

HIGH COURT OF AUSTRALIA

JAGOT J

CELESTINE OGBONNA

PLAINTIFF

AND

LINK WORKFORCE PTY LTD & ANOR

DEFENDANTS

[2026] HCASJ 28

Date of Judgment: 24 August 2026

P16 of 2026

ORDERS

1. *The plaintiff's application for a constitutional or other writ filed on 29 May 2026 is summarily dismissed as an abuse of process under r 28.01.2(c) of the High Court Rules 2004 (Cth).*
2. *No order as to costs.*

Representation

The plaintiff is unrepresented

The first defendant is represented by Kingston Reid

Submitting appearance for the second defendant

JAGOT J.

The application

1 The plaintiff, Mr Ogbonna, filed an application for an extension of time to file a constitutional or other writ against Link Workforce Pty Ltd ("Link Workforce") and the Federal Court of Australia. Both defendants filed submitting appearances. For the following reasons, the application should be determined without being listed for hearing under r 25.09.1 of the *High Court Rules 2004* (Cth), and an order should be made summarily dismissing the application as an abuse of process under r 28.01.2(c) of those Rules.

2 By r 28.01.3(b) the Court or a Justice may make an order staying or giving judgment on any claim "of the Court's or the Justice's own motion after notice has been given by the Registrar to each plaintiff or applicant". In this case, the Deputy Registrar gave such notice to Mr Ogbonna on 28 July 2026 and invited him to file such further material as he saw fit in respect of the making of an order summarily dismissing the application for a constitutional or other writ. Mr Ogbonna was subsequently granted two extensions of time in which to file that material. In response, on 17 August 2026, Mr Ogbonna filed written submissions and a further affidavit in support of his application, in addition to the several affidavits already filed. On 20 August 2026 Mr Ogbonna filed amended submissions and further affidavits which had been filed in the Federal Court proceedings. This material has also been considered despite it being filed after the grant of the final extension of time to 17 August 2026.

3 Consideration

4 The application concerns orders made by the Federal Court of Australia (Derrington J) on 22 February 2024,¹ refusing Mr Ogbonna leave to appeal from an interlocutory decision (Feutrill J).² Mr Ogbonna had claimed damages for defamation relating to comments made about him by a colleague while both were employed by Link Workforce and for loss of income as a result of conduct by Link Workforce, not involving dismissal, that he contended contravened the general protections provisions of the *Fair Work Act 2009* (Cth). Based on Link Workforce's alleged failure to dispute facts and documents specified in a "Notice to Admit" which Mr Ogbonna served under r 22.01 of the *Federal Court Rules 2011* (Cth), he sought judgment on these claims by interlocutory application. Feutrill J dismissed this interlocutory application and reserved costs.

1 *Ogbonna v Link Workforce Pty Ltd* [2024] FCA 119.

2 *Ogbonna v Link Workforce Pty Ltd* [2023] FCA 633.

5 Feutrill J identified the principal issue for determination as "whether [Link Workforce] is deemed to have admitted the facts and authenticity of the documents specified in the notice to admit."³ In circumstances where two such notices had been served in the same terms (and Link Workforce had disputed one such notice), his Honour held that Link Workforce had "disputed the truth of the facts and the authenticity of the documents specified in the notice to admit (whether served on 12 October 2022 or 25 October 2022)".⁴ His Honour characterised Mr Ogbonna's arguments to the contrary as depending on "an unduly technical and formalistic interpretation of the notice of dispute and rr 22.01 and 22.02 of the [*Federal Court Rules*]."⁵ Feutrill J also said that even if this conclusion were wrong, it was "clear that [Link Workforce] intended to dispute the facts and authenticity of the documents specified in the notice to admit served on 12 October 2022" and had given notice of that intention to Mr Ogbonna, so that his Honour would have granted Link Workforce leave to withdraw any deemed admission in any event. As his Honour put it, it was "not in the interests of justice that form be permitted to rule over substance in the circumstances of this case."⁶

6 Derrington J ordered that Mr Ogbonna's application for leave to appeal be dismissed and that there be no order as to costs. His Honour concluded that "[n]o doubt was raised as to the correctness of the primary judge's decision and Mr Ogbonna would not suffer detriment if required to establish the facts supporting his case in the usual manner".⁷ His Honour was also satisfied that, in the circumstances, "it cannot be said that substantial injustice would result in this case if leave were refused, supposing the decision below to be wrong".⁸

7 In the application to this Court Mr Ogbonna contends that Derrington J's orders were affected by jurisdictional error in that his Honour: (i) failed to give proper consideration to the "Submitting Notice" (a reference to Link Workforce subsequently having filed a submitting appearance) and the admissions of fact alleged to have been made by Link Workforce not having disputed one of the notices to admit; (ii) failed to exercise judicial power according to law; (iii) denied procedural fairness to Mr Ogbonna; and (iv) made a decision which raises issues concerning "equal access to justice and equal protection before the law". In

3 *Ogbonna v Link Workforce Pty Ltd* [2023] FCA 633 at [17].

