

## Gov't To Amend Constitution For Employment Of Retired Judges



File

Delroy Chuck, minister of justice.

- If the Government gets its way, more than 20 judges who have retired could be employed as part of a thrust to cut the backlog of cases burdening the justice system.

Speaking in the House of Representatives on Wednesday, Justice Minister, Delroy Chuck, announced that an amendment to the Constitution will be proposed to allow for some judges to sit beyond the statutory retirement age of 70.

He said the general retirement age will remain, but it will be up to the Chief Justice and the President of the Court of Appeal to make the decision on who will ultimately be re-engaged. He argued that there is a need for such a move, and he is pushing for the measure to be implemented by this year or next year the latest.

"During this fiscal year, approximately five judges are due to retire and a further five over the next two years. This will effectively reduce the complement of judges in the Court of Appeal, the Supreme Court and the parish courts," he said during his contribution to the Sectoral Debate. Chuck said some of Jamaica's judges who retire are re-employed in other jurisdictions where they go on to serve at a high level for years.

"Many of them are working in the Cayman Islands, Bermuda, The Bahamas and the Turks and Caicos Islands. We need to utilise that experience."

A submission proposing the amendment is to be taken to Cabinet for consideration and approval. Director of Public Prosecutions Paula Llewellyn has welcomed the move, saying it should have been in place long ago.

"I believe that constructive use can be found for judges who have retired. I would only caution that if it means that the capacity, certainly, of the criminal courts will be enhanced to assist in the backlog, then it would mean that we have to make sure we have more prosecutors and more court staff," she said.

One of Jamaica's most respected jurists, Paul Harrison, who retired in 2007 as president of the Court of Appeal, is a high court judge in the Turks and Caicos Islands presiding over corruption cases, including the Michael Misick matter.

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## **Letter Of The Day | Dog Nyam Yuh Supper In Courts**

The Gleaner

THE EDITOR, Sir:

The justice minister's recently expressed concern relative to the length of time it takes the court to dispose of cases is more than justified. No doubt each case has to be dealt with on its own facts and circumstances, but this should be based on clear policy guidelines. That way we ensure that particular cases are not singled out because they grab public attention or are based on some other expediency.

I recently had an appeal, which was only disposed of after 24 years. In giving his decision, the then president of the Court of Appeal noted that this was unacceptable, and in his words, "the court did not expect a repetition".

But delays in the court system are not the only concern that citizens have in relation to the justice system. There are extended delays in paying out money to citizens who have suffered loss and injury at the hands of government departments and public officers. This is so even when the court has ruled that citizens' rights have been breached and that they must be compensated.

It is no secret that the Government is just now making payments on such court orders made back in 2014. That means that if the court makes an order today, 'dog nyam yuh supper' - and your breakfast, lunch, and dinner, too, as from a most optimistic viewpoint, you are not likely to be paid for the next two to three years. Often, this is after the case has worked its way through the court system for three to four years.

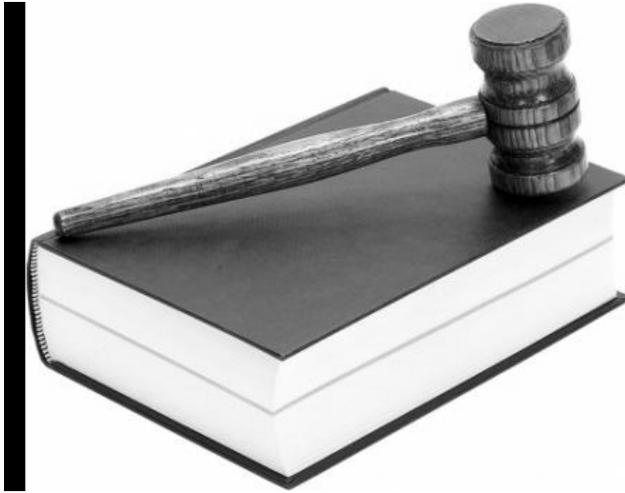
This is a sad and unsatisfactory state of affairs. I remember the fuss that was made when there was a delay by the Barbados government in paying out money in the Shanique Myrie case. All sectors weighed in in condemning the Barbadian government. But what has happened to the rule that charity begins at home?

