

New Court Appointments Tuesday, Swearing-In Ceremony At King's House

The Gleaner

There are to be new appointments to the Supreme Court and Court of Appeal benches.

Supreme Court judge Justice Frank Williams has been appointed to the Court of Appeal.

Williams was previously acting in the position.

Justice Carol Edward has appointed to act on the Court of Appeal bench.

Resident Magistrate (RM) Carolyn Tie, who has been acting as Master-in-Chambers at the Supreme Court, has now been appointed to act as a puisne judge.

RM Stephanie Jackson Haisley has been appointed to act as Master-in-Chambers.

All four are to be sworn in at a ceremony at King's House on Tuesday at 10 a.m.

Attorney, doctor freed of fraud charges

The Gleaner



KINGSTON, Jamaica — A well-known civil attorney and a medical doctor who were accused of forging a dead man's will were today freed of fraud charges in the Corporate Area Resident Magistrate's

Court.

The 67-year-old attorney-at-law Peter Millingen of Braywick Road in Kingston, and 58-year-old medical doctor Dane Levy of White Wing Avenue, Portmore in St Catherine, were arrested last November and charged with conspiracy to defraud, uttering forged document, and demanding property by means of forged document, while Levy is to face charges of conspiracy to defraud and forgery.

The duo were freed after the Crown entered a nolle prosequi, to discontinue the matter.

Prosecutor Donnette Henriques told Magistrate Maxine Ellis that Director of Public Prosecutions Paula Llewellyn had reviewed the case file and came to the conclusion that the matter had been inadequately investigated and that she felt that it was in the best interest of justice to discontinue the case to give the police an opportunity to conduct further investigations to proceed.

Reports from the police's Corporate Communications Unit (CCU) are that in 2013, the relative

of a deceased man requested a copy of the Last Will and Testament document from Millingen – the dead man’s lawyer – and was denied.

The relative then retained the services of another attorney who applied for and obtained a copy of the document. After examining the will, the relative discovered discrepancies with the document to include the deceased’s signature, CCU said in a release.

A report was made to the Counter Terrorism and Organised Crime Branch (C-TOC) and an investigation was launched.

The purported document was sent to the Jamaica Constabulary Force’s Questioned Document Examination Department, along with several specimen handwriting. It was revealed that the Last Will and Testament reportedly signed by the deceased was forged, the release said.

The investigation, according to the police, also revealed that Millingen, the preparer of the document, filed an Affidavit of Feeble Handwriting in the Supreme Court of Jamaica, which stated that he was present at the date when the deceased and the two purported witnesses signed the document.

However, forensic evidence revealed that it was Levy who forged the signatures of the witnesses, the police reported.

Attorney Tom Tavares Finson represented Millingen while Levy, was represented by attorneys Bert Samuels and Stacy-Ann Knight.

Tanesha Mundle

Laws Of Eve: When Can The Court Correct Itself?

The Gleaner

Despite the best efforts of the court and the parties to an action, there are times when further applications have to be made after the court has pronounced its final order.

Regrettably, this was the case in *Weir v Tree*, involving a husband and wife in an action concerning matrimonial property. The claim was filed in the Supreme Court in 2008, and the court delivered its ruling in November 2009. An appeal of that decision was filed in 2011, and determined in March 2014.

It was, therefore, surprising to see yet another decision from the Court of Appeal involving the same parties handed down on March 4, 2016.

The first trial awarded the husband a half-share of the value of the dwelling house on the land in question, that had a value of \$2,600,000. A judgment was entered for the husband in the amount of \$1,300,000. On his appeal to the Court of Appeal, the husband sought a half-share in the

family home (not just the dwelling house) and the first option to acquire the wife's interest in the home that had been his home for 28 years, and he succeeded. At that time, the court also ordered that an updated valuation report should be prepared and that the husband would have the option to purchase within three months of the 'order for sale'.

