequent defamatory statements. However, the Judge said that this general allegation did not comply with the requirements of s 37 of the Defamation Act which requires the plaintiff to specify every statement they believe to be defamatory.[26] Accordingly, that claim was also struck out as an abuse of process.

[37] Mr AlKazaz appeals the High Court's decision on the grounds set out at [3]–[5] above.

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23 High Court judgment, above n 1, at [61].
24 At [63]–[66].
25 At [69].
26 At [72] and [73].

**Did lodging the proceedings in the Employment Relations Authority or the Employment Court constitute the commencement of a defamation claim against the respondents for the purpose of Limitation Act?**

[38] Mr AlKazaz argues, that by filing his statement of problem with the Employment Relations Authority on 31 July 2018 and his statement of claim in the Employment Court in early May 2019, he secured his right to pursue defamation claims. He says these proceedings were initiated in direct response to the defamatory statements made by Dr Enderby and Mr Wong on 20 April 2018. He said it was necessary to commence his proceeding in these forums to ascertain the employer's identity. He also points out that his legal proceedings in all three forums focused on "the exact same defamation statements", highlighting "the interconnectedness of [the] claims."

[39] These arguments are readily addressed. First, as the respondents point out, the Employment Relations Authority is not a "specified court or tribunal" as defined in s 4 of the Limitation Act. The fact he had to commence his employment-related claim in the Employment Relations Authority cannot change the clear wording of the statutory provision.

[40] More importantly, though, we are satisfied that the statement of claim filed in the Employment Court in early May 2019 was not the filing of a claim in defamation against the current defendants.

[41] First, of the current defendants, only Deloitte was a defendant in the Employment Court proceedings. Neither Dr Enderby nor Mr Wong were named as defendants.

[42] Second, the only relevance of the emails was to determine whether they contained statements which were a breach of the settlement agreement. That cause of action was contractual, it was not a claim in defamation. As the Employment Court Judge noted, a breach of cl 5 of the settlement agreement did not "require that the comment be false, just that it be derogatory."[27] She held the statement was

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[27] Employment Court judgment, above n 5, at [111].

derogatory[28] but as it was not made by Mr AlKazaz's employer, there was no breach of the settlement agreement.[29] The claim Mr AlKazaz now wishes to bring is in defamation, not contract, and defences of truth and qualified privilege would be available to answer the claim.

[43] For these reasons, we are satisfied the Associate Judge was correct to conclude that this defamation proceeding "is a discrete proceeding in a different forum [and which] includes different parties and [where] the cause of action, while relying in part on the same underlying facts, has a different legal foundation".[30] The filing of proceedings in the Employment Relations Authority and in the Employment Court was insufficient to constitute the commencement of a defamation claim against the respondents for the purpose of the Limitation Act.

[44] This ground of appeal fails.

**Did the High Court err in allowing the defendants to file supplementary evidence when that was inconsistent with the timetabling orders agreed by the parties and confirmed in the minute of Associate Judge Sussock dated 1 March 2023?**

[45] Mr AlKazaz is aggrieved that further evidence was allowed to be filed by the defendants on 28 April 2023, saying this underscores the "prejudicial treatment" of him and shows a "disregard for the High Court's established protocols" and denied him the opportunity to cross-examine witnesses.

[46] He points out that the initial timetabling directions were agreed in a consent memorandum dated 23 February 2023 which confirmed that:

(a) the application for an order striking out the claim, along with supporting evidence, had been brought on 17 January 2023;

(b) a notice of opposition and supporting affidavit had been filed and served on 7 February 2023; and

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28 At [110].
29 At [124].
30 High Court judgment, above n 1, at [28].

(c) a short reply affidavit had been filed and served on 16 February 2023.

The parties also agreed that the matter was ready to be set down for a defended hearing. They proposed directions for the filing of submissions and sought the allocation of a half day hearing date.

[47] While Mr AlKazaz's statement of claim did not raise any issue of late knowledge, his affidavit dated 7 February 2023 stated that he was first made aware of the defamatory statements by Dr Enderby when he received Mr Wong's brief of evidence on 22 October 2020. It is surprising, therefore, that the respondents did not respond to this claim in their reply affidavit of 16 February 2023. Instead, they responded to it in a supplementary affidavit dated 28 April 2023. In the affidavit, evidence was adduced of the email exchanges Mr AlKazaz had with the Employment Court in July 2019, to challenge Mr AlKazaz' argument that he did not know of the defamatory statements by Dr Enderby until 22 October 2020.

[48] On 1 May 2023, Mr AlKazaz filed a memorandum objecting to the late affidavit, saying the consent memorandum dated 23 February 2023 was filed on the basis that the exchange of evidence was complete and the attempt to file and serve the evidence after the first call on 10 March 2023 had been vacated was an "abuse of the High Court's process" and "amounts to a trial by ambush".

[49] The defendants then filed a memorandum on 2 May 2023 formally seeking leave to adduce this further reply evidence, noting that it simply exhibited relevant documents from the Employment Court proceeding and that it was in the interests of justice that the supplementary evidence was before the Court because it directly addressed the point in issue.

[50] In response, the Associate Judge issued a minute. In it she extended the time by which Mr AlKazaz' submissions should be filed and she directed that the issue of whether leave should be granted to the respondents to adduce that evidence would be determined at the defended hearing.

[51] Mr AlKazaz then filed a formal document challenging the admissibility of the affidavit, repeating his argument that the affidavit was not anticipated by the timetabling orders which were made by consent. He also stated that "the affidavit contains out-of-context evidence from conversations with the Employment Court that were not previously disclosed to the Plaintiff, thereby possibly denying the Plaintiff of a fair hearing".