I certainly hope that the minister will find it possible to give this justice issue priority attention. And fix it.

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## Trafigura Case Management Hearing Today

A case management hearing is scheduled for today for the lawyers involved in the Trafigura matter to determine whether there are any obstacles to an appeal going ahead.

It's an important step before the possible hearing of the appeal filed by the lawyers for People's National Party (PNP) president Portia Simpson Miller and four other party functionaries.

The lawyers are appealing against a ruling by Supreme Court Judge Lennox Campbell that Simpson Miller and the others should answer in open court questions by Dutch officials about a \$31-million donation to the party in 2006.

Dutch officials, acting through the Director of Public Prosecutions as the Central Authority, want to question under oath Simpson Miller; PNP chairman Robert Pickersgill, Region Three chairman Phillip Paulwell, former general secretary Colin Campbell and businessman Norton Hinds.

However, the matter has stalled since November 2011 pending the outcome of the appeal. Lawyers representing the PNP officials have contended that they were unable to proceed with their appeal because they were awaiting Justice Campbell's written ruling.

However, the Director of Public Prosecutions has said the written ruling has been at the Supreme Court since 2011.

Among the issues to be settled at today's case management hearing is whether Justice Campbell has already provided his reasons.

Last week the DPP made another effort to restart the case, but it could not go forward because of an earlier order by the Appeal Court that the matter should be stayed until the appeal is heard.

## Gov't Focused on Achievements

By Garfield L. Angus

JIS



Photo: Rudranath Fraser Prime Minister, the Most Hon. Andrew Holness (left), points out something of interest to Minister of Justice, Hon. Delroy Chuck (right), just before the start of a ceremony to dedicate the Ministry's new premises at 61 Constant Spring Road, St. Andrew, on June 15.

Prime Minister, the Most Hon. Andrew Holness, says his Government is focused on achievements and fulfilling commitments made to the people of Jamaica.

“I want to send a clear signal about the type of leadership that we want to give the country. We have to spend our time on achievements, on the real things that are going to drive economic growth and job creation,” he said.

“Our Government cannot be a Government of too many ceremonies. Efforts must be spent on ensuring that the things that the administration has committed to, we fulfil them, and that we spend our time wisely. Let us focus on getting things done,” he said.

The Prime Minister was delivering the keynote address at the dedication of the new Ministry of Justice building at 61 Constant Spring Road in St. Andrew on Wednesday (June 15).

The Ministry relocated after its Oxford Road offices were ordered closed earlier this year due to air quality issues and the effect on the health of the staff. A sum of \$100 million was approved by Cabinet for the move.

The Prime Minister noted that priority attention is being given to strengthening the justice and security systems in order to arrest crime and violence.

“The Government is looking very carefully at ways to find additional resources to invest... for the attainment of economic growth and citizen security,” he pointed out.

## Justice Ministry Proposes Changes For JP Regime



File

Delroy Chuck, said the ministry is looking at expanding the geographical jurisdiction of JPs to give them islandwide coverage and introduce sanctions where JPs are involved in criminal activities.

• The Justice Ministry is proposing to make a number of changes to the regime which governs Justices of Peace (JPs).

Portfolio minister, Delroy Chuck, said the ministry is looking at expanding the geographical jurisdiction of JPs to give them islandwide coverage; introduce sanctions where JPs are involved in criminal activities; increase sanctions where negligence has resulted in the loss of the JP Seals where they charge for services rendered.

Chuck further said consideration is also being given to give a stipend to JPs to offset the costs for serving in the courts.

He noted that JPs spend between four hours and six hours per day adjudicating cases which they are assigned each year and must forgo economic activities to do so.

The justice minister said that there are currently between 5,000 and 6,000 serving JPs across the island, many of whom are overworked.

He said the justice ministry will be working with the Custodes to empower and strengthen the capacity of JPs.