Issues concerning the timing of the updated valuation report, and the exercise of the husband's option to purchase, necessitated the filing of the application to the Court of Appeal by the husband in 2015 for further directions, or a variation of the court's order. Importantly, the valuation report did not reach the hands of the husband's attorney until June 17, 2014, exactly three months after the order was made. When the husband then tried to purchase the wife's interest in the property, she countered by saying that the time within which he could do so had lapsed and that she, instead, wanted to purchase his interest in the property.

MAJORITY DECISION

On these issues, the Court of Appeal's majority decision was in the husband's favour. The following findings of the court may be relevant to all applications for variation of a court order:

1 The court has the power to correct errors in an order that it had previously made, arising from accidental slips or omissions, so as to bring the order as drawn into conformity with that which the court meant to pronounce.

2 In order to determine what was the intention of the court which had made the original order, the court must have regard to the language of the order - taken in its context, and against the

background of all the relevant circumstances, including (but not limited to): (i) the issues which the court that made the original order was called upon to resolve; and (ii) the court's reasons for making the original order.

3 The real issue for the court's consideration is whether there is anything to suggest that the actual language of the original order is open to question. It is not limited to the question of whether any ambiguity exists.

4 If the court made an accidental error, it needs to be corrected as soon as it becomes evident.

5 Additionally, if there was no prejudice to any third party, then even the delay of years in making the application would not deter the court from correcting the obvious error by inserting the words which had originally been omitted.

IRRESISTIBLE CONCLUSION

The determining factor on this appeal was what one member called the irresistible conclusion that "it was the intention of the court that the updated valuation should be first obtained before the property could be sold by private treaty or by public auction, and before the first option granted to the applicant [husband] could be exercised". The husband could not have made arrangements to acquire the wife's interest in the property without first receiving the valuation report to confirm the price he would need to pay for it.

While I make no pronouncement regarding the emotional state of the parties in this matter, in my experience, most matters that involve division of matrimonial property are impacted by emotional issues that cloud rational thought. It is unfortunate that more than two additional years of litigation, two hearing days in the Court of Appeal, significant expense and a 49-page judgment became necessary when three months' extension of time for the husband to purchase the wife's interest in the property might have resolved the matter.

• **Sherry Ann McGregor is a partner and mediator in the firm of Nunes Scholefield DeLeon & Co. Please send questions and comments to lawsofeve@gmail.com or lifestyle@gleanerjm.com**

Challenge to Schools' Challenge Quiz thrown out

The Observer



The Supreme Court last Thursday refused an application from Camperdown High School for an injunction to stop the current season of TVJ's Schools' Challenge Quiz, the radio and

television company said weekend.

Costs were also awarded against Camperdown in the matter, the company said in a news release.

“TVJ is pleased with the decision of the court and hopes the matter puts to rest an unfortunate issue which has emerged as the competition is in its 47th year of staging,” the company said but did not give details about the “unfortunate issue”.

“Radio Jamaica whom the action was brought against wishes to advise that if it actually pursues the collection of the damages awarded, it will use the funds to inaugurate a fair play or most disciplined team award in the competition starting this year,” the company cautioned.

“TVJ remains committed to Schools’ Challenge Quiz and other such programmes it has developed to showcase the best of our young people, especially our children.”

TVJ was recently involved in another dispute over allegedly faulty scoring in the match between Campion College and Kingston College. The Camperdown dispute involved Ardenne High.

Caymanas Sale Stalls At The Starting Gate

The Gleaner

Arthur Hall

The Cabinet's plan to divest the State-owned horse racing company, Caymanas Track Limited (CTL), could be stalled in the starting gates following legal action by former champion jockey Shane Ellis.

The Supreme Court last week granted an injunction sought by lawyers representing Ellis to bar CTL from disposing of assets up to the value of \$150 million, effectively leaving the divestment to Supreme Ventures Limited (SVL) as a non-starter.

In an order dated March 21, Supreme Court judge Sonia Bertram-Linton blocked CTL from disposing of its assets up to \$150 million until the matter is further considered on April 18.

CTL and its CEO Cedric Stewart have been given 14 days to disclose their assets to the court, even as the judge made no order that would prevent racing from continuing.

