MEDIA UPDATES
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Measures being pursued to reduce delays in court

The Observer

Chief Justice Zaila McCalla, speaking at the swearing-in ceremony for judges, held at King's House, on Tuesday.

KINGSTON, Jamaica (JIS) – Chief Justice Zaila McCalla, says several measures are being pursued to reduce delays in matters before the courts.

Speaking at the swearing-in of two Appeal Court judges; a Puisne judge and a Master-in-Chambers, at King's House, on March 29, McCalla said the strategies are intended to streamline the system, thereby reducing the length of time for matters to be resolved.

Among the measures being introduced through the Justice Sector Reform Programme by the Ministry of Justice, is the crafting of a new policy direction, to ensure a common standard of operation at every level for efficiency in the judicial process.

As part of this process, officers and administrators at every level of the justice system are being sensitized about the new legislative provisions, which have been made to facilitate the agreement of evidence and shorten the trial of criminal cases.

"Ongoing training and sensitization is necessary for all levels of staff to ensure that we embrace

the new approach being taken in relation to the trial of cases, so as to be more efficient and effective in the performance of our duties," the Chief Justice said.

Provisions have also been made for the reduction of sentences, particularly where guilty pleas are offered at an early stage.

Additionally, judicial clerks and judicial assistants who have been employed from the Norman Manley Law School have been working part time with judges to assist with legal research.
The Evidence Amendment Act, passed in May last year, has also been serving to reduce delays in the country's legal system. The Act seeks to enhance the efficiency of the country's justice system, by providing a simpler procedure for the admissibility of computer-generated evidence, and the reports of experts, where the latter is not deemed disputable.

A high density filing system, procured through a $48 million contract as part of the programme, has also been installed at the Supreme Court registry. The system will ensure that all the documents within the control of the court are properly filed.

The Chief Justice called on members of the justice system to collaborate to drive the process of reformation. "We must lead the process of change in the culture of delay endemic in our justice system," McCalla urged.

Improvement in juror numbers at Home Circuit Court

The Observer

A total of 82 people will serve as jurors during the Easter Term of the Home Circuit Court.

Making the disclosure during Wednesday's opening of the new term at the Supreme Court in downtown Kingston, Director of Public Prosecutions Paula Llewellyn said the figure represents "more than we were accustomed to having in previous times" and may be as a result of the recent amendments to the Jury Act.

"I look forward to a fruitful term and I think, along with all the stakeholders, we will continue to give of our best in service before self for Jamaica," she said.

She said of the 1,800 summonses prepared, 1,000 were conveyed to the police for service, while the remaining 800 were sent out by means of mail.

She further noted that, out of the 1,000 summonses originally given to the police, only 182 were served.

Llewellyn said it would also appear that the returns have not yet been received for the summonses sent via mail.

There are 526 cases to be tried during the Easter Term of the Home Circuit Court. Of the 526 cases, 22 are new cases. The Easter Term of the Home Circuit Court runs from April to July.
In the Hilary Term which just ended, 44 of the 522 listed cases were settled.

The amended Jury Act provides for the enhancement of the jury selection process by modifying the rules concerning the number of peremptory challenges allowed.

It also allows for the production of an expanded list of potential jurors from a combination of the voters' list and the list of people with Taxpayer Registration Numbers issued under the Revenue Administration Act, and an array of seven jurors for all jury trials other than for treason or murder, where, on conviction, the death penalty may be imposed.

Tesha Miller deported, police issue warning

The Observer

Tesha Miller alleged leader of the Klansman Gang.

DEPUTY Commissioner of Police Glenmore Hinds yesterday warned alleged Klansman gang boss Tesha Miller that no act of criminality will be tolerated by him or other members of the Jamaica Constabulary Force (JCF).

The senior lawman made the statement in light of Miller's return to the island yesterday after being deported from the United States where he spent two years behind bars on a charge of illegal entry. He was processed yesterday at the JCF's Mobile Reserve and released.

Reports last year that he would have been released early triggered anxiety among residents in Spanish Town and the wider St Catherine, as there was an intense battle at the time for leadership of the Klansman gang.

"We are aware that there have been some challenges to his leadership while he was abroad. We are also aware that as a result of the intra-gang struggle we have experienced a number of

murders in St Catherine North and its environs. We are resolved to ensuring that anyone involved in the committing of any crime on behalf of anyone, that we will investigate, get the evidence; and put those persons in jail so that they can in fact face the courts and answer to the allegations made against them or evidence that we have gathered against them," Hinds told the Jamaica Observer.

