



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 421

**APPLICANT**      **KS**

**APPLICANT**      **QS**

**RESPONDENT**    **ZA**

**The Tribunal orders:**

The Applicant's claim is dismissed.

**Reasons:**

1. The Applicants (KS and QS) and the Respondent (ZA) are neighbours. In June 2022, the property manager for ZA's property (KZ) called ZA and told him KS and QS wished to discuss building a new fence between the properties.
2. After several meetings and some discussion with KZ as the intermediary, ZA was of the opinion that the whole fence of 57 meters did not need replacing, only certain sections. He agreed to contribute to a portion of the fence on the basis that KS and QS would have a surveyor mark out the boundaries of the properties so that any new fence would be built on the boundary line.
3. KS and QS engaged a friend of theirs who was a surveyor to survey the boundary 'off the record'. However, as this was the case, no formal report was produced and when ZA asked for one, KS and QS were unable to provide it. Being unsure that the pegs located by KS and QS friend were indeed the correct boundary markers, ZA did not agree to the building of the new fence.
4. KS and QS proceeded to build a new fence between the properties at a cost of over \$10,000.00 and have lodged a claim against ZA for \$4,000.00 towards the cost of the fence. ZA gave evidence that he will not pay for the fence because he did not agree to it being built and because he believes it is not on the legal boundary and encroaches onto his land.

*Issues: Is ZA liable to contribute to the cost of KS and QS fence?*

1. The Section 10 of the Fencing Act 1978 (the Act) sets out the process for when a party wishes an adjoining neighbour to contribute to work on a fence on their boundary. It involves that party sending a Fencing notice to the adjoining neighbour outlining the boundary where the work is to be done, the work proposed to be carried out, materials to be used and estimated cost. The neighbour then has 21 days within which to lodge an objection.
2. In the absence of any agreement on these matters between the parties, section 10(4)a of the Act states that an occupier of adjoining land shall not be liable to contribute to the cost of the fence where any work has been done before a notice relating to the work has been served on him. In

this situation, the parties had not reached agreement about the fence because ZA wished to see a surveyor's report before he agreed to contribute to the fence.

3. Nevertheless, KS and QS went ahead with building the fence without having served ZA a fencing notice and giving him statutory the 21 day period to respond. As a result, ZA is not liable to contribute to the cost of the fence and KS and QS claim is dismissed.
4. A related issue that arose at the hearing was ZA's concern that the fence was built in a way that encroached on his property. However, there was no counterclaim lodged by ZA and even if there had been, not enough evidence (for example, a surveyor's report) was available to enable this matter to be determined.

**Referee: Kaho**

**Date: 25 August 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.