

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-03190**

IN THE MATTER OF THE INTERPRETATION OF THE INDICATABLE OFFENCES
(PRELIMINARY INQUIRY) ACT CHAPTER 12:01, THE SUMMARY COURTS ACT,
CHAP 4:02

AND IN THE MATTER OF THE DETERMINATION OF VARIOUS PENDING MATTERS
WHICH WERE COMMENCED AND UNFINISHED BEFORE MAGISTRATE MARCIA
AYERS-CAESAR

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Claimant

AND

JUDICIAL AND LEGAL SERVICE COMMISSION

First Defendant

HER WORSHIP, MARIA BUSBY-EARLE CADDLE, CHIEF MAGISTRATE (AG.)

Second Defendant

DIRECTOR OF PUBLIC PROSECUTIONS

Third Defendant

MARCIA AYERS-CAESAR

Fourth Defendant

Before the Hon. Madam Justice C. Gobin

Appearances:

**Mr. G. Peterson S.C., Mr. J. Mootoo, Mr. R. Dass instructing by Ms. M. Benjamin for the
Claimant**

Ms. D. Peake S.C., Mr. I. Roach, instructing by Ms. M. Ferdinand for the First Defendant

Mr. M. Quamina instructed by Ms. K. Matthew for the Second Defendant

Ms. E. Greene for the Third Defendant

**Mr. R. Lawrence Maharaj, Mr. R. Bissessar instructing by Ms. V. Maharaj for the Fourth
Defendant**

REASONS

1. For the purposes of these reasons I shall not repeat the background facts and the train of events that led to the filing of this Fixed Date Claim by the Attorney General. They are detailed in Mr. Al Rawi's supporting Affidavit. By Notice of Application filed on 29th September 2017, the Fourth Defendant applied to have the proceedings against her struck out on several grounds. On 15th May 2018, I dismissed the application. I rejected the arguments of the Appellant and found that: -

- (a) The Attorney General does have the jurisdiction to bring the instant proceedings;**
- (b) Part 56 1 (c) of the CPR allows the proceedings to be brought in the manner that they have been;**
- (c) The proceedings raise a valid, preliminary issue i.e. the status of the fourth named Defendant as a Magistrate, the consideration and determination of which required the joinder of the JLSC and Mrs. Ayers Caesar as necessary parties.**

Jurisdiction of the Attorney General

2. On the issues of the availability of the jurisdiction of the Attorney General and of the justification for the exercise of it I accepted the submissions of the Claimant and found support for them in the authorities cited on the existence and importance of the jurisdiction.

3. **De Smith's – Judicial Review, 6th Edition, 2014** states:-

“The Attorney General has an ancient power to make legal claims in the name of the Crown as an aspect of his role as Guardian of the public interest. Proceedings may be commenced by the Attorney General in the name of the Attorney General.”

4. Authoritative statements of the learned author Zamir, confirm the above as well as the appropriateness of the Attorney General's exercise of it in circumstances such as those which led to the institution of these proceedings: -

On the historical role:-

“The Attorney General is by law the representative of the public interests. The reason is, that he is the office of the Crown, and that, according to the principles of our law the interest of the public is vested in the Crown.”

32. As to the breadth of the power:-

‘ If there is excess of power claimed by particular public body, and it is a matter that concerns the public, it seems to me that it is for the Attorney General and not for the courts to determine whether he ought to initiate litigation in that respect or not.’ That is to say, only where the dispute concerns public interests has the Attorney General an absolute discretion whether or not to bring it to the court. And it is for the court, and not for the Attorney General, to decide finally whether a matter is of public interest or whether it is strictly private.”