The senior cop said a strong message was being sent to Miller, members of the gang, and his rivals that the police are resolute in ensuring that Spanish Town and the wider Jamaica remain calm, and that no form of criminality by any gang member in Spanish Town or anywhere else in the country will be tolerated.

"We are resolved to leverage whatever legislation we have to ensure that these criminals behave themselves and begin to recognise that there should not be any benefit from criminal activity," Hinds insisted.

Hinds also appealed to Miller to refrain from participating in any act of reprisal as a result of the death of his brother while he was locked away. Miller's brother was shot dead last April by unknown assailants on the Spanish Town Bypass in St Catherine.

"I will appeal to him... that anybody related to him who has been killed, we urge him to co-operate as best he can if he has evidence. There is only one body charged with investigating crimes in Jamaica and that is the Jamaica Constabulary Force, so we're asking him to allow us to do our job. How he can help us? Provide information if he has it and use his influence to help us to get the evidence to ensure that we can arrest those involved in his brother's killing," said Hinds.

Miller fled to the United States after he was freed of gun and robbery charges by the Court of Appeal in March 2013.

He was sentenced in the High Court Division of the Gun Court to seven years' imprisonment for illegal possession of a firearm and 15 years for robbery with aggravation, which led to him filing the appeal.

In June 2010, Miller, also called 'Rat', was acquitted of the 2004 gun murder of John Haughton in the Home Circuit Court because of insufficient evidence.

Months before, Miller was freed of the triple murders of Oraine Jackson, Jeffery Johnson and Nicole Allen in Braeton, St Catherine, in January 2005.

Tesha Miller back in Jamaica

The Observer

Tesha Miller

KINGSTON, Jamaica — Reputed Klansman leader Tesha Miller is back in Jamaica. OBSERVER ONLINE sources say he is now being processed at the Jamaica Constabulary Force's Mobile Reserve in Kingston.

Miller, who was convicted in the United States in 2014 on a charge of illegal entry, returned to the island today.

News last year that he would have been released early triggered anxiety among Spanish Town, St Catherine, residents, as there was an intense battle at the time for leadership of the criminal Klansman gang.

Police said at the time that they would be keeping a watch on communities within Spanish Town, which is the seat of the gang.

Last year's news of Miller's pending return came less than a week after his brother, Craig Miller, was shot dead at a premises on March Pen Road in Spanish Town.

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RJR-Gleaner Transaction Closes ... Gleaner's Media Subsidiary Joins RJR Group Of Companies

The Gleaner
Jermaine Barnaby

The merger of the media assets of The Gleaner Company Limited with Radio Jamaica Limited (RJR) was concluded on Thursday, March 24, with Gleaner shareholders receiving their

allotment of Radio Jamaica Limited shares, ending several months of activities to bring the deal, announced in August of 2015, into effect.

The merger, which was approved by shareholders of both companies last December, supported by various local regulatory authorities, and sanctioned by the Supreme Court in February, has created the largest media entity in Jamaica and among the largest in the English-speaking Caribbean, offering services across various platforms, including television, radio, cable, print and online.

The first meeting of the merged 14-member board of the expanded Radio Jamaica Limited took place last Thursday. Chairman J.A. Lester Spaulding said he was very happy to be past the administrative hurdles of the coming together and looked forward to guiding the company, with the new board, through a quick integration process, which will ultimately create shareholder value.

Other directors on the reconstituted board are Oliver Clarke (deputy chairman), Lisa Johnston, Glen Francis, Carl Domville, Minna Israel, Dr. Carol Archer, Andrew Leo-Rhynie, Douglas Orane, Joseph M. Matalon, Lawrence Nicholson, Elizabeth Jones, Gary Allen and Christopher Barnes.

Gary Allen, RJR's managing director, who will lead the combined entity as chief executive officer, said: "The team is ready to get to work on delivering and exceeding the commitments we have made to our shareholders. We are excited about the type of diversity in services and plurality of views that we will be able to offer to expanded audiences from the expanded group."

Allen, in explaining the reasons for the merger of the two largest media entities locally, said: "The low or no growth economic conditions in Jamaica have for decades persisted, which with higher operating costs have affected all businesses. To be able to maintain journalistic independence and credibility, media houses must remain viable. This transaction strengthens RJR's and The Gleaner's independence and strengthens our viability. More importantly, it amalgamates strong print, online, radio, television and local content on multiple platforms that

can be exported, starting with a target in diaspora markets, but going beyond it and accelerating our hard currency earning capabilities for shareholders and the country."

