

Reference No. HRRT 018/2022

HUMAN RIGHTS ACT 1993

BETWEEN

ANNETTE NEPE

PLAINTIFF

AND

WOODVILLE COMMUNITY COMMITTEE
INCORPORATED (FORMERLY KNOWN
AS WOODVILLE DISTRICTS VISION
INCORPORATED)

DEFENDANT

AT WELLINGTON

BEFORE:

Ms SJ Eyre, Chairperson

Ms BL Klippel, Member

Ms SP Stewart, Member

REPRESENTATION:

Ms A Nepe, currently unrepresented

Woodville Community Committee Incorporated, currently unrepresented

DATE OF HEARING: On the papers

DATE OF DECISION: 16 November 2023

DECISION OF TRIBUNAL STRIKING-OUT CLAIM¹

¹ [This decision is to be cited as *Nepe v Woodville Community Committee Incorporated (Strike-Out)* [2023] NZHRRT 40.]

[1] This decision relates to a claim filed by Ms Nepe in the Human Rights Review Tribunal (the Tribunal) alleging that the Woodville Community Committee Incorporated (WCC) discriminated against her.

BACKGROUND

[2] On 20 May 2022 Ms Nepe, who was represented by the Director of Human Rights Proceedings (the Director) at that time, filed a claim against the WCC and the editor of the local Woodville Wire newsletter. The claim alleged racial harassment and discrimination against Ms Nepe on the basis of her ethnicity.

[3] Ms Nepe and the editor of the Woodville Wire newsletter entered into a settlement and Ms Nepe withdrew the claim against the editor on 21 December 2022. On the same day, the Director advised the Tribunal that he was awaiting instructions from Ms Nepe regarding continuation of the claim against WCC. The claim against WCC was not further progressed, and in May 2023 the Director sought leave to withdraw as counsel for Ms Nepe.

[4] Ms Nepe was notified of, and was expected to attend, the teleconference on 12 May 2023 where the withdrawal of the Director as her counsel was to be discussed. Ms Nepe did not attend. In a *Minute* issued on 6 June 2023 Ms Nepe was specifically advised that she was expected to attend the next teleconference. She was also advised that her next step would require the filing of an amended statement of claim against the WCC.

[5] Ms Nepe attended the next teleconference held on 17 July 2023. In the *Minute* issued following that teleconference, the Tribunal directed Ms Nepe to file and serve an amended statement of claim by 18 August 2023.

[6] Ms Nepe did not file the amended statement of claim and did not contact the Tribunal at all regarding this failure.

[7] On 15 September 2023, a further *Minute* was issued in which Ms Nepe was directed to file and serve the amended statement of claim by 13 October 2023. Ms Nepe was put on notice that if she did not comply with the direction, the Tribunal would consider striking out her claim as an abuse of process.

[8] Ms Nepe did not file the amended statement of claim and did not contact the Tribunal at all regarding this failure.

[9] On 24 October 2023 the Tribunal issued a *Minute* advising that it intended to consider striking out Ms Nepe's claim (on the papers) as an abuse of process. Ms Nepe was given the opportunity to file submissions in respect of this matter by Friday 10 November 2023.

[10] Ms Nepe did not file submissions or respond to the Tribunal's correspondence in any other manner regarding the consideration by the Tribunal of striking out Ms Nepe's claim.

JURISDICTION TO STRIKE-OUT

[11] The Tribunal has the power to strike-out proceedings pursuant to s 115A the Human Rights Act 1993 (the HRA):

115A Tribunal may strike out, determine, or adjourn proceedings

- (1) The Tribunal may strike out, in whole or in part, a proceeding if satisfied that it—
- (a) discloses no reasonable cause of action; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of process.

[12] In this claim s 115A(1)(d) is the relevant ground of potential strike-out.

[13] A decision to strike-out a claim for an abuse of process involves a two-stage test: whether there was an abuse of process; and if there was, whether the Tribunal should exercise its discretion to strike-out the proceeding.

[14] Section 115A is equivalent to the strike-out jurisdiction of the High Court under r 15.1 of the High Court Rules 2016. The principles adopted by the High Court under r 15.1 may therefore inform the approach of the Tribunal to strike-out decisions, subject to any other relevant provisions of the HRA.

[15] There is a useful discussion of the High Court's jurisdiction to strike-out a proceeding under r 15.1 in *Gwizo v Attorney-General (Gwizo)* which is also relevant to this case:²

[43] The High Court's jurisdiction to strike out a proceeding as an abuse of process is available in several situations. Two are potentially relevant here. Each sets a high threshold.

[44] The first is where there has been a consistent failure to comply with court orders. This will be an abuse of process only where the failure is deliberate. Failures, even repeated ones, and especially where the plaintiff is a lay litigant, will not always be deliberate. They may be a result of ignorance, disorganisation or anxiety. However, a consistent failure in the face of repeated warnings will be regarded as deliberate, particularly where the plaintiff was conscious of the breach and chose to do nothing.

