

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 139
EMPC 87/2022**

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

AND IN THE MATTER OF an application for a stay of proceedings

BETWEEN MENDE BIOTECH LIMITED
Plaintiff

AND DOUGLAS ANTHONY MENDE
Defendant

Hearing: On the papers

Appearances: G Dewar, counsel for liquidators of plaintiff
J Goddard, counsel for defendant

Judgment: 28 August 2023

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE K G SMITH
(Application for a stay of proceedings)**

[1] On 21 February 2022, the Employment Relations Authority determined that Mende Biotech Ltd was indebted to Douglas Mende for unpaid wages and holiday pay amounting to \$30,728.11.¹ Costs were subsequently determined and the company was ordered to pay Mr Mende a further \$4,500.²

¹ *Mende v Mende Biotech Ltd* [2022] NZERA 46 (Member Loftus).

² *Mende v Mende Biotech Ltd* [2022] NZERA 100 (Member Loftus).

[2] On 24 May 2022, the Authority ordered the company to comply with its earlier determinations and to pay Mr Mende \$35,228.11 no later than 4 pm on 21 June 2022.³ A further costs order was made on 14 June 2022.⁴

[3] Mende Biotech challenged the Authority's determination that it owed holiday pay and wages to Mr Mende and sought a full rehearing of that matter.

[4] Mr Mende defended the challenge and, in February this year, filed a counterclaim for a significant sum of money, claiming unpaid wages exceeding \$1 million.

[5] On 20 June 2022, by consent the Authority's determination was stayed on the basis that \$35,228.11 would be paid by the plaintiff to the Registrar of this Court pending the outcome of the challenge.⁵ Those funds were ordered to be held in an interest-bearing account pending further order of the Court or agreement in writing by the parties.

[6] Mende Biotech has now been placed in liquidation. Mr Mende intends to seek leave of the High Court to enable him to continue with his claims against the company. Counsel have now jointly applied for a stay of this proceeding, pending the conclusion of the leave application in the High Court. The parties have agreed that the funds paid to the Registrar of this Court are to continue to be held in trust in the meantime.

[7] I agree with counsel that a stay is appropriate in these circumstances. The application is granted. For the avoidance of doubt, the Registrar is to continue to hold the funds previously paid pending further order of the Court.

K G Smith
Judge

Judgment signed at 11 am on 28 August 2023

³ *Mende v Mende Biotech Ltd* [2022] NZERA 210 (Member Loftus) at [17]–[18].

⁴ *Mende v Mende Biotech Ltd* [2022] NZERA 245 (Member Loftus).

⁵ *Mende Biotech Ltd v Mende* [2022] NZEmpC 105.