Ellis, a two-time champion jockey in Jamaica, had filed a defamation lawsuit against CTL and Stewart over comments he claimed had damaged his reputation following a race in 2013 when his mount Morebulletstofire failed to finish a race.

Delaying And Frustrating

With that lawsuit pending, lawyers representing Ellis returned to the Supreme Court claiming that CTL is delaying and frustrating his efforts to obtain justice until it can divest itself of its assets, and along with any contingent liabilities.

"I have no claim against ... SVL and so, if the first-named defendant (CTL) is permitted to divest itself of its assets whether by sale or lease before this matter is tried, I will be left holding an empty judgment for a substantial amount of damages with nothing to enforce it against.

"This has been the defendants' plan all along," claimed Ellis in his affidavit seeking to block the divestment of the racetrack.

"Additionally, CTL is technically insolvent and only continues to operate with government support until its assets can be divested - a process that would rescue CTL from the consequences of operating while insolvent but will leave me without any recourse to justice," added Ellis.

Last week, Information Minister Ruel Reid announced that the Cabinet had approved SVL as the preferred bidder for CTL but announced that "the final sales terms are to come back to the Cabinet for the final approval".

The CTL privatisation opportunity was advertised by the Development Bank of Jamaica in May 2015, and the bid submission deadline was extended twice from July 10, 2015 to August 28, 2015, and subsequently to September 18, 2015 to accommodate the due diligence of prospective investors.

CTL is Jamaica's sole horse racing promotions company, which operates the Caymanas Park Track situated in Portmore, St Catherine.

Yesterday, chairman of the CTL board, Christopher Brown, directed our news team to Stewart for a comment, but efforts to contact him were unsuccessful.

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Man hit with baton after he attacks cop and rips up traffic ticket

Covering the courts

with Tanesha Mundle

The Observer

A taxi driver, who reportedly got angry after he was ticketed for a traffic violation and assaulted a policeman, has found himself in trouble with the law.

Elvis Abraham is also accused of ripping up the ticket and throwing it on the ground and, as a result, was charged with littering, along with assaulting the constable.

On Wednesday when the matter was mentioned, the court heard that on March 7 in Half-Way-Tree, St Andrew, the policeman gave Abraham a traffic ticket, which he took and tore up in front of the cop, and threw it to the ground.

RM Pusey then questioned the policeman about the circumstances which had resulted in Abrahams being charged with assaulting the police.

The constable then told the magistrate that he was cautioning Abraham after he threw the ticket to the ground, when he turned around and grabbed him in his chest.

The policeman said he retaliated by pulling his baton and used it to hit Abraham. Abraham, however, pleaded not guilty to assaulting the policeman, but admitted that he had thrown the ticket on the ground.

“I get upset too, but I don’t jump up and attack the officer,” the RM said. She then asked Abraham’s lawyer what was his defence but he told her that he did not want to disclose same and refused to answer.

The magistrate, on seeing that the lawyer was not budging, asked him what were the facts they could agree on, but the lawyer avoided answering by telling the magistrate that he needed more time to take further instructions from his client.

He was then asked by the magistrate to mitigate on his client’s behalf in respect of the charge to which he had pleaded guilty.

The lawyer then told the magistrate to bear in mind that the charge was his client’s first offence and that he was sorry for throwing the paper on the ground and asked her to be lenient.

The magistrate then ordered Abraham to pay a fine of \$2,000 or serve 10 days in jail. She then extended his bail on the charge of assaulting a constable and set a date for trial in the Petty Session Court on May 9.

Man allegedly hammers another during fight over ‘babymother’

Covering the courts

with Tanesha Mundle

The Observer



A man accused of using a hammer to beat another man in the head — during a fight over the mother of his child on New Year’s Eve last year — claimed self-defence when he appeared in the Corporate Area Resident Magistrate’s Court last week.

Jason Manning, 38, computer network installer of Sandy Park in St Andrew, reportedly used a hammer to assault his co-accused, Kristoff Sullivan, 20, a contract worker of Stand Pipe in St Andrew.

Sullivan is, however, accused of using an object to hit Manning twice in his face, causing a bruise to his nose. He is facing a charge of assault occasioning bodily harm while Manning is charged with unlawful wounding.