5. It is no exaggeration to say that the events which led these proceedings caused grave concern and trauma for a number of persons, including prisoners, families of accused persons as well as victims of serious crimes, who were more directly affected by them, but more generally one of confidence in the administration of criminal justice. In filing these proceedings, the Attorney General sought the guidance of the Court as to whether provisions of the **Summary Courts Act Chapter 4:02** and the **Indictable Offences (Preliminary Inquiry) Act Chapter 12:01** avail the DPP or the Chief Magistrate or indeed the Chief Justice, (in his role as head of the administration of justice) of any or sufficient powers to resolve it. The matter involves the

interpretation of legislation. If as the law clearly provides the Attorney General is the office of the Crown which is charged with the responsibility as *parens patriae* of upholding the law for the general public benefit, it follows that the Attorney General must be entitled in a case such as this one, to seek a definitive pronouncement or an interpretation as to what is the law. The matter on which that pronouncement is required is the central issue in the case, it is one of serious public importance.

6. Not surprisingly, has been no suggestion that this is not such but paragraph 41, of the Claimant's submissions identified the obvious reasons and I quote: -

- (a) It raises live and subsisting issues of law which will likely have to be determined in the future;**
- (b) It affects a substantial number of cases which will benefit from a single determination herein and a clarification of various issues of considerable uncertainty and will ultimately lead to a saving of expense, time and judicial resources which would otherwise not be available if such issues are raised and/or litigated in each individual case;**
- (c) There is urgency in obtaining a binding determination as this may affect the future progress of the Pending Matters;**
- (d) The issues raised by these proceedings are likely to affect fundamental rights and freedoms guaranteed under the Constitution and the wider administration of justice;**
- (e) The factual issues raised by these proceedings involve substantially similar fact patterns which are likely to be a matter of record and therefore not contested;**
- (f) The issues raised herein could occur again in the future and it will be useful for this purpose to obtain definitive guidance from the Supreme Court; and**

(g) A determination of the Court may provide guidance in respect of the development of any future remedial legislation to address issues raised by the continuation of part heard criminal proceedings (both summary trial and preliminary enquiries) by different decision makers.

7. In support of her submission that the Attorney General has no jurisdiction to bring the claim, the appellant relied on the following statement which appeared in the Judgment in **Dumas v.**

Attorney General [2017] UK PC 12: -

**“As the Court of Appeal has explained, in Trinidad and Tobago there is no established practice of the Attorney General raising proceedings against public authorities in the public interest
...”**

8. This obiter statement in my opinion does not remove, circumscribe or qualify the power of the Attorney General to approach the Court. An argument that non-user or infrequency of the exercise of an important power can simply erase it, is in my view untenable.

Part 56.1 (c)

9. The appellant accepted that there can be no objection to these proceedings merely on the ground that declaratory reliefs have been sought. The contention was however, that it was wrongly brought under Part 56.1 (c).

56.1 (c) provides: -

“For a declaration in which a party is the State, a court, a tribunal or any other public body.”

10. The appellant's submission was overruled first, because Part 56.1 (c) applies as it states to a matter in which a party is the State. It is not limited to matters in which declarations are being sought against the State or a public authority. I find that the ambit of the rule is sufficiently wide to accommodate the instant proceedings in which the State is seeking pronouncements and declarations as to what is the law.
11. The further objection that the rule provides for declarations against public bodies and Mrs. Ayers Caesar is not a public authority was also rejected. The preliminary determination that the Court was asked to make was essentially, what is the status of the fourth named Defendant vis a vis the office of Magistrate. As I understand it, the formal determination of that status necessarily has to be settled in order to allow a proper consideration of what the law provides in the unusual circumstances of this case.
12. It was convenient and sensible and consistent with the overriding objective that the question of the status of the Fourth Defendant should be raised in the manner in which it has been. The issue is clearly one in which Mrs. Ayers-Caesar as well as the JLSC must have an interest. The rules of natural justice mandate that since both the Fourth Defendant and the JLSC which appointed her to the post of Magistrate, would be directly affected by any declaration as to her status, they were necessary parties to the action.

The Appellant obviously no longer a Magistrate

13. In the course of the arguments the Fourth Defendant adopted the position that given that she was elevated to the High Court Bench, it is obvious that she is no longer a Magistrate. That position was fortified by the fact that since the date of the filing of the proceedings, the

post of Chief Magistrate which the appellant formerly held, has been advertised by the JLSC and filled. Indeed the second named Defendant has since been appointed Chief Magistrate.