New Attorney General Marlene Malahoo Forte greets Prime Minister Andrew Holness after being sworn into office by the governor general Monday.

Let's get real! I know several individuals who, like me, are of the firm opinion that Marlene Malahoo Forte is not a fit and proper person to occupy the position of Jamaica's attorney-general and that Prime Minister Andrew Holness displayed extremely poor judgement and showed grave disrespect to all Jamaicans, in general, and to the legal profession, in particular, when he advised the Governor General last March to swear her in as the attorney general.

Jamaicans at home and in the Diaspora have, within no more than three months or so, already begun to pay dearly for Holness's folly. Because of her oh-so-early unsurprising indiscretion, the international press is on Jamaica's case once again, and we confidently, though sadly, predict that there is more, much more, to come if she continues in the role.

The attorney general, a constitutional figure, is the principal legal advisor to the Government. Malahoo Forte's background experience in legal circles has been no more than as a prosecutor for a short time and as a resident magistrate.

Since Jamaica attained independent status, and certainly before, there has never been any person with that scanty level of legal work behind them to have been put forward to fill that lofty position within the machinery of government.

And it gets worse.

Here is an attorney who, just over a year ago, was found by our Supreme Court and Court of Appeal to have breached the Constitution of Jamaica by having agreed to pre-signed letters of resignation as a condition precedent to be given the opportunity to serve in Parliament's Upper House.

Holness and some other attorneys who had also been found by the courts to have similarly breached the provisions of our constitution have apparently considered such a wrong to be no impediment to their occupying the positions in the Cabinet and the legislature that they now hold. Never an apology from any of those senators. Holness should never have been so insensitive as to place her in a position in government that ought to attract someone who must be like Caesar's wife — above reproach — certainly as far as upholding the law and the constitution is concerned.

And it gets even worse — the coup de grace. It was just over three months before her appointment that Marlene Malahoo Forte, as a senator and a lawyer, was reported in the media that she was in the ladies' room at Gordon House when the then president of the Senate and the leader of government business ordered the (male) marshal to fetch her from the ladies' room and bring her back to the floor of the Senate to answer certain questions. That horrible public display was fortunately exposed to the general public with video footage of the movement of people within Gordon House.

From time immemorial, the person in the sensitive seat of attorney general has been referred to as *parens patriae* (the father/mother of the nation) because, among other things, he/she holds the jurisprudential integrity of the nation in his/her hands. In *Malahoo Forte's* case, can we stand secure in the thought?

The prime minister must now act post-haste to prevent any further stain from coming to rest upon the body politic of our country. Replace her, Mr Holness, we plead!

Philip Mascoll, OD, is an extremely concerned member of Jamaica's Diaspora. Send comments to the Observer or to

[pmascoll1948@gmail.com](mailto:pmascoll1948@gmail.com).

## Obedience to the law of the constitution

A J Nicholson

The Observer



The cheers at Gordon House celebrating the Charter of Rights as Parliament's response to the people's cry for justice is a classic example of that disconnect.

Proposals recently made in the House of Representatives and in the media relating to certain constitutional amendment initiatives have moved me, as legal advisor to our party, to make a few comments on some aspects of what has been put forward.

Each Administration — both of the Jamaica Labour Party (JLP) and the People's National Party (PNP) — has projected the entirely wholesome desire and goal that Jamaica should remove itself from the monarchy and to become a republic within the Commonwealth, with our own indigenous ceremonial president as head of State.

We had reached that highly commendable consensus position in 1995 when the Parliament accepted a recommendation in those terms contained in the Report of the Joint Select Committee on Constitutional and Electoral Reform, under the chairmanship of the Honourable David Coore, of blessed memory.

Nonetheless, the PNP has long held to the view that access to justice, one of the fundamental rights to which all our citizens are entitled, dictates that it is also of immense importance for our development as a people that we should be steadfast in moving to sever our relationship with Her Majesty's Privy Council and accede to the full jurisdiction of the Caribbean Court of Justice.

And there are some additional inescapable considerations. First, the oath that is sworn to by all parliamentarians obliges the members of the legislature to be faithful to our legal and constitutional imperatives and should never seek to act outside of those boundaries.