The Gleaner Company last year grouped its media assets under a new subsidiary company, The Gleaner Company (Media) Limited, which is now transferred into the RJR Group. All publications and broadcast operations under the Gleaner brand are expected to continue; cited as a main plank of value offering of the deal. The deal also includes $665 million in cash and cash equivalents in GCML, which will go a far way to financing Radio Jamaica's capital plans, including the prospect of digital free-to-air television services in Jamaica.

The remaining publicly traded Gleaner Company Limited, having received approval from the Companies Office to change its name to '1834 Investments Limited', will continue operations with its non-media assets, consisting mainly of financial investments and a real-estate portfolio. A managing director for 1834 is to be named to replace Christopher Barnes, who joins the management team of Radio Jamaica Limited as chief operating officer.

Radio Jamaica's shares in issue were increased to 2.4 billion through splits and bonus issues in support of the transaction which saw shareholders of the Gleaner receiving 1.2 billion shares in exchange for RJR receiving 100 per cent shares of the Gleaner's media subsidiary. Trading for Radio Jamaica was halted between March 22 and 24 to effect the exchange and has since resumed trading. Both companies have in public releases encouraged shareholders to contact the respective company secretaries and or the Jamaica Central Securities Depository to confirm their shareholdings resulting from the transaction. Thirty-four thousand shares of RJR traded at $1.46 per share on March 31.

A new name for the expanded media group is to be made public at a later date.

Privy Council Allows Advantage General $692M Tax Set-Off

The Gleaner
McPherse Thompson

The Privy Council has ruled in favour of Advantage General Insurance Company Limited (AGIC) in its appeal against a Court of Appeal decision that it was not entitled to claim a loss of $692 million, which would be set off against future tax assessments.

Responding to queries from Sunday Business as to whether this was precedent-setting, lead lawyer representing the insurance company, Michael Hylton, QC, said this is the first time that a taxpayer has successfully challenged the commissioner of the Taxpayer Audit and Assessment Department's (TAAD) designation of a change in its accounts as a change in policy, as opposed to a change in estimates.

He said the designation is important because a change in policy would allow a restatement of prior-year accounts, while a change in estimates would not.

"That may, in turn, have a significant effect on a taxpayer's liability to the Revenue. In this case, as a result of this successful challenge, AGIC's tax liability of $14 million has been wiped out and it is now effectively entitled to tax relief of $692 million," Hylton said.

AGIC made the appeal against an assessment by the commissioner of the TAAD.

CHANGE IN PRACTICE

Lord Robert Carnwath, in giving the majority decision of the board last month, noted that the appeal concerned the tax consequences of a change in practice for valuation of AGIC's reserves, arising from the Insurance Act 2001.

Although the act came into operation in December 2001 and was not retrospective, AGIC adopted the new approach to restate its financial statements for calendar year ending December 2000, and submitted an amended tax return on that basis.

The effect of the amendments, if accepted, was to create a substantial loss in that year, which the company sought to carry forward to set against profits in subsequent years up to and including 2003.

In giving the background to the case, Lord Carnwath noted that in June 2001, AGIC submitted its annual income tax returns for 2000. Six months later, in December 2001, the Insurance Act came into operation.

In accordance with the provisions of the Act, AGIC appointed an independent firm of actuaries to value its actuarial reserves. At the end of that valuation exercise, the reserves for prior years, calculated by the company's management, was considered unreasonable and led to a steep increase in the provisions existing at December 31, 2000.

Following that exercise, AGIC in 2004 filed amended income tax returns for the years 2000, 2001 and 2002, converting what was originally assessed as a tax liability of just over $14 million in 2000 to a claimed loss of just over $692 million for that year.

As a result, AGIC claimed tax refunds for the years 2000, 2001 and 2002. In 2007, the commissioner of the TAAD notified AGIC that it did not agree that the company was entitled to amend its tax returns, disallowed the $692 million loss and issued a notice of additional assessment for income tax in the sum of $26.5 million.

AGIC objected to the additional assessment and appealed to the Commissioner of Taxpayer Appeals.

The insurance company argued, among other things, that it had to restate its financial statements because this was what was required under the relevant accounting standards where there was a

change in accounting policy, and the change in how it determined its actuarial reserves was a change in accounting policy.

The Commissioner of Taxpayer Appeals disagreed that it was a change in accounting policy and required AGIC to amend its income tax return.

AGIC appealed against that decision to the Revenue Court, which agreed with the Commissioner of Taxpayer Appeals, and dismissed the appeal. AGIC's appeal to the Court of Appeal against the Revenue Court's decision was also dismissed.

Before the Privy Council, Hylton and attorney Kevin Powell argued on behalf of AGIC that the relevant accounting standards require it to restate its financial statements, and by extension, its income tax returns, where there is a change in accounting policy.

