

## Appeals Court Dismisses Supreme Court Ruling On Default Judgments

The Gleaner

[Barbara Gayle](#)

The Court of Appeal has overturned a Supreme Court ruling that it is a mandatory requirement to file an acknowledgment of service in order for the court to entertain an application to set aside a default judgment.

Frank I. Lee Distributors Ltd had appealed against the ruling after Justice Bryan Sykes turned down its application. The appellant contended that it had not been served with the claim form. The appellant was sued by the law firm Mullings and Co, of which attorney-at-law Gillian Mullings is a partner, for outstanding fees for work done.

In setting aside the ruling, the Court of Appeal ordered that the application to set aside the default judgment must be heard by the Supreme Court. Legal costs were awarded to the appellant.

Attorney-at-law Hugh Wildman, who represented the appellant, argued that the Supreme Court ruling was inaccurate.

He submitted that the rules governing the setting aside of default judgments were clear and did not require the filing of an acknowledgment of service.

Wildman said that the Civil Procedure Rules (CPR) state that the period for filing an acknowledgment of service is 14 days after the date of service of the claim.

He said that it was of paramount importance that service of the claim must mean that the claim had been brought to the attention of the defendant.

He argued that it was only when a defendant had been notified of the claim by service that the need for acknowledgment of service arose.

Wildman said that the rules allowed for an application to be made to set aside a default judgment if it were considered that in the interest of justice it ought to be so set aside.

### **Disputing Court's Jurisdiction**

Attorney-at-law Paul Beswick, who represented the law firm, had submitted that the notice of application to set aside the default judgment was a challenge to the court's exercise of its jurisdiction to issue a default judgment.

The court, in allowing the appeal, said that an application to set aside a default judgment was not disputing the court's jurisdiction to try a claim nor was it being argued that the court should not exercise its jurisdiction.

The court said that on the contrary, "it is more by nature, an invoking of the court's jurisdiction to exercise its discretion to set aside the default judgment already entered so that the claim may be tried".

The court pointed out that a defendant who was not served and had a default judgment entered against him for failing to acknowledge service could hardly be expected to file an acknowledgment of service while seeking to explain the failure in an effort to have the judgment set aside.

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# Lawyer Countersues NCB And Loses

The Gleaner

Barbara Gayle



Court okays tapping bank accounts for loan payments

The Supreme Court affirmed that National Commercial Bank (NCB) Jamaica acted appropriately when it deducted funds from a client's

accounts to cover payments on an outstanding loan, and now the client, who is a lawyer, may have to answer to the General Legal Council on issues related to the case.

Attorney-at-law Humphrey Lee McPherson borrowed \$7.1 million from NCB in December 2008, before which he had instructed the bank to debit funds from two accounts one of which was his client's trust account totalling \$1.55 million, convert the funds to US dollars and place them on fixed deposit to secure the loan. The fixed deposits totalled US\$76,800.

Under the agreement with NCB, McPherson would service the loan at \$195,086.40 per month. He last made a payment on October 30, 2009.

McPherson complained that NCB had withdrawn funds from a trust account, which Supreme Court Justice David Batts observed served to reduce the loan balance. In January 2014, the bank assessed the outstanding balance at \$1,984,559.26, and deducted the funds from one of McPherson's accounts, to which he objected.

NCB took the matter to court seeking a declaration that it was entitled to apply the US\$76,800 and \$1,984,559.26 held in McPherson's accounts towards the loan.

The lawyer countersued, challenging the size of the indebtedness. In his counterclaim filed March 20, 2015, he contended that the loan amount was \$6.53 million and not \$7.1 million. He denied instructing the bank to deduct payments from his current account, and claimed that it was a separate fund of US\$19,300 that was to be used as security for the loan, and not his fixed deposit accounts.

But Supreme Court Justice David Batts dismissed his claim, and made a declaration that NCB was entitled to apply US\$76,800 and \$1,984,559.26 held in McPherson's accounts towards the outstanding loan balance.

