

## Courting disaster

BY TANESHA MUNDLE Observer staff reporter mundlet@jamaicaobserver.com



A familiar litany of problems — acute shortage of courtrooms, judges and jurors as well as increasingly reluctant witnesses — continues to hobble the Jamaican court system, causing long delays in trials of criminal matters, some of them well past five years.

For the Hillary Term, which ends in March, only 44 of 5,522 cases on the overall list were disposed of, the Jamaica Observer was informed.

Not a stranger to the deficiencies, Justice Minister Delroy Chuck, now taking a second bite at the cherry, has urged judges to dispose of cases that are in the system for five years and more by the end of this year, unless there are reasonable grounds to have them continued.

“It is just not fair that any accused person, even if he is guilty, has to be going to court for five years,” Chuck said in a controversial speech to the recent Justice Undertakings for Social Transformation (JUST) forum in Kingston.

So well-established is the court system’s reputation for slowness that lawyers in the Gorstew-Jamaica Tours case were stunned when an application by Jamaica Tours lawyers was submitted

and an order made in their favour within two days earlier this month, to provisionally freeze Gorstew shares, while the company was challenging an earlier court decision related to the case. A spokesman for the company, though complaining that the order was given without notice against Gorstew, noted that the speed involved should really be the norm.

Chuck appeared to have won wide support for his position from defence lawyers who have, as a group, often been accused of adding to the delays by causing cases to be postponed multiple times for selfish reasons, including frustration of witnesses. Several attorneys with whom the Observer spoke stressed the importance of addressing the problems causing the delays.

“I am of the view that a large part of the reason some matters are still before the court has to do with the unavailability of witnesses in instances where they have migrated,” attorney Peter Champagne suggested.

“Another problem is where evidence of a forensic, ballistic and scientific nature is difficult to get and this would include doctors who perform post-mortem in murder matters who were assigned to the Government of Jamaica under contract and have gone back to their respective native lands, and that has been the problem in terms of the delay,” he argued.

Champagne, however, acknowledged that some steps had been taken to deal with the issue, including recent amendments to the Evidence Act where testimony of witnesses who migrated can be received via video link and where both prosecutor and defence counsel can agree on certain evidence of a forensic nature, without necessitating the presence of forensic and ballistic experts. But he said the protocol for receiving that kind of evidence had not yet been agreed, resulting in further delays.

He also noted that Chief Justice Zaila McCalla had assigned a special court to deal with matters that were five years or older to give them special attention.

“So I don’t think that we are likely to see this problem (of long delays) happening once you agree with certain of the fine details with respect to the new laws,” an optimistic Champagne

said. “It’s just a matter of time before we no longer see these cases lasting so long and it is because of these new amendments.”

### **One case a day can’t cut it**

Fresh from the Tivoli Gardens/Dudus Commission of Enquiry, attorney Linton Gordon believed that where a man or woman was before the court for over five years “just about everyone thinks that that is unreasonable”.

But he, too, believed that the reasons for the delays are varied.

“Sometimes witnesses refuse to attend court and give evidence and this refusal might be grounded in fear or the fact that they never spoke the truth in the first place, and there are instances where once the person is charged, the witness who might have lied on that person is satisfied that that person is sufficiently punished and therefore does not come to court any longer,” he said.

Added to that, he said, there were issues pertaining to the number of judges in the Circuit Court where judges sit for four to six weeks. For example: “Sometimes the judge turns up to face a list of 130 cases and they are presiding for five days a week. If the case takes four weeks, that is 20 days. Even if the judge achieves the impossible of doing one case a day, only 20 out of 130 cases in the parish would have been dealt with in the period,” Gordon reasoned.

Other reasons for delays include the absence of defence counsel and the practice of accused people to keep changing their defence, resulting in their lawyers not being fully ready to proceed. Additionally, the Supreme Court “needs far more judges than are there now, and the RM courts are overcrowded with cases that are totally disproportionate to the number of magistrates”.

“We need to move in that direction of providing more parish courts and more parish judges to ensure there are adequacies at all levels of the judiciary,” he added. “Despite all of this, I think what Minister Chuck has said is headed in the right direction because he is imposing on the State itself to put its house in order and ensure that people who are charged are tried within a reasonable time or the cases are thrown out,” said Gordon.

Attorney Carolyn Reid Cameron, too, had experienced different reasons for delays, saying, “...there is really no one reason and they come from all sides — witness unavailability; juror shortage; lack of opportunity to try the cases because there is no courtroom; there is no judge and, of course, the prosecutors are overburdened and so are stretched far and wide,” she explained.

“I have also seen where cases tend not to be ready when they get to trial; I have had the experience where in the middle of a trial investigators are still putting bits and pieces together: you get a statement in the middle of the trial and, of course, that will cause an adjournment to be taken or adjournments to be asked for so that persons to whom the statement is directed can appraise themselves and perhaps take instructions as it relates to the content,” said Reid Cameron.