The alleged fight occurred at Sullivan’s friend’s home in Sandy Park, on New Year’s Eve at 8:45. According to Sullivan in his statement, he was at his friend’s home with his sister and the mother of Manning’s 9-month-old child when he heard Manning calling his ‘babymother’.

Shortly after, Manning came inside the house and reportedly started to hit Sullivan in his head and face with a hammer. Sullivan's sister and another person reportedly went to Sullivan's assistance, but were assaulted by Manning.

An injured Sullivan was reportedly rushed to the University Hospital of the West Indies and was transferred to the Kingston Public Hospital where he was admitted for three days.

But Manning, in his statement, gave a different account, claiming that the fight occurred because Sullivan had not heeded his warning to stay away from his baby.

According to him, on the night of the incident he went to check on his son's mother who was not feeling well, and saw Sullivan holding his baby in his arms.

Manning indicated in his statement that he had told his 'babymother' not to let Sullivan hold or talk to his child. As a result, Manning said he spoke to Sullivan and an argument reportedly developed wherein Sullivan threatened to hit him in his face.

It is further reported that Sullivan shoved Manning and Manning retaliated in like manner. Sullivan reportedly punched Manning who returned the punch, which resulted in a fist fight between the two men.

Another person reportedly intervened and was inquiring about what had happened when it is alleged that Sullivan used an object to hit Manning twice in his face. Manning reportedly grabbed a hammer and used it to defend himself.

However, on Tuesday when the matter was mentioned before Senior Magistrate Judith Pusey, the investigating officer told the court that the probe had revealed that the fight was over Manning's 'babymother'.

He also told the court that Manning turned himself in to the police five days after the incident and the police, at that time, had not seen any marks of violence on him.

The magistrate then looked at Manning's medical report and shortly after told him: "The doctor don't agree with you." But Manning insisted that he was injured in the fight and that he was acting in self-defence when he hit the complainant.

The matter, as a result, was scheduled for trial on June 23 and both accused men's bails were extended. In the meantime, Sullivan, who was present in court, told the court that he was not experiencing any after-effects from the alleged blows to his head and was feeling "Okay".

Man accused of chasing and killing man after friend attempts to steal bicycle

Covering the courts

with Tanesha Mundle

The Observer



A man, who reportedly chased another man — whose friend tried to steal a bicycle — and stabbed and killed him, was denied bail.

Lashawn Seaton, 32, was arrested and charged for the alleged murder of 26-year-old Teddane Jackson.

According to the allegations, on March 15, Jackson and his friend were walking along Hanover Street in downtown Kingston, when Jackson's friend attempted to steal someone's bicycle.

An alarm was made and Seaton and other men reportedly chased both males. Seaton reportedly caught up to Jackson and used a knife to stab him in his chest.

Allegations are that a policeman witnessed the stabbing and saw Seaton running away from the man and apprehended him.

The injured man was taken to the Kingston Public Hospital where he died.

On Wednesday, when Seaton appeared in court, his lawyer, Franklin Grenion, told RM Pusey that his client was defending himself.

“Somebody is stealing my bike, he drops the bike and starts to run – explain how self-defence come into that,” she challenged the lawyer.

“When they came face to face a knife was brought into play,” Grenion replied.

The prosecutor then interjected and told the magistrate that the statement from the police officer who had witnessed the incident was outstanding and that they should await the statement.

As a result, the matter was rescheduled for mention on April 1 and Seaton was remanded.

“I don’t believe that because a man is a thief that you should run him down and stab him,” RM Pusey remarked.

Store manager in alleged \$62-m fraud

The Observer



DETECTIVES assigned to the Fraud Squad on Monday arrested and charged 37-year-old Taneka Stewart-Blake, a resident of Mahoe Avenue, Old Harbour, St Catherine, for reportedly fleecing more than \$62

million from a company in Mandeville, Manchester.

According to the police, Stewart-Blake was a manager at a business place in Mandeville, Manchester, between December 2008 and December 2015. It is reported that she misrepresented the daily sales at the company and allegedly pocketed \$62,753,681 over a period of time.