The judge also directed the Registrar of the Supreme Court to forward a copy of his judgment to the General Legal Council, saying it was a matter of concern that McPherson had instructed the bank to withdraw funds from a trust account belonging to his client to secure a loan.

Justice Batts, in his judgment issued last month, noted that McPherson had decided to represent himself in the case.

"Regrettably, he has paid no heed to the adage about an attorney who chooses to represent himself," the judge wrote.

During the case, McPherson admitted that he stopped making payments on the loan but claimed it was due to the bank's failure to issue a promissory note underlying a letter of commitment, failure to address issues raised in letters to NCB, and that the bank made withdrawals from his trust account without his permission.

He contended that the bank's application of the fixed deposits and US dollar holdings to the loan account was fraudulent and sought damages for alleged unauthorised use of his funds.

McPherson also sought an order of accounting from the bank. He contended he owed no money to NCB as there was no operative account or promissory note for the letter of commitment dated

September 24, 2009 for the \$6.5 million purportedly loaned. He demanded that his fixed deposit of US\$76,800 be returned.

### **STOPPED MAKING PAYMENTS**

Outlining his reasons for striking out McPherson's claim - which was based on an application by the attorney representing NCB, Hadrian Christie of the law firm Patterson Mair Hamilton - Justice Batts said the lawyer admitted he stopped making payments on the loan.

"The defendant does not, anywhere in his affidavit, deny that money was borrowed nor does he say that the loan was repaid. He, however, repeatedly denies owing any money," the judge said. Accountants retained by McPherson had confirmed the accuracy of the bank's statement of account, Justice Batts emphasised.

"If, as alleged, the bank wrongfully or unlawfully withdrew monthly repayments from a trust account without authorisation, then it means the defendant's debt to them was reduced accordingly. This is a benefit to the defendant," he wrote.

If the funds were deducted from the wrong account, it was McPherson's duty to bring the error to the bank's attention "and to transfer funds from the account from which those debits were to be raised and place them into or to the credit of the trust account," the judge contended.

Batts added that, alternatively, NCB ought to re-credit the trust account and debit the accounts from which the funds should have been withdrawn.

The judge also ruled that the size of the loan, whether \$6.5 million or \$7.1 million, was not pertinent to the issue to be decided, which was whether the funds were wrongfully withdrawn from the accounts. NCB, however, had produced documents showing that the loan was for \$7.1 million.

"There is, in any event, unchallenged documentary evidence that the defendant instructed that funds from the trust account were to be combined with other funds to purchase currency of the

United States, all of which was then to be held on fixed deposit. There is documentary evidence that the claimant was authorised to apply balances on fixed deposits to secure the loan account," the judge said.

"I think I have said enough to demonstrate why to allow this matter to go to trial would be an unwise use of the resources of the court. The defendant on the material before me cannot succeed," Justice Batts ruled.

McPherson was ordered to pay the bank's legal costs.

Regarding his decision to alert the General Legal Council to his ruling, the judge said he had cautioned McPherson that this could happen.

"The defendant did not heed my caution. Having considered the evidence, and in particular documentation emanating from the defendant, it is a matter of concern that an officer of this court appears to have instructed a financial institution to: (a) withdraw funds from his client's trust account; (b) combine those funds with other funds to purchase United States currency; (c) place the combined funds on fixed deposit; and (d) use the fixed deposit to secure a loan or loans," Judge Batts wrote.

It is up to the chairman of the General Legal Council to determine whether to pursue an investigation or take other action, he said.

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# St James Magistrate Denies Application To Reject Several Ballots In Recount

The Gleaner



The presiding magistrate at the recount in the St James Southern constituency today denied an application by the attorney for the Jamaica Labour Party's candidate, Homer Davis, to reject a number of ballots from one polling division.

Resident Magistrate Ann-Marie Granger rejected the application made by the attorney, Hugh Wildman that the ballots under dispute were not properly issued by the Electoral Office of Jamaica.

Wildman argued that the initials of the presiding officer and the polling date were missing from the ballots.

However, in her ruling, RM Granger said that there was no evidence to suggest the ballots were not properly supplied by the presiding officer.