“I have had a few cases that are over five years. Right now there is one that has been before the court since 2003, but it’s a peculiar case, as it was tried and came back for retrial,” she said, noting that the matter, since then, had been before the court for nine years “without being able to get off the ground because people are dead and some have resigned due to the protracted period of time that has passed... It’s just falling apart bit by bit.”

### **This is not a cable television show**

Reid Cameron was, however, not so optimistic that the five-year time frame was doable, arguing that: “Based on what we are experiencing in terms of infrastructure, in terms of manpower, in terms of culture, so many elements, I would say ‘no’, it would not be practicable. But the truth is, you have to start somewhere to change the situation.”

Director of Public Prosecutions (DPP) Paula Llewellyn sympathised with Minister Chuck’s concern, which, she noted, was also shared by his predecessor Mark Golding. However, she cautioned that several factors had to be considered when it came to disposing of a matter and that timelines could only work in the case of very simple matters.

“When a case is to be tried, certainly in the Circuit Court where the most serious cases are dealt with, we are not talking about Law and Order (the American television series). Unfortunately, the perception of a lot of members of the public and even some members of the media regarding the disposition of a case is influenced by some of these shows on television, but in reality it’s a lot more complex,” Llewellyn said.

“We have had a case on the Home Circuit list where the accused man has been before the court for at least the last five or six years; he is charged with six counts of murder and every time the matter comes up for trial he changes his attorney. So he plays musical chairs with the attorneys representing him, and even though the court tries to remonstrate he still does it,” she added. Llewellyn explained that in criminal justice, every case has to be assessed according to the particular circumstances and relevant law as there might be a number of reasons preventing the cases from being tried.

Further to that, the DDP said, under the Constitution and at common law, judicial and prosecutorial discretion were pre-eminent in being the deciders in what happened to cases based on the circumstances, knowledge of the law and what is happening on the ground.

She noted that the proposal for setting timelines for trial of criminal cases had gone as far as Cabinet in the past. But it was her view that such timelines could only work in very minor matters in the Resident Magistrate’s Court, such as traffic, petty session, and very simple and not indictable cases.

However, her office was also concerned about matters that had been in the system for five years or more and has been addressing the issue.

“We have been red-flagging cases that are on the list for over five years and to date we have taken off some of the matters, whether by *nolle prosequi* where the police can’t find witnesses, or by offering no evidence,” Llewellyn said.

Deputy DPP Sharon Millwood-Moore, supporting her boss, said: “Several years ago, the office was so concerned about it that the director set up a task force which had the specific mandate to look at cases of this type of vintage and try to identify what was the appropriate course in terms of how they should be disposed of, as opposed to having them remain on the list to clog it.”

Retired Justice Marva McIntosh has been working with the office for the last three years, tasked with looking at those vintage cases to see whether they should be kept on the list or steps should be taken to dispose of them.

Llewellyn, who spoke passionately about the shortcomings of the justice system, said she was particularly worried about the shortage of courtrooms.

“What has been my bugbear, and I call it the big elephant in the room that has gone from administration to administration over the last 30 years, is the insufficient number of courtrooms. There is a great capacity issue here. There has been a tripling of cases coming into the court system over the last 30 years and the capacity of the system in terms of number of courts remains the same,” she complained.

The DPP said that even though the number of judges and magistrates had been increased, no new courtrooms or chambers had been provided for them, which negatively impacted their work. Other factors such as delays in the production of forensic and scientific materials and forensic cell site analysis, the assigning and retaining of legal aid counsel and the withdrawal of defence counsel also resulted in delays, she said.

Furthermore, there were delays when defence counsel asked for disclosure of materials that were hard to source, sometimes involving the prosecutor having to get a court order to obtain the material.

Llewellyn suggested that to help in speeding up the system, defence lawyers and prosecutors should agree on certain facts of the case, thereby eliminating the need to call certain witnesses. She disclosed that a document which outlines the sentences for the different cases is to be published as it is felt that people would plead more quickly if they knew the sentence.

Discounts would be given to accused who plead quickly.

Amendments have also been made to the Plea Bargain Act.

She said that despite the deficiencies in the system, she must praise both Minister Chuck and former minister Mark Golding for their efforts, adding: “Their heart is in the right place in regards to the resources that they would want for the system, but they are constrained by policy imperatives from the Ministry of Finance and basically the tight fiscal space that the country is going through.

But what you really need is a massive cash injection to increase the capacity of the system to have more courts, more judges, more prosecutors and more court staff.

Unfortunately, the justice system, under successive governments, has always been treated like Cinderella, without any hope of finding a prince.”

## **Four Judges Sworn In At King’s House Ceremony**

The Gleaner

Four judges were sworn into office yesterday during a ceremony held at King’s House.

Frank Williams and Carol Edwards took the oath and will serve as Judges of the Appeal Court.

So did Carolyn Tie, who will serve as Puisne Judge in the Supreme Court; and Stephane Jackson Haisley, who will act as Master- in-Chambers.

Deputy Governor General, Steadman Fuller, who presided over the swearing-in ceremony, congratulated the judges on their appointments and urged them to continue to protect the legitimacy and integrity of the judicial system.