They further argued that the valuing of AGIC's actuarial reserves through the use of an actuary, a method not previously employed, was a change in accounting policy.

Lord Carnwath observed that neither party relied on expert accounting evidence, but concluded after examining the provisions of the relevant accounting standards that the change required by the Insurance Act to actuarially value insurance reserves when employed by AGIC represented a change in the company's accounting policy.

Lord Jonathan Sumption, in a dissenting opinion, disagreed that the actuarial valuation of the company's insurance reserves was a change in accounting policy.

He considered that the employment of actuaries to value AGIC's reserves was "only a better way of applying the same accounting policy".

Lord Sumption said he would have advised that the appeal be allowed only on the grounds that AGIC was entitled to carry forward to the 2003 financial statements the loss first recognised in the financial statements for 2000.

He said his concern in the note of dissent was with the view of the majority of the board that the restatement of the accounts for financial year 2000 arose from a change of accounting policy.

The Commissioner of Taxpayer Appeals was represented by Solicitor General Nicole Foster-Pusey, QC, and Althea Jarrett.

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Hubby is not the father

Margarette Macaulay
The Gleaner

Dear Mrs Macaulay,
My husband and I have just recently found out through a home DNA test that a woman who had been claiming him to be the father of her two children had lied. The DNA test came back to prove they're not his children. How does he go about getting his name removed from their birth certificates?

It seems that your husband had for some years believed that he was the father of the two children and as such registered them. But I am not sure that you have sufficient evidence to conclude that the mother of the children lied. Do not get me wrong, she may have, but she could also have been mistaken if she was in a relationship with your husband and someone else.

I am rather concerned that this letter was not written by your husband himself; after all, he is the one who is directly involved. You as his wife, though directly affected, are only indirectly involved. This is only because when the children are with him you possibly assist him with their

care. You have also not said how old the children are and you have not indicated how long you have been upset about them.

Anyway, if your husband does indeed wish to have his name removed from the children's birth certificates, he would have to make an application to the court. In either the Supreme Court or the Family Court, your husband would have to carry the burden of proving what he claims, that is to say, that he is not the father of the children.

In order to prove this to the standard of proof acceptable to a court of law, your husband would have to obtain an order for court-directed DNA tests to be done on him and the two children. The basis of his application, from what you have said, would be that he no longer believes that he is their father and that he was wrongly put on their birth certificates by their mother, who knew otherwise.

You see, the court cannot accept a home-administered DNA test. The court has a list of approved DNA laboratories and would direct that one of them be used by a named/putative father who is questioning his paternity. He will, of course, have to pay for the tests and would be bound to accept whatever the results turn out to be.

I hope that if the tests do in fact prove that he is not the biological father, he would not abruptly cut off all contact with the children. After all, they would not be at fault, but rather they are innocent victims who were told that your husband was their father. And as they were told this, they developed familial relationships with him and he with them.

He should try to save them the trauma of suddenly cutting himself off from them. They must also have the facts sensitively explained to them by him and their mother with the assistance of a counsellor.

You have not stated the children's ages, but the older they are the more traumatic the situation would be for them if your husband is in fact not their biological father. If, however, the results

show that he is their biological father, then you both will have to accept this with good grace and treat the children responsibly and with love and sensitive care.

So your husband should make his application to the court to have his status and relationship with these children sorted out through the results of a court-ordered, properly and professionally conducted DNA test, and from these results the court would make the appropriate orders.
Good luck to you all.

Margarette May Macaulay is an attorneyat- law, Supreme Court mediator, notary public and women's and children's rights advocate. Send questions via e-mail to allwoman@jamaicaobserver.com; or write to All Woman, 40-42 1/2 Beechwood Avenue, Kingston 5. All responses are published. Mrs Macaulay cannot provide personal responses.

Laws Of Eve: It Pays To Be A Housewife

The Gleaner

When relationships fall apart and issues concerning marital property and spousal support arise, spouses usually try to assess the likely outcome of a court battle. For lawyers, that is difficult advice to give, because in matters of that nature no precedent provides a truly reliable basis on which to predict the findings of a court. Each case is determined on its own peculiar facts.

In early March, 2016, the Internet was abuzz with articles about the English Court of Appeal's decision in the case of Jane Morris (JM) v Peter Morris (PM). The case raised eyebrows because it was hard to believe that a court could have awarded a former wife the lion's share of the family assets.

JM and PM were married for 25 years and had three children. At the start of the marriage, JM had a promising career as a recruitment specialist. PM was the managing director of a software company and, by agreement, JM gave up her career to be a housewife and to raise the couple's three children.