She noted that the ballots' polling divisions and constituency could be identified.

Meanwhile, up to 4:30 this afternoon, 52 out of 106 ballots boxes had been counted.

Davis was leading with 3,277 votes while the People's National Party's Derrick Kellier had 2,696 votes.

Ras Astor Black has received 16 votes while the fourth candidate, Joseph Hilton, has received 13 votes.

The magisterial recount will continue tomorrow morning.

# St James Southern Magisterial Recount Likely To Continue Thursday



## ST. JAMES SOUTHERN

Eligible Voters : 26000    Votes Cast : 12469    Voter Turnout : 48%  
Counted Ballot Boxes : 106    Total Ballot Boxes : 106



Ras-Astor Black  
**NDM**



Homer Davis  
**JLP**



Derrick Kellier  
**PNP**



Joseph Hilton  
**MGPPP**



The Gleaner

The magisterial recount in the St James Southern constituency is likely to continue on Thursday.

At 4:30 p.m., 24 of the 106 boxes were counted at the Cambridge Resident Magistrate's Court in the parish.

The Jamaica Labour Party's Homer Davis was leading with 1,628 votes to the 1,144 votes for the People's National Party's Derrick Kellier.

Independent candidates Ras Astor Black had five votes and Joseph Hilton, four. Six ballots were rejected and another seven spoilt.

The application for a recount was filed by the JLP which contended that some ballots which were rejected during the final count should have been accepted.

Following the official count, Kellier was declared the winner by 81 votes.

# St James Southern Magisterial Recount To Continue This Morning

The Gleaner



The magisterial recount for the St James Southern constituency is set to continue at the Cambridge Resident Magistrate's court this morning with the Jamaica Labour Party (JLP's) Homer Davis is ahead of the People's National Party (PNP's) Derrick Kellier.

At the close of counting yesterday with 26 out 106 ballot counted, Davis has received 1,749 votes to Kellier's 1,261.

During the count, Davis picked up 21 of the 35 ballots which had been rejected at the official count.

Ras Astor Black and Joseph Hilton, the two independent candidates who contested the seat, were also present at Wednesday's recount, with each man receiving five votes.

Meanwhile, at the end of Wednesday's count, nine ballots were rejected and seven spoiled. However, presiding magistrate Ann-Marie Granger is to make a ruling on two of the nine rejected ballots on Thursday, following submissions by the attorneys representing Davis and Kellier.

The JLP had filed for a magisterial recount on the grounds that several ballots which were rejected at the final count should have been included.

Following the official count on February 25, Kellier was declared the winner by 81 votes.

# UPDATE: Health officials shut down Ministry of Justice

The Observer



Justice Minister Delroy Chuck

KINGSTON, Jamaica – Newly appointed Justice Minister Delroy Chuck has confirmed that the ministry's offices at the NCB Towers in St Andrew were yesterday shut down by public health officials.

He told OBSERVER ONLINE that he and his staff were given until 1:00 pm yesterday to vacate the offices occupied by the ministry.

He further explained that the closure was due to the air quality, which was causing a number of staff to get sick.

The ministry said in a subsequent press release that it will be relocating to 61 Constant Spring Road in Kingston.

However, Chuck said the move, which could take weeks, will hamper his work. "Right now I'm just trying to find some space. Our work is being inconvenienced by this movement".

Meanwhile, Permanent Secretary in the ministry Carol Palmer said the health authorities have given allowance for staff to pack and remove their property from the building. The stipulations however are that individuals should not remain inside the offices for prolonged periods.

"We are not to remain in the building all day," she said, explaining that they were instructed to exit the building after a few hours then return.

The Public Health Authority reportedly closed the second floor of the building in 2014 due to similar issues.

The permanent secretary did not say when the move would be completed but noted that they will start moving into the new building on Monday.

**Keleshia Powell**

## **Ministry of Justice Moving to 61 Constant Spring Road**

By [Shelly-Ann Irving](#)



Photo: FILE Permanent Secretary in the

The Ministry of Justice will be situated at premises at 61 Constant Spring Road, St. Andrew as at March 16.