Police did not name the store, but said the matter was reported to Fraud Squad and an investigation subsequently launched.

Stewart-Blake was arrested and charged on Monday, March 21 and is to appear before the Corporate Area Criminal Court on Wednesday, March 30. She has not been offered bail.

Venezuelan man who attempted to smuggle cash

The Observer

A Venezuelan man who was caught trying to leave the island with US\$83,000 and \$49,000 bolivars — some of which was hidden in shampoo and lotion bottles — was fined \$700,000 in the Corporate Area Resident Magistrate's Court last Thursday.

Forty-three-year-old Randolph Fernandez was sentenced by Senior Magistrate Judith Pusey after he pleaded guilty.

He was ordered to pay \$250,000 or serve three months each on charges of attempting to remove criminal property from Jamaica and concealing criminal property, and \$100,000 or three months for possession of criminal property.

Fernandez was arrested at the Norman Manley International Airport in Kingston last November as he was about to board a flight to Dutch-speaking Curacao.

During security procedures, he was stopped and searched and US\$73,000 was found in bottles of shampoo and lotion while US\$10,000 was found in his wallet.

A black strap bag that he was carrying was also searched and \$49,000 bolivars, or Ja\$60,000, was also found.

The prosecutor told the court that Fernandez under caution told the police that he was given a package by a man that he did not know and that he had been given certain instructions by a man name Juan in Venezuela, before coming to the island.

Attorney Tom Tavares-Finson, who represented the foreigner, told Senior Magistrate Judith Pusey that Fernandez was very sick and that he would like for him to be removed from the country to seek medical attention.

The magistrate, in handing down the sentence, said she would take into consideration that he was gravely ill and that he had already spent three months in custody.

The US\$83,000 was forfeited by the State and he was recommended for a removal order.

— Tanesha Mundle

Man gets bail in stabbing case

By **Rasbert Turner**

A St Catherine man accused of stabbing another was granted \$250,000 bail in the Spanish Town Resident Magistrate's Court on Tuesday.

Colin Campbell, a 40-year-old labourer from Frazier Content, Spanish Town, was granted bail by Resident Magistrate Tara Reid-Carr.

Campbell's attorney, Everton Dewar, made a successful bail application. He told the court that his client was attacked by three men and acted in self-defence at the time of the incident. He further told the court that Campbell's house was burnt following the incident.

Bail was granted after he submitted an alternative address for Campbell. The attached condition is that Campbell must report to the Hunts Bay Police Station on Mondays and Fridays.

Allegations are that on February 21, 2016, during a physical confrontation, a knife was used to inflict several wounds to the complainant. The complainant reportedly ran from the scene and ran to the Spanish Town Police Station.

A report was made and following investigations, Campbell was subsequently charged with unlawful wounding. He is to return to court on May 24, 2016 when the matter will again be mentioned.

Doctor remanded on fraud charges

By SHANICE WATSON



A medical doctor was on Monday hauled before the court on allegations that he conned a health insurance company out of more than \$5 million.

The accused, Alvin Grant, is charged with conspiracy to defraud, uttering forged documents, forgery, and obtaining money by means of false pretence. He pleaded not guilty in the Corporate Area Resident Magistrate's Court.

The Crown is alleging that Grant submitted claims to Guardian Life on behalf of some of his patients, however, when contacted, the patients denied making such claims and said the signatures which accompanied the claims were not made by them.

Grant was subsequently charged and granted station bail.

After hearing the allegations against the doctor, presiding judge, Senor Resident Magistrate Judith Pusey, added conditions to his bail.

"A stop order is in place and he is to submit all travel documents. Once he has done so, his bail will be extended. Until then, he stays with me. I have my reasons for doing so," Pusey said.

Grant's lawyer, Mel Brown, explained that he recently lost his passport and will therefore be unable to submit it. On that ground, he requested that his client's bail be extended without the submission of travel documents, however, the request was denied.

"We can check that out if a report was made." Pusey said.

The accused doctor is to return to court on May 9, when it is expected that outstanding files will be made available to complete the case file.

The End