He also congratulated Chief Justice, Zaila McCalla, on her recent appointment as Honorary Bencher of the Middle Temple Inn in London, England, in recognition of her contribution to the law in Jamaica.

He said the Chief Justice's appointment along with the new designation of the judges "reflects the fact that strides are being made within our judicial system, irrespective of the challenges."

Meanwhile, the Chief Justice implored the new judges to ensure that justice "is seen to be done in all circumstances" and to continue to exhibit the high standard of professionalism and dedication that is required and that they have demonstrated in the past.

## **Tread Cautiously With Five-Year Cases, Warns DPP**

Livern Barrett, The Gleaner

Nearly a quarter of the more than 500 cases before the Home Circuit Court could be tossed out if a call by Justice Minister Delroy Chuck for judges to dismiss criminal cases that have been in the system for a minimum of five years is heeded.

There were 522 cases on the court list at the start of the Hilary term in January, and, according to Director of Public Prosecutions (DPP) Paula Llewellyn, 127 of them are five years or older - all murder cases.

Llewellyn, who was speaking at the start of the Easter term yesterday, said 96 of these cases are down for trial during this term and that her office is ready to proceed with 51.

Her disclosure comes days after Chuck called for judges to dismiss cases that have been before the courts for five years or more by the end of this year.

The minister argued that the cases should be dismissed unless there are reasonable grounds to continue with the prosecution, suggesting that it was unfair for an accused person to go to court for five years hoping to prove his innocence.

It was one of several measures that are aimed at reducing the huge backlog of cases that have swamped the judicial system.

## **ABSOLUTE RULE**

According to Llewellyn, 526 cases are on the Circuit Court list for this Easter term. That number includes the 504 cases that were rolled over from the previous term, 328 of which were for murder.

However, while acknowledging the need to clear the backlog stifling the judicial system, Llewellyn warned of the dangers of implementing an "absolute rule" that cases be dismissed after a minimum of five years before the court.

"If you are going to have a five-year limit, the system would be open to abuse, manoeuvring, and contrivance, where one side could seek to play musical chairs with the system," she warned.

Citing as an example an accused person who has been charged with murder and released on bail, she questioned:

"He is held after three years [on the run]. Let's say it takes another two years to round up the witnesses, are you saying he should not be tried again?"

Noting that the circumstances of a petty session case are different from those of a murder case, the DPP cautioned that each case must be assessed on its own merit.

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# Poor Juror Turnout As Circuit Court Easter Term Kicks Off

[Livern Barrett](#), Senior Gleaner Writer



Only 82 persons turned up today to serve as jurors in the current Easter term of the Home Circuit Court. According to Director of Public Prosecutions (DPP) Paula Llewellyn, this is from the 1,800 summonses that were prepared and sent out.

Llewellyn, who was speaking this morning during the opening of the new term, revealed that 1,000 summonses were sent to the police to be served while 800 were sent out by mail.

However, she said only 182 summonses were served by the police.

There was no word yet on whether there was any responses to the summonses that were mailed out.

"Eighty-two jurors have turned up to serve the four courtrooms in the coming weeks," Llewellyn said.

# Of 522 Circuit Court Cases Only 44 Disposed Of Last Term

Livern Barrett, Senior Gleaner Writer



[Norman Grindley photo](#)

Justice L. Hibbert (second right) stands with the Jamaica Constabulary Force marching band after an making an inspection during the Easter Term opening of the Home Circuit Court, which got underway this morning with a short ceremony in downtown Kingston.

Only 44 of the 522 cases set for trial during the last term of the Home Circuit Court were disposed of.

Of the 44 cases disposed of, 20 ended in convictions.

That's according to data from the Office of the Director of Public Prosecutions.

This means that a total of 478 cases have been traversed to the Easter term of the Home Circuit Court, which got underway this morning with a short ceremony in downtown Kingston.

This coupled with the new cases listed means that a total of 526 cases are down for trial in the new term.

Of the 478 cases traversed from the previous Hilary term, murder accounted for 328.

Rapes were next with 69 traversed cases. There were two cases of capital murder, six cases of manslaughter and five cases of trafficking in person.

# Al Miller's Defence Team Closes Case At Corruption Trial

The Gleaner



Al Miller, the pastor of the Fellowship Tabernacle Church in St Andrew is on trial for attempting to pervert the course of justice.

Attorneys for popular pastor the reverend Merrick 'Al' Miller today closed their case in his corruption trial before the Corporate Area Criminal Court.

This now clears the way for closing arguments from prosecutors and defence attorneys before a verdict from Resident Magistrate Simone Wolfe-Reece.

The trial has been adjourned until May 4 when the closing arguments will be heard. Wolfe-Reece is scheduled to give her verdict on June 14.

Miller, who is the pastor of the Fellowship Tabernacle Church in St Andrew is on trial for attempting to pervert the course of justice.

He was charged after then fugitive Christopher 'Dudus' Coke was captured in his vehicle along the Mandela Highway in St Catherine in June 2010.

After prosecutors closed their case against the popular clergyman last year Wolfe-Reece dismissed a no-case submission made by lead defence attorney Jacqueline Samuels-Brown.

**The End**