The Ministry began scaling down operations at its current offices at 2

Oxford Road, New Kingston on Wednesday (March 9), to facilitate the relocation.

Permanent Secretary in the Ministry of Justice, Carol Palmer, told JIS News that the relocation is due to “an issue with air quality” at the New Kingston location, which has aggravated respiratory problems for some employees.

“On Tuesday of last week ((March 1), four staff members from our division experienced respiratory distress, three of whom had to seek medical attention and were nebulised. The Public Health Authority was called in to assess whether it was something wrong with the building. They

did their tests and advised me that based on their findings, they need to have the floors closed,” Mrs. Palmer explained.

She informed that in 2014 the Public Health Authority closed the second floor of the building due to similar issues.

“When you have a staff health emergency, firstly you seek medical attention and then you need to find out what the problem is. I am not aware of the full details of the (Public Health Authority) findings, but we were told that the air quality was very poor and we are not to remain in the building for a full day. The authority has taken the decision to close the floors and we are only allowed to be here to pack our things to take them,” Mrs. Palmer said.

She said the staff is now focused on “getting the Ministry’s property packed and moved so we can resume full operations as soon as possible.”

Members of the public can contact the Ministry at 906-4923-31.

## **JP freed of corruption charge**



The Star Online

A St Catherine-based justice of the peace (JP) was freed of corruption charge in Spanish Town Resident Magistrate's Court on Monday.

He is Howard Charvis from Linstead in the parish.

When Charvis appeared before Resident Magistrate

Llyle Armstrong, the matter was dismissed for want of prosecution.

This was after it was revealed that the witness in the matter has been constantly absent. Charvis was told that if the witness is found, then the matter could be listed again.

Charvis was charged in 2014 with making a false declaration. This was after he was accused of signing documents for a surety, who he did not know, to bail someone. The matter came to light when a bench warrant was issued for the accused who did not turn up for his hearing.

When the surety was held, he revealed that some documents was just brought to him to sign and that he did not know the JP who dealt with the documentation.

An investigation was launched which resulted in Charvis being charged. He has made numerous court appearances and maintained his innocence.

## **Man gets 18 months for bank fraud**

The Observer

A man who visited a bank to encash a cheque while purporting to be the true owner of the account on which the cheque was drawn was on Tuesday slapped with an 18-month prison sentence when he appeared in the Corporate Area Resident Magistrate's Court.

Needen Walker was held at a branch of the National Commercial Bank (NBC) in Kingston where he went to encash the cheque, valued at \$179,000, with a forged driver's licence in the name of the bank account holder.

However, Walker, who was sentenced to 18 months on charges of attempting to obtain credit by fraud and uttering forged documents after pleading guilty, told the court that someone had given him the cheque to encash and that he did it because he was unable to send his two sons to school. The court heard that Walker went to the bank on February 29 to change the cheque, and submitted the driver's licence in the name of the account holder on whose bank account the

cheque was being drawn, along with account holder's account number and other personal information.

Prior to going to NCB, the court heard that Walker went to an insurance company and drew the money from the complainant's account.

Walker was held at the bank on February 30 when he returned to collect the money. But in his defence, Walker told Senior Resident Magistrate Judith Pusey that he was only responsible for going to the bank with the cheque.

"Is somebody approach me to change the cheque," he said.

"And they gave you the driver's licence with your picture on it?" the magistrate asked Walker, who responded that he was "telling the truth".

The magistrate then asked Walker why he should not be imprisoned for his actions. "Mi have two sons," he responded while pointing out that the younger was six years old.

"That means six years now you have a son and should know better," RM Pusey said.

Moreover, she said, "It's not a chance encounter; that man would've had to approach you before. It's a carefully orchestrated plan and called for a certain machination of the mind."

Walker then begged the magistrate for leniency, but she was not feeling merciful towards him.

"You get up and put your face on a fake driver's licence to try and take out \$179,000 out of a man's account. Why should I be lenient?" SRM Pusey asked.

"I could not send my sons to school," Walker answered before he was sentenced to 18 months on both charges. They sentences will, however, run concurrently.

