

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA411/2023  
[2024] NZCA 471

BETWEEN AHMED ALKAZAZ  
Appellant

AND DELOITTE LIMITED  
First Respondent

AND CAREY WONG  
Second Respondent

AND MICHAEL ENDERBY  
Third Respondent

Court: Courtney, Dunningham and Moore JJ

Counsel: Appellant in person  
S A Armstrong KC and A West for Respondents

Judgment: 23 September 2024 at 10.30 am  
(On the papers)

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JUDGMENT OF THE COURT

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- A The application for recall is declined.**
- B The appellant must pay the respondents costs for a standard application on a band A basis and usual disbursements.**
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REASONS OF THE COURT

(Given by Courtney J)

[1] The High Court struck out defamation proceedings brought by Mr AlKazaz against Deloitte Ltd and two former Deloitte employees, Mr Wong and Dr Enderby.<sup>1</sup> The basis for the strike out was that the proceeding had been commenced outside the limitation period provided for in s 15 of the Limitation Act 2010. Mr AlKazaz appealed.

[2] This Court dismissed Mr AlKazaz's appeal.<sup>2</sup> He has applied for a recall of that decision.<sup>3</sup> It is well settled that, generally, once a judgment is delivered it must stand subject only to rights of appeal. This reflects the importance of the principle of finality.<sup>4</sup> Accordingly, a decision to recall a judgment will only be made in exceptional circumstances.<sup>5</sup>

[3] Mr AlKazaz's application is made on the basis that he has recently been diagnosed with attention deficit hyperactivity disorder (ADHD) combined type. He says that diagnosis impacted his ability to participate fully in the legal proceedings because it created difficulty with concentration, memory, impulse control, and hyperactivity. This meant he had difficulty keeping track of legal documents, deadlines, and legal arguments.

[4] However, Mr AlKazaz does not identify any specific way in which these difficulties affected the appeal itself. The alleged defamation occurred in April 2018, by statements made by Mr Wong and Dr Enderby. In July 2018, Mr AlKazaz filed a statement of problem with the Employment Relations Authority in which he raised the statements. The Authority issued a determination on 11 April 2019, dismissing Mr AlKazaz's complaints.<sup>6</sup> He then unsuccessfully challenged the Authority's decision in the Employment Court.<sup>7</sup> Finally, in October 2022, Mr AlKazaz commenced his defamation proceedings in the High Court.

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<sup>1</sup> *AlKazaz v Deloitte Ltd* [2023] NZHC 1592 [High Court judgment].

<sup>2</sup> *AlKazaz v Deloitte Ltd* [2024] NZCA 194 [Court of Appeal judgment].

<sup>3</sup> The application is framed as an application for a rehearing but is properly treated as one for recall in accordance with r 8A of the Court of Appeal (Civil) Rules 2005.

<sup>4</sup> *Ideal Investments Ltd v Earthquake Commission* [2023] NZCA 388 at [4].

<sup>5</sup> *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; *Unison Networks Ltd v Commerce Commission* [2007] NZCA 49 at [10]; and *Ideal Investments Ltd v Earthquake Commission*, above n 4.

<sup>6</sup> *AlKazaz v Asparona Ltd* [2019] NZERA 215.

<sup>7</sup> *AlKazaz v Deloitte (No 3) Ltd* [2022] NZEmpC 171.

[5] The High Court proceedings were brought well outside the limitation period for defamation claims provided for in s 15 of the Limitation Act. On appeal Mr AlKazaz maintained that bringing his claims in the Authority and the Employment Court constituted commencement of the defamation claim for the purposes of the Limitation Act. This argument failed, as a matter of law.<sup>8</sup> It did not require any factual findings and therefore did not depend on anything that Mr AlKazaz could remember or could have said differently.

[6] Now, Mr AlKazaz raises the possibility that time should be extended under s 45 of the Limitation Act on that basis that he was incapacitated as a result of his ADHD. However, “incapacitated” is defined in s 46 in a restrictive way:

**incapacitated** means that a claimant or a personal representative is not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings with respect to the act or omission on which the claim is based, or is unable to give sufficient instructions to issue, defend, or compromise proceedings of that kind, because of all or any of the following:

- (a) temporary or permanent physical, intellectual, or mental impairment:
- (b) lawful or unlawful detention:
- (c) a situation that is, or circumstances that arise from, war, another similar emergency, or a state of emergency declared under the Civil Defence Emergency Management Act 2002

[7] Looking at the history of this matter and the information Mr AlKazaz has provided, we are satisfied that Mr AlKazaz does not meet any of these criteria by virtue of having ADHD.

[8] Mr AlKazaz also raised what he said were procedural irregularities and unfairness in the High Court. He identifies two aspects that would have been affected by his ADHD. Both were raised and determined in the appeal. First, the Judge allowed the respondents to file supplementary evidence. Mr AlKazaz maintained that this deprived him of the opportunity to cross-examine witnesses. This Court considered that the admission of the supplementary evidence was proper because it ensured that all the relevant evidence was before the Court and there was no unfair prejudice to Mr

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<sup>8</sup> Court of Appeal judgment, above n 2, at [43].

AlKazaz because he was aware of the evidence 10 days before the hearing.<sup>9</sup> The fact that Mr AlKazaz suffers from ADHD could not have resulted in any unfairness.

[9] Secondly, the Judge found that Mr AlKazaz was aware of the allegedly defamatory statements earlier than he had claimed and Mr AlKazaz asserts that he was at a disadvantage because his condition caused forgetfulness and affected his short- and long-term memory which could have contributed to his perception of the timeline.<sup>10</sup> However, the Judge's finding was based on emails that Mr AlKazaz had sent. There is no basis on which to think that Mr AlKazaz's memory being affected by ADHD could have led to a different outcome.

[10] Mr AlKazaz seeks to recall our judgment on the basis that he now understands that he has ADHD. But in reality, the application is an attempt to relitigate arguments already advanced and considered. None of the material provided suggests that the appeal hearing was unfair or that the outcome of the appeal could have been affected. The circumstances fall well short of meeting the criteria for recalling a judgment.

[11] The application for recall is declined.

[12] The appellant must pay the respondents costs for a standard application on a band A basis and usual disbursements.

Solicitors:  
MinterEllisonRuddWatts, Wellington for Respondents

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<sup>9</sup> At [57].

<sup>10</sup> High Court judgment, above n 1, at [40].