So, the suggestion has never arisen from any quarter that we should attempt to remove ourselves from the monarchy by a route which is beyond that which is laid down within our legal and constitutional framework, that is, by means of a referendum.

By parity of reasoning, the party of Norman Washington Manley has always insisted that we abide by the legal and constitutional route — and none other — that is required for us to allow our people to enjoy a cornerstone right that they have been denied for almost two centuries, that is, access to justice in a court which is within their reach, that will come to our doorstep, as we have already experienced.

Our highest court, the Privy Council itself, in answer to a petition placed before their Lordships on behalf of the JLP, no less, and others, has advised that the route to be taken to embark upon,

and succeed in, such a venture is by means of a two-thirds majority vote in each House of Parliament.

Recent rulings of our Supreme Court and our Court of Appeal, concerning pre-conditions that were unlawfully extracted from people to allow them to serve in our Upper Chamber of Parliament, must certainly have jolted us into sitting up and reminding ourselves of the grave danger of any route being taken to address any subject matter in the legislature other than that which the law and our constitution dictate.

To do otherwise is to set a most dangerous precedent; to open a door that could lead to irreparably disastrous consequences. And bowing and pandering to the expediency of the populist suggestion about being “afraid to trust the people” will not prevent that door from being left ajar.

That is the basis of the solid, principled reason why the PNP has never resiled from the position — and there is the fervent hope that the party will continue to stand firm — that we are obliged to abide by the ruling set forth by our highest court on the issue of adopting the Caribbean Court of Justice as our final appellate tribunal, and never to yield to the ruse of taking a route which, for their own unjustifiable and controversial purposes, may be demanded by any political party or any other entity or individual.

Our party’s position, then, has had nothing whatsoever to do with any ghost of the outcome of the 1961 West Indies Federation referendum, as some individuals, including those who certainly know better and who should dutifully and stridently join in urging obedience to the law of the constitution, have, so unfortunately, publicly insinuated.

There is a second consideration, which is rooted in plain and simple practicality and logic. The suggestion of the establishment of a “Jamaican final court of appeal”, desirable as it might be, must obviously remain a dream for the near and medium term, at least. With respect, further comment on that score at this point in time would surely be superfluous.

And third, the route to remove ourselves from the monarchy, undoubtedly a required pursuit, remains a hugely costly referendum initiative. A referendum is, in effect, nothing more or nothing less than a general election exercise, with its mountain of a price tag of hundreds of millions of dollars.

Unlike the constitutional requirement in a jurisdiction such as Antigua and Barbuda, no such challenge stands in the way of Jamaica abolishing appeals to the Privy Council and acceding to the full jurisdiction of the Caribbean Court of Justice.

The good sense embodied in the declared desire and intention of all of us in Jamaica to have our own indigenous head of State cannot be questioned. It speaks loudly and precisely to the message of the independence experiment.

However, access to justice, to our final court of appeal — particularly in the circumstances of a people with our kind of history and heritage — that is clearly within our grasp beckons us to reach out and touch and to seize the moment. That is something which we should have long moved to put behind us, once and for all.

Is that not a signpost that cannot be circumvented or bypassed along the road to prosperity for all of us as Jamaicans? Or, ah nuh nutten?

A J Nicholson is a former senator and Cabinet minister in the People's National Party administrations. Send comments to the Observer or [nicholsonaj1@gmail.com](mailto:nicholsonaj1@gmail.com).

# Super Plus Held Liable For Rent In Inherited Lease Case

McPherse Thompson

The Gleaner



Super Plus CEO Wayne Chen.

Tikal Limited, which trades as Super Plus Food Stores, has filed notice of appeal against a high court ruling that it pay its former landlord \$280.87 million in rent arrears linked to a lease the company walked away from seven years ago.

Super Plus vacated space at the Oasis Shopping Centre in Spanish Town, St Catherine, before its 10-year lease had expired, citing bad business.