Walker was also charged with illegal possession of identity information, but the charge was withdrawn.

# Man on assault charge gets bail extension

By [Bjorn Burke](#)

The Star Online



A man accused of assaulting another had his bail extended when he appeared before the Corporate Area Resident Magistrate's Court last Thursday. Charged with assault occasioning bodily harm is Kevore Donaldson, who pleaded not guilty to the offence.

The Crown alleged that on the day of the incident, the complainant and the accused man got into an altercation which became physical when Donaldson allegedly used a piece of iron to hit the complainant all over his body, causing pain. However, the complainant was not present in court.

Senior Resident Magistrate Judith Pusey ordered Donaldson to return to court on April 19 for a mention hearing, pending an outstanding medical report. His bail was extended.

## Man punches 'future wife' in mouth, fined \$10,000

The Observer



KINGSTON, Jamaica – Senior Resident Magistrate Judith Pusey could not help but laugh when a young man referred to the woman who was the reason he was before the court as his "future wife" and "spouse". The man appeared in the Corporate Area Resident

Magistrate's Court for punching the woman in her mouth.

"You hear you," RM Pusey said to Sean Clarke after a bout of laughter.

"Then you think you're going to marry her after you punch her in her mouth?"

"Let me look at you good," the magistrate said to Clarke. "You are very handsome, dark and tall.

"You have some special talents, hidden or otherwise, why I would allow you to marry me after you punch me in my mouth," RM Pusey remarked.

Clarke then told the court that he did not deliberately punch his girlfriend.

During his explanation he said that they had an argument and he went to her workplace with the intention of speaking to her. However, they ended up in a fight instead.

Clarke was subsequently ordered to pay \$10,000 or serve six months in prison.

"Silly," the magistrate said, following the sentencing.

**Tanesha Mundle**

## **St Catherine man attempts to board UK flight with forged passport**

The Observer

ST CATHERINE, Jamaica – The police have informed that a St Catherine man was yesterday arrested and charged with forgery and uttering forged documents following reports that he attempted to leave the country on a fake passport.

The police's Counter Terrorism and Organized Crime Branch (CTOC) identified the accused as 38-year-old Glendee Brown of Tarrant Drive, Willowdene in the parish.

According to the lawmen, Brown attempted to board a flight to the United Kingdom on Sunday, with a forged passport and following investigations by the British High Commission was prevented from travelling. The police were informed and Brown was subsequently arrested.

He is to appear before the Half Way Resident Magistrate's Court next Tuesday.

## **Inspector gets 4 months for soliciting \$2,000 from bus conductor**

The Observer



KINGSTON, Jamaica — Transport Authority Route Inspector Michael Frith was today sentenced to four months in prison at hard labour when he appeared in the Corporate Area Criminal Court.

Frith was arrested in July 2012 by members of the then Anti-Corruption Branch after he reportedly solicited \$2,000 from a Coaster bus conductor.

According to a news release from the Major Organised Crime and Anti-Corruption Agency, a report was made by the conductor who then agreed to participate in an operation to apprehend Frith.

Frith pleaded guilty to breaches of the Corruption Prevention Act on January 19, 2016, and was today sentenced.

# Man freed of having Tesha Miller's documents

By [Rasbert Turner](#)

The Star Online



Despite being in possession of driver's licence application form that bore the image of reputed don Tesha Miller and had the name Itashi Miller written on it, a St Catherine man was freed yesterday.

Victor Barnes, a resident of Ensom City, Spanish Town, walked free from the Spanish Town

Resident Magistrate's Court after the Crown conceded that it could not prove the case against him.

## **FORGERY**

Barnes was arrested in May 2010 after police raided his house and found the documents. He was subsequently charged with forgery and possession of forged document.

However, his attorney, Courtney Maxwell, successfully argued that his client had no knowledge the documents were forged.

He said that it would be very difficult for the Crown to prove otherwise, and that the accused should be given the benefit of the doubt.

Resident Magistrate Llyle Armstrong agreed and told Barnes, who has been acquitted of fraud charges in the past, that there was not a case for him to answer. He was then set free.