4 *Ogbonna v Link Workforce Pty Ltd* [2023] FCA 633 at [23].

5 *Ogbonna v Link Workforce Pty Ltd* [2023] FCA 633 at [22].

6 *Ogbonna v Link Workforce Pty Ltd* [2023] FCA 633 at [24].

7 *Ogbonna v Link Workforce Pty Ltd* [2024] FCA 119 at [4].

8 *Ogbonna v Link Workforce Pty Ltd* [2024] FCA 119 at [38].

3.

support, Mr Ogbonna makes wide-ranging and entirely unfounded contentions in his written submissions including of racial discrimination and judicial misconduct.

8 By r 41.02.1 of the *High Court Rules*, Mr Ogbonna had a period of 28 days from the date of the orders of Derrington J to seek special leave to appeal, or by r 25.02, two or six months to seek mandamus or certiorari respectively. The application has been filed some 27 months after the order of Derrington J. Leaving aside the manifestly groundless contentions in his written submissions and affidavits, the real problem is that the proceeding before the Federal Court remains on foot and has merely been stayed. The decisions which Mr Ogbonna seeks to impugn in the application also concern a matter of practice and procedure rather than a substantive right. As Derrington J recognised, Mr Ogbonna could seek to prove his case by evidence if he so wished.⁹ Instead, Mr Ogbonna has attempted to use the happenstance of the service of two notices to admit as a mechanism to contend that Link Workforce, having failed to dispute one such notice, has made admissions of fact in Mr Ogbonna's favour.

9 The class of potential abuses of process is not closed. Abuse of process is "capable of application in any circumstances in which the use of a court's procedures would be unjustifiably oppressive to a party or would bring the administration of justice into disrepute".¹⁰ Further, "[a]lthough the categories of abuse of procedure remain open, abuses of procedure usually fall into one of three categories: (1) the court's procedures are invoked for an illegitimate purpose; (2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or (3) the use of the court's procedures would bring the administration of justice into disrepute".¹¹ Mr Ogbonna's attempt now to circumvent the decisions below engages these principles.

10 First, the observations in *Bussa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* are apt:¹²

"even if grounds for judicial review were established by the plaintiff, this Court would be disposed to exercise its discretion to refuse the extraordinary relief sought unless satisfied that the remedy by ordinary appellate process is 'less convenient, beneficial and effective' in the interests of the parties or the public. And that is so notwithstanding that the ordinary appellate process available to the plaintiff would require ... special leave to

9 *Ogbonna v Link Workforce Pty Ltd* [2024] FCA 119 at [38].

10 *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 at 518-519 [25].

11 *Rogers v The Queen* (1994) 181 CLR 251 at 286.

12 (2020) 94 ALJR 497 at 501 [13]; 337 ALR 228 at 232 (footnotes omitted).

appeal. Consequently, as this Court has recently made clear on several occasions, to seek review of a judgment on the merits by application for constitutional or other writs, rather than by application for special leave to appeal, without any explanation for the departure from the ordinary course, is an abuse of process."

11 Second, this Court "has always been reluctant to grant special leave against an interlocutory order as opposed to a final order".¹³ The Court ought to be similarly reluctant to intervene in proceedings that remain on foot in the Federal Court (albeit stayed),¹⁴ particularly where the issue is one of practice and procedure rather than substance.¹⁵

12 Third, the application is manifestly unmeritorious. The position remains as Derrington J identified: "[n]o doubt was raised as to the correctness of the primary judge's decision and Mr Ogbonna would not suffer detriment if required to establish the facts supporting his case in the usual manner".¹⁶

13 For these reasons, the orders to be made are:

- (1) The plaintiff's application for a constitutional or other writ filed on 29 May 2026 is summarily dismissed as an abuse of process under r 28.01.2(c) of the *High Court Rules 2004* (Cth).
- (2) No order as to costs.

13 *Collier v Sengos* (1993) 67 ALJR 810 at 811.

14 *Ogbonna v Link Workforce Pty Ltd [No 3]* [2026] FCA 668.

15 *Queensland v JL Holdings Pty Ltd* (1997) 189 CLR 146 at 172.

16 *Ogbonna v Link Workforce Pty Ltd* [2024] FCA 119 at [4].