Lavish Living

PM was very successful, the family lived lavishly, occupied a home that was purchased for £1.2 million, and their children attended expensive schools. Even after the marriage broke down and the parties separated, they did not alter their lifestyles. In fact, there was evidence that PM took six expensive vacations within a nine-month period, and JM spent over £5,000 on her birthday party. In the end, the family's wealth was substantially depleted, leaving £560,000.

The judge awarded almost £500,000 to JM and £66,000 to PM. Among the reasons for the judgment, the judge reportedly cited the fact that JM "needs adequate maintenance", because she had sacrificed her career and was left with "low earning capacity ... in her middle 50s with rusty skills". The judge was of the view that PM had "very substantially larger earning capacity into the future".

When PM complained about JM's extravagance in relation to her 50th birthday party, the judge said that JN was "probably in need of emotional and psychological comfort" during her own spending sprees. With the family's assets severely depleted, the judge said, "It is self-evident that not all the needs of the parties could possibly be met in full, or even substantially, from the available resources, so the parties expectations have to be scaled down. Some of their needs will have to be prioritised over others. The priority must be given, in my judgment, to the housing of the wife and children."

Non-Payment Of Maintenance

There were apparently other court actions between the parties, including a claim for maintenance that resulted in a court order in which PM neglected to pay. The arrears of maintenance amounted to £77,000, and with PM being ordered to also pay those arrears from his share of the family's assets, the net result was that there was still outstanding maintenance. In the

maintenance case, the judge said that PM had had enough money to pay maintenance but chose to spend that money on himself.

PM, who could face imprisonment if he fails to pay the balance of the maintenance arrears, has appealed both rulings.

In this case, JM's sacrifice was not in vain. However, that will not always be true for housewives who are forced to re-enter the work world many years after making the choice to stay home and raise a family.

• 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.

Men ‘war’ over dog

Covering the courts with Tanesha Mundle

There was laughter in the Corporate Area Resident Magistrate’s Court last week when two men appeared before the magistrate for injuring each other during a dispute over a dog.

Demetri Barrett told Senior Resident Magistrate (RM) Judith Pusey that Leroy Smikle and his friend attacked and beat him after he told Smikle’s dog to get away while he was at a shop.

“The dog growl at me and me say ‘watch it from yah suh idiot dog’ and him say ‘b.... bwoy what you want with me dog’.

“He left from where he was and push me in my chest and when he came at me a second time me ‘pop off’ me knife,” Barrett told the court.

Smikle, for his part, told the court that Barrett pulled a knife at him and held it at his throat and he used a stone to hit Barrett.

According to Smikle, Barrett’s constant attack on his dog had led to the confrontation.
“I have a dog and he kick my dog and I didn’t say anything to him and an another day I saw him kick the dog again and I still did not say anything to him,” Smikle told the court.

However, he said that last Sunday Barrett again attacked his dog and he went to speak to him about it and it caused a fight.

Smikle said Barrett kicked the dog after it urinated on his bicycle.
“Him rush me dog and me say ‘Odain a wa u want wid me dog’ and he tell me about me mother and me say a really me mada you a tell me bout,” he said.

“And me push him and him rush me with a knife and juk me inna me forehead and hold the knife a me throat and me tell him say betta yuh kill me and done cause if yuh let me go me ago lick yuh with a stone,” Smikle added.

“And you did,” the magistrate said, to which Smikle replied: “Yes.”
Barrett, despite his earlier admission to the court that Smikle’s friend had intervened and had tried to put an end to the dispute, also complained to the court that Smikle’s friend had assaulted him.

“Dem mash up me head, and me dinner, me all loose me money,” Barrett said.
“The friend never attack you, is when you ‘pop off’ you knife the friend held on to you,” the magistrate reasoned.

But Barrett said he did not agree.

“He was there saying ‘finish’ and a thump me same time,” he added.
“You can’t be saying that he was holding onto you and attacking you at the same time,” RM Pusey told Barrett.

She then asked him: “ You did kick the dog?”
“I have never done that,” Barrett answered before pleading not guilty to assault occasioning bodily harm.

Smikle, on the other hand, pleaded guilty to the same charge.
“Smikle, you can’t take the law into your hands. If a man kick my dog I know what to do, you don’t have to touch him,” the magistrate said before ordering him to pay $5,000 or serve six months in prison.

Barrett’s bail was then extended for him to return to trial on April 29.

Jamaica moving to deal with court delays

April 1, 2016 CMC Regional
The Daily Observer – Antigua

KINGSTON, Jamaica, Apr 1, CMC – Jamaica is moving to reduce the delays in matters before the courts with Chief Justice, Zaila McCalla, indicating that the new measures are intended to streamline the system.

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The End