# Jamaican model: Trump shorted my pay by \$200,000

By [Jeff Ostrowski](#) - Palm Beach Post Staff Writer

You've heard of [Trump Steaks](#), Trump Vodka and [Trump University](#). Now another of [Donald Trump's](#) far-flung businesses is getting attention for allegedly promising more than it delivered. In a lawsuit that has been making its way through the federal courts since 2014, Jamaican model Alexia Palmer says she was snookered by Trump Model Management, a New York agency founded in 1999 by the Republican presidential front-runner.

Palmer says Trump Model Management arranged a visa for her through the federal government's H-1B program, which allows well-paid workers with special skills into the country. Promised \$75,000 a year, she moved to New York from Jamaica.

Instead, Palmer says in her suit, "After the deduction of all agency fees, expenses, and allowance, the plaintiff received a check in the amount of \$3,880.75 for all the work she did from 2011 to 2013."



Trump Model Management dinged her for expenses including limo rides, "walking lessons," makeup, dermatology appointments and other things required by the agency, Palmer said.

The suit has garnered little attention so far. But as Trump moves closer to the GOP nomination, Palmer's law firm on Wednesday sought publicity for the dispute.

"The complaint is bogus and completely frivolous," Trump attorney Alan Garten told the New York Daily News in 2014.

Palmer accuses Trump Model Management of breaking federal law by underpaying her.



Model Alexia Palmer. REUTERS/Pulse Model Agency

“Defendants took more than 80 percent of the plaintiff’s hard earned money by cloaking it as ‘expenses,’” the suit says. “Despite an assertion to pay the plaintiff well above the required wage — as evidenced in the [federal] application

promising to pay her \$75,000 per year — the defendants failed to pay her even the prevailing wage of \$45,490 per year as required by immigration laws.”

The suit is seeking class-action status to represent other models who believe they were misled and underpaid after coming to the United States to work for Trump’s agency.

Trump, the billionaire businessman, owns Mar-a-Lago, the private club in Palm Beach, and operates golf courses in an unincorporated area near West Palm Beach, in Jupiter and in Doral in Miami-Dade County.

In his primary victory speech Tuesday night in Jupiter, Trump dismissed gripes that Trump University ripped off consumers who paid thousands of dollars to learn how to become real estate operators.

“I don’t settle lawsuits — very rare,” Trump said. “Because once you settle lawsuits, everybody sues you. Very simple.”

# Antigua Launches Public Education Campaign Ahead Of Referendum On CCJ

The Gleaner

ST JOHN'S, Antigua, CMC :

Antigua and Barbuda yesterday launched a three-month non-partisan public education campaign ahead of a planned referendum on whether or not the country should retain the London-based Privy Council or turn to Trinidad-based Caribbean Court of Justice (CCJ) as its final court.

Prime Minister Gaston Browne and opposition Leader Baldwin Spencer put aside their political rivalry in urging citizens to support the referendum and ensure that they are fully made aware of the pros and cons of leaving the British judicial system that has served the country for decades. But at the same time both men underscored the need for the island to be "truly independent" and move towards the CCJ, which was established in 2001 by regional governments and also serves as an international tribunal interpreting the Revised treaty of Chaguaramas that governs the 15-member regional integration movement.

"Whereas, our government enjoys in excess of a two-thirds majority in the Parliament and is assured of the passage of the necessary legislation to give effect to the operationalisation of the CCJ, our Constitution mandates, that we obtain the fiat of the people by way of referendum," Prime Minister Browne told the launch that was attended also by the CCJ President Sir Dennis Byron, the former Barbados Chief Justice Sir David Symmons and other regional and international dignitaries.

## **PEOPLE'S INPUT REQUIRED**

"Any provision of the Constitution that is entrenched, requires the vote of the people. In other words, a referendum is required to change certain Constitutional provisions, including the proposed change to the CCJ," he added.

Spencer said the public education campaign would provide the citizenry with the opportunity "to fully decide we will no longer loiter at the doorsteps of colonialism".

**The End**