14. I have to confess that the “obviousness” of her position, given the events that have been recounted in the Affidavit filed by the Hon. Attorney General as well as the more recent development, was an argument which I first considered attractive. On further and closer consideration I concluded that a formal declaration or pronouncement as to the status of Mrs. Ayers Caesar in relation to the office of Magistrate was nonetheless necessary.

15. S.11 (1) of the Judicial and Legal Service Act. Ch 6:01 prescribes the modes by which the appointment of a Magistrate may terminate. It is comprehensive, one may say even exhaustive.

It prescribes: -

“The modes by which the appointment of an officer may terminate are as follows: -

- (a) on dismissal or removal in consequence of disciplinary proceedings;**
- (b) on compulsory retirement;**
- (c) on voluntary retirement;**
- (d) on retirement for medical reasons;**
- (e) on resignation;**
- (f) on the expiry of an appointment for a specified period;**
- (g) on the abolition of office;**
- (h) in the case of an officer on probation, on the termination of appointment;**
- (i) in the public interest;**
- (j) in the case of a female officer on grounds of marriage**

16. Neither the JLSC nor Mrs. Ayers-Caesar has as a matter of public record, indicated which mode of termination applied in her case. This has left open legitimate and important questions as to her status. It has not helped that statements issued by the JLSC very early on lent no clarity.

17. The JLSC through a media release dated 27th April 2017 indicated: -

“Given Mrs. Ayers-Caesar’s commitment to address her outstanding matters and having regard to the hardships likely to be experienced by accused persons, witnesses and the legal fraternity should matters be restarted, the JLSC has met and agreed to restore Mrs. Ayers-Caesar to the Magisterial Bench.”

This puzzling statement raised a legitimate question as to which mode of termination allowed a “restoration” whatever was meant by that, to the Magisterial Bench.

18. The issue was only further muddled by a subsequent press release dated 9th October 2017 which included this statement: -

“The JLSC was of the view that the situation was sufficiently grave to trigger a disciplinary enquiry but after some further discussion it was agreed that Justice Ayers-Caesar should be given an opportunity to return to the Magistracy to complete the matters that she had left unfinished. The JLSC was of the view that it was a viable course of action as a means relieving possible hardship to defendants, victims and other interested parties.”

19. This statement sought to give the impression that the parties agreed to a “return to the Magistracy”. As to how that was to be achieved again, compounded the lack of clarity as to

her status. Against the backdrop of the clear terms of S.11, the vagueness as to the mechanism by which it was allegedly agreed she would “return” did not help.

20. To add to the confusion, by letter dated 25th May 2017, Mr. Douglas Mendes, President of the Law Association wrote to the Hon. Chief Justice Ivor Archie asked specifically in the light of the public releases given by the JLSC: -

(1) Did Mrs. Ayers Caesar resign as Chief Magistrate when she was appointed a Judge;

(2) If not how was her employment terminated;

(3) Is there any documentation recording the termination of her appointment in the Magistracy.

21. These were undoubtedly legitimate questions. The letter was addressed to the Hon. Chief Justice and answered by his then Administrative Secretary, Ms. Sherlanne Pierre. I am not aware that Ms. Pierre was purporting to respond on behalf of the JLSC though her response did allude to matters concerning the JLSC. She wrote:-

“the JLSC is advised by Senior Counsel that upon being sworn to the High Court Bench, Mrs. Ayers Caesar would have been deemed to have vacated office as a Magistrate.”

This answer confirms the legitimacy of the preliminary question raised in the instant claim. It suggests the JLSC and /or the Chief Justice had considered it and had sought the advice of Senior Counsel on it, well before this litigation. The response failed to identify the mode by which the Appellant “vacated” office. The pointed question as to whether she had resigned remained unanswered. What remained unclear was whether the proposition that the appellant was “deemed to have vacated office” upon being sworn in as a Judge of the Supreme Court,

allowed for some mechanism for the proposed “restoration or return” to the Magistracy, outside of S.11.