But even while Supreme Court Justice David Batts held Tikal liable for rent arrears and maintenance, he also ruled in favour of a counterclaim by the supermarket owner for the landlord, Tewani Limited, to refund Tikal its US\$60,000 (about \$7.56 million) security deposit covering three months' rental.

According to the judgment handed down last month, the Oasis Shipping Centre in Spanish Town was to be operated as a first-class commercial complex populated by several businesses with substantial traffic.

However, the judge noted that in reality, only a few business operated there and the complex had limited patronage. Over time, some of the businesses left, resulting in even less customer traffic flowing to the Super Plus supermarket.

Tikal vacated the property in January 2009, telling the court it could not meet the high rental. At the time that the supermarket shuttered, it had been at the location for four to five years under a lease contract that was initially penned with a different landlord, Pastique Limited.

In July 2007, Tewani acquired the property from Pastique. In its lawsuit against Tikal, Tewani said it also acquired the fixed term, 10-year lease agreement, under the deal with Pastique and was entitled to the benefit of the remaining term of the lease. It therefore sued Tikal for breach of contract.

## **CLAIMS**

Its claim includes US\$1.64 million in rent plus general consumption tax of US\$270,393 for the period January 2009 to December 2014, interest of US\$400,224 on the rent arrears, service, and maintenance charges of \$31.72 million and interest of J\$3.17 million on those charges.

In its defence, Tikal argued that the status of the land on which the property sits requires that the lease be registered on the title, but was not.

However, citing correspondence between the disputing companies in July 2008, Justice Batts ruled that notwithstanding the non-registration of the lease, Tikal had acknowledged the existence of the lease and agreed with Tewani to be bound by its terms.

And despite evidence given by Super Plus CEO Wayne Chen during the case that he instructed his attorney, Jennifer Messado, to serve a notice to quit the property on Tewani, Batts ruled that Tikal had not served notice on the landlord.

According to the judgment, Chen himself was unable to verify that the notice had in fact been served on Tewani.

Batts acknowledged that Tikal had tried to terminate the lease and had also requested that the landlord reduce the rent, but Tewani refused.

"This refusal was not unlawful. There is no evidence, nor indeed was it suggested, that the claimant agreed to a surrender of the lease," he said. On that basis, Tikal breached its contract by not paying rent and vacating the premises before its term had expired, the judge added.

Tikal had also argued in its defence that the landlord was in breach of certain covenants, including failing to uphold the standard of the plaza. However, the judge said there was no evidence that a notice of such breaches was served on Tewani before Tikal vacated the premises. Regarding the counterclaim to recover the security deposit, the judge awarded interest at three per cent on the US\$60,000 and ruled that it be offset against the damages awarded to Tewani Limited.

Tikal's lawyer, Vincent Chen, told Sunday Business that the company has already filed a notice of appeal. Tewani was represented by Emile Leiba and Kristopher Brown of law firm DunnCox. [mcpherse.thompson@gleanerjm.com](mailto:mcpherse.thompson@gleanerjm.com)

## **Contractor accused of indecently assaulting missing 14-year-old girl**

Covering the courts with Tanesha Mundle

The Observer

A Kingston contractor has found himself in serious trouble with the law following allegations that he indecently assaulted a 14-year-old runaway teen who had been living with him and his wife for three months.

The 47-year-old man is facing charges of harbouring a juvenile and indecent assault.

The accused man's wife has not escaped charges and, like her husband, is charged with harbouring a juvenile.

The Tivoli Gardens couple was charged on June 3.

The teen in question was reported missing from her home in Denham Town, Kingston, last December.

According to the police report, the minor was spotted in Tivoli Gardens in May and investigations led to the couple.

The police were reportedly informed that the female accused met the juvenile and decided to assist her.

However, further investigations reportedly found that the juvenile had been sexually assaulted by the male accused.

Last Friday when the couple appeared in the Kingston and St Andrew Parish Court, the prosecutor told Parish Judge Simone Maddix that the Counter Terrorism and Organised Crime division was investigating the female accused.

The couple was subsequently remanded and will return to court on July 4.

**The End**