[45] The second is where a plaintiff lacks any intention of bringing the proceeding to a conclusion in a timely way. This may be evidenced by a long period of inactivity. [Footnotes omitted]

[16] Similarly, in *Yarrow v Finnigan*:³

The courts must not be used for collateral purposes (whether conscious or unconscious) as this will be oppressive on defendants and tends to undermine the system of judicial adjudication of disputes between parties. The flip side, however, is that the Court's power to strike out proceedings on this basis is not to be used lightly as over-vigorous intervention in this area will oppress plaintiffs who may well deserve their day in court, whatever their quality of proceeding and knowledge of judicial process. Non-compliances, even multiple ones, and especially by lay litigants, will not always be deliberate or otherwise for wrongful reasons. They may be the result of ignorance, disorganisation, anxiety or a combination of these. The Court will tend to be tolerant of these things, but not endlessly so.

ISSUES

[17] To determine whether the Tribunal should strike-out Ms Nepe's claim, the Tribunal must consider the following two issues:

[17.1] Is Ms Nepe's failure to progress this claim an abuse of process?

[17.2] If so, should the Tribunal exercise its discretion to strike-out the claim?

² *Gwizo v Attorney-General* [2022] NZHC 2717.

³ *Yarrow v Finnigan* [2017] NZHC 1755 at [16].

IS MS NEPE'S FAILURE TO PROGRESS AN ABUSE OF PROCESS?

[18] There have been no substantive steps taken by Ms Nepe to progress her claim against WCC since December 2022. Despite Ms Nepe maintaining that she wished to continue her claim, and despite her being given multiple opportunities to do so, Ms Nepe has not filed an amended statement of claim as directed. In particular:

[18.1] Ms Nepe did not attend the teleconference scheduled for 12 May 2023 despite being advised of it. As recorded in the *Minute* following that teleconference, she was advised that the filing of an amended statement of claim was the next step.

[18.2] By *Minute* dated 17 July 2023, Ms Nepe was directed to file her amended statement of claim by 18 August 2023. Ms Nepe did not file the amended statement of claim and did not contact the Tribunal to seek an extension or explain her failure to do so.

[18.3] By *Minute* dated 15 September 2023, the Tribunal again directed Ms Nepe to file her amended statement of claim, this time by 13 October 2023. Ms Nepe did not file her amended statement of claim and did not contact the Tribunal.

[18.4] Having noted the repeated failure by Ms Nepe to progress the claim against the WCC and to file her amended statement of claim, Ms Nepe was then put on notice by *Minute* dated 24 October 2023 that the Tribunal was considering striking out her claim. Ms Nepe was provided with the opportunity to file submissions addressing this issue by 10 November 2023. She did not file submissions nor respond in any other way.

[19] It has now been eleven months since Ms Nepe withdrew her claim against the editor of the Woodville Wire and was expected to progress her claim against the WCC. Up to May 2023, Ms Nepe was represented by the Director who was advising her on this process, although no steps were taken to progress the claim between December 2022 when settlement was reached with the editor and May 2023 when leave for the Director to withdraw as her counsel was given. Since that time, the Tribunal has repeatedly advised Ms Nepe of the next steps in this matter. Ms Nepe has taken no action to file the amended statement of claim as directed, nor has she contacted the Tribunal to discuss this or to seek an extension of time.

[20] A party who wishes to file a claim must actively progress the claim or it causes prejudice to the other party and is an abuse of the Tribunal's processes, including by placing an administrative burden on the Tribunal to monitor non-compliance with Tribunal directions and otherwise wasting its resources.

[21] Ms Nepe's repeated failure to progress this claim against the WCC, despite being represented by competent counsel and being provided with multiple opportunities to do so, cannot be the result of ignorance, disorganisation or anxiety. The inaction in this case represents a deliberate failure to engage with the Tribunal processes and indicates Ms Nepe has no intention of bringing these proceedings to a conclusion in a timely manner. Accordingly, the Tribunal finds that Ms Nepe's failure to progress her claim is an abuse of process.

SHOULD THE TRIBUNAL EXERCISE ITS DISCRETION?

[22] Having found that Ms Nepe's failure to progress her claim is an abuse of process, the Tribunal must now consider whether to exercise its discretion to strike-out Ms Nepe's claim.

[23] Ms Nepe has provided no submissions opposing the Tribunal striking out her claim. For the past six months she has not contacted the Tribunal regarding her failure to file an amended statement of claim, a failure the Tribunal has concluded is an abuse of process.

[24] This Tribunal has previously noted the importance of the need for finality of proceedings for both the Tribunal and the parties.⁴ In *Gwizo* the High Court also noted that it is relevant to consider the effect of a plaintiff's non-compliance on the Tribunal, given its limited resources.⁵

[25] While the Tribunal accepts that the jurisdiction to strike-out should not be used lightly, no substantive steps have been taken by Ms Nepe to actively progress the claim since December 2022. If this claim was to remain on foot, the experience to date suggests that the Tribunal would be required continually to follow up with Ms Nepe to remind her of directions made, which takes the Tribunal's limited resources away from progressing and determining other claims.

[26] For these reasons it is appropriate that the Tribunal exercise its discretion under s 115A(1)(d) to strike-out Ms Nepe's claim.

ORDER

[27] Ms Nepe's claim against the Woodville Community Committee Incorporated is struck out in its entirety.

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Ms SJ Eyre
Chairperson

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Ms BL Klippel
Member

.....
Ms SP Stewart
Member

⁴ *Muir v Zhou (Strike-Out)* [2022] NZHRRT 49 at [26].

⁵ *Gwizo v Attorney-General* as above n 2, at [75].