22. Mere days later, the question of the status of Mrs. Ayers-Caesar was raised by the DPP in a letter dated 7th June 2017 to the Hon. Chief Justice in his dual capacity as such, and as Chairman of the JLSC. According to the Affidavit of the Attorney General, the DPP’s request for an urgent response within 48 hours went unanswered. The letter indicated the concerns of the DPP on the very matters which have given rise to and which provide the justification for these proceedings. The DPP’s letter ended with this request.

“I would be grateful therefore, if you were to advise me on the status of her Worship Mrs. Ayers-Caesar and provide me with due notification thereof.”

23. Had the Hon. Chief Justice or the JLSC indicated the advice of Senior Counsel or any position to the DPP the need for these proceedings may not have arisen. The Attorney General’s evidence suggests that the formal request of the DPP went unanswered. If that is indeed so, did the failure to indicate Senior Counsel’s opinion imply that the recipient was no longer relying on the advice.

24. In her oral submissions, Senior Counsel for the JLSC suggested that the Hon. Chief Justice, having answered the question by indicating the advice of Senior Counsel to the President of the Law Association, and the Hon. Attorney General in the affidavit in support herein, having included evidence of that answer, that was sufficient to answer the preliminary question. Her argument continued, in the circumstances, these proceedings as against the JLSC and Mrs. Ayers Caesar are therefore pointless.

25. It bears repeating, these proceedings raise an important question which has been asked by the Law Association and by the DPP and on which whether directly or indirectly the JLSC sought advice of Senior Counsel. The DPP received no response. The Chief Justice is not a party to these proceedings. There has so far been no formal answer from the JLSC on this particular question. I do not consider the contents of a letter from the Hon. Chief Justice to a third party to be sufficient to settle the preliminary question. I was not prepared to accord the contents of Ms. Pierre's response to Mr. Mendes' letter, the weight that is required to firmly put the issue to rest.

26. The question having been asked frontally, I considered that the answer had to be provided for the record by the JLSC and the Appellant. Nothing short of this could provide a proper basis for informed consequential action on the part of the DPP or the Chief Magistrate or the Hon. Attorney General. The answer was required to inform the Court of what if any statutory provisions were triggered as a result and whether those vest sufficient powers in any authority to effectively end the crisis.

27. When I delivered my oral ruling I indicated to the parties that I was prepared to accept a joint or individual statements as to their positions regarding the status of Mrs. Ayers Caesar as a Magistrate. By letter dated 24th May 2018, Senior Counsel for the Appellant indicated: -

“ ... The Fourth Named Defendant maintains her position that she is not a Magistrate and that upon being sworn in as a High Court Judge she would have vacated the office of Magistrate.”

By letter dated 23rd May 2018 The JLSC indicated its position in similar terms:-

“upon being sworn in to the High Court Bench, the Fourth Defendant is deemed to have vacated her office as a Magistrate.”

28. The insufficiency of this answer becomes more apparent when one considers that it applies equally in the case of acting appointments from the Magistracy to the Bench. The JLSC is charged with the very important constitutional responsibility of appointing Judges, Magistrates and Law Officers. The elevation of a Magistrate to the High Court Bench ought not leave open a question of how the Magistrate’s appointment terminated. As obvious as it may seem that one cannot hold the office of Magistrate and Judge at the same time, it must be obligatory, that the JLSC should record as a formality, a mode of termination that falls within the provisions of S.11 of the Act even where it is relying on “deeming” circumstances.

29. However, subject to the opinions or objections of the remaining parties as to whether “vacating office” is the same as resigning voluntarily and I believe that it is, I am prepared to accept the statements contained in these letters as the position of the parties by making them part of the record. I am of the view that that should effectively determine the issue between the claimant and the Appellant and the JLSC. I consider that for the purposes of this case, this approach may be conveniently adopted to settle the preliminary issue, in order to proceed to deal with the more critical issues in the claim. The striking out applications were in my view simply premature.

30. I shall hear the parties on the issue of costs of the striking out applications.

Dated the 26th day of June 2018

**CAROL GOBIN
Judge**