[52] In the substantive decision, Associate Judge Gardiner granted leave to the respondents to adduce this further, saying "[i]t is in the interests of justice that the Court has before it any evidence that is relevant to th[e] issue [of Mr AlKazaz's knowledge]".[31] She concluded that Mr AlKazaz was not prejudiced as he received the affidavit 10 working days before the hearing. She noted he could have filed a further affidavit to provide context but, in any case, she bore in mind the explanation that he gave during the hearing.

*Discussion*

[53] In deciding whether to grant leave to admit the further affidavit, the Judge was not constrained by the parties' consent memorandum dated 23 February 2023, which recorded that all evidence had been filed and the matter was ready to be set down for hearing. The Court has broad powers to vary directions made in respect of the management of a proceeding. For example, it can extend or shorten the time for doing any act or taking any step in a proceeding.[32] It can also vary an order or direction that relates to the management of a proceeding and which has been made by a Judge in chambers.[33] The overriding objective is to secure the "just, speedy, and inexpensive determination of any proceeding or interlocutory application."[34] As was said in *Schmidt v Bank of New Zealand Ltd*:[35]

> Procedural rules are the servants of Court proceedings to achieve just, speedy and at the least cost, expedition of cases. The construction of Court rules should always be approached with care but with a readiness to apply them to meet the justice of the case which is manifest before a Court.

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31 High Court judgment, above n 1, at [56].
32 High Court Rules 2016, r 1.19(1).
33 Rule 7.50.
34 Rule 1.2.
35 *Schmidt v Bank of New Zealand Ltd* [1991] 2 NZLR 60 (HC) at 63.

[54] In this case, we are satisfied that allowing the further evidence appropriately served the objective of the High Court Rules. While it is unfortunate that the defendants did not include this evidence in their reply affidavit filed on 7 February 2023, they clearly realised, a reasonable time in advance of the hearing, that this evidence was necessary to rebut Mr AlKazaz's claim about the date he first realised his cause of action against Dr Enderby arose. Had this evidence not been adduced on the interlocutory application to strike out, it could still have been adduced at the hearing and Mr AlKazaz would have had to confront it in any event, in due course.

[55] Furthermore, the Judge was mindful of ensuring there was no unfair prejudice to Mr AlKazaz. She enlarged the time for him to file submissions recognising that he may wish to address that evidence. Furthermore, it was not evidence Mr AlKazaz was unaware of, as it was all evidence of his own correspondence with the Employment Court. To the extent Mr AlKazaz thought it important to understand the context in which these communications were made, he addressed that in his submissions and the Judge took that into account. Mr AlKazaz has not identified any further evidence which he would wish to adduce which would alter the interpretation of these emails.

[56] While Mr AlKazaz claims that he has been denied the opportunity to cross-examine witnesses, we note that cross-examination would rarely be allowed on a strike out application because the Court will not in such hearings "attempt to resolve genuinely disputed issues of fact".[36] Here, Mr AlKazaz has not identified the factual allegations that are disputed, nor does he identify the party he had wished to call to be cross-examined. Instead, it appears he is asking the Court to ignore his own statements to the Employment Court which reveal he knew Dr Enderby was the author of the statements he took issue with. We also note it is entirely inconsistent for Mr AlKazaz to argue that he did not have knowledge of his claims in defamation until after 20 October 2020, when he also seeks to argue that his claims were made in time by the filing of proceedings before this date in the Employment Relations Authority and the Employment Court.

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[36] *Attorney-General v McVeagh* [1995] 1 NZLR 558 (CA) at 566.

[57] In our view, the Judge was correct to grant leave to adduce the further evidence as it ensured all evidence the parties wished to rely on for the strike out application was before the Court. There was no unfair prejudice to Mr AlKazaz in doing so and it ensured the proceedings were disposed of in the most efficient way possible.

[58] This ground of appeal is dismissed.

**Did the other disadvantages Mr AlKazaz had when engaging with the legal process justify allowing the appeal?**

[59] Mr AlKazaz raises a third ground which he describes as "evaluation of potential bias and assurance of procedural fairness". The respondents say this must be confined to whether it was appropriate to allow them to file the further affidavit evidence in the High Court hearing, as none of the other issues constitute a ground of appeal.

[60] Mr AlKazaz's third ground relies in part on what he describes as the "procedural irregularities in allowing further evidence to be filed" but also claims there is a cumulative effect to his disadvantage as he is self-represented and has limited English proficiency. He suggests that in combination, these factors disadvantaged him within the legal process and there is a need for "corrective actions" to ensure he has "an equitable trial in line with the fundamental principles of justice".

*Discussion*

[61] We do not doubt that, as a litigant in person, Mr AlKazaz had more difficulty in participating in the legal process than if he had been legally represented. We also accept that he may have less English proficiency than a native speaker of English. However, as the Judge noted, those factors could not justify the Court failing to apply the provisions of the Limitation Act, nor did the Court have jurisdiction to do so.[37] These factors are irrelevant to the appeal where there is clear evidence that Mr AlKazaz knew all the material facts to have advanced his defamation claim prior to 20 October 2020.

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[37] High Court judgment, above n 1, at [29].

**Result**

[62] For these reasons, the appeal is dismissed.

[63] The appellant must pay the respondent costs for a standard appeal on a band A basis and usual disbursements.

Solicitors:
MinterEllisonRuddWatts, Auckland for Respondents