

ROSEMARIE SANT

Former High Court judge Marcia Ayers-Caesar, who once sat as the Chief Magistrate of this country, is now in limbo as there has been no word from the office of the Chief Justice on whether she has been restored as a magistrate.

It was widely expected that she would have returned to the Port-of-Spain Eighth Magistrates' Court yesterday, where part-heard matters were listed. But she was a no-show.

Head of the Criminal Bar Association Pamela Elder, SC, yesterday told the T&T Guardian she was hoping Ayers-Caesar would have been in court where part heard matters were listed, "because I felt it was my duty to bring to her attention a Privy Council ruling on *functus officio*, but she was not there."

In the matter of Aubyn McBean against the Queen, number 3 of 1975, from the Court of Appeal in Jamaica, the Privy Council looked at the issue. On page three of the judgment, in reference to the case of Frederick against the Chief of Police, Elder explained that "it was held on the termination of the magistrates' appointment he became *functus officio* and had no jurisdiction to continue the hearing of part heard cases and did not get jurisdiction to do it in consequence of his reappointment."

As debate over future rages

No Marcia in court yet

Elder has since issued notice to all "criminal practitioners that it is their duty to consider the principle of *functus*, to consider the relevant principle of law and to advise their clients and to bring this to the attention of the learned magistrate (Ayers-Caesar) if she intends to resume her part heard matters."

She added that "this is not a matter to be trivialised as it goes to the heart of the criminal justice system." Elder said in her view, Ayers-Caesar should never have resigned and she advised her to seek "independent legal advice on the way forward."

Former high court judge Herbert Volney again said yesterday that Ayers-Caesar was effectively "without a job." He also insisted the Judicial and Legal Services Commission (JLSC) cannot simply accept her resignation and reappoint her to the magistracy.

It's a view shared by a former chief justice who preferred to speak on condition of anonymity, but who indicated that for Ayers-Caesar to return to the magistracy, a vacancy has to be advertised and she has to apply and be interviewed along with

other applicants if there are any.

Volney said, "The return to the magistracy is not the prerogative of the Chief Justice or the JLSC, for it flies in the face of process.

A vacancy has to be declared, a public advertisement has to be put out to allow others to apply, the JLSC then has to meet, interview other applicants and then make an appointment either to the vacant post of Chief Magistrate or magistrate," he said.

This, he said, "Is the process before Marcia Ayers-Caesar can return to hear any magisterial work. At this time she has no job."

Volney, who resigned as a judge in 2010 to contest the general election on a People's Partnership ticket, has to wait ten years under the law before he can resume practicing law. Yesterday, he wondered if Ayers-Caesar, having resigned her post as a judge, could simply return to the magistracy or whether the law which prevented him from resuming practice will also apply to her. He said, "If they reduce it for her then they will have to reduce it for me also."

Forced to resign after prisoner fracas

Meanwhile, sources close to Ayers-Caesar said yesterday she was called to a meeting by Chief Justice Ivor Archie following the fracas by prisoners at the Port-of-Spain Magistrates' Court last week and was told to resign her position as a judge. She subsequently issued a statement in which she acknowledged concerns raised with respect to the matters which she did not complete before taking up her appointment as a judge.

Efforts to contact Ayers-Caesar yesterday were unsuccessful.

The most senior and practicing attorney at the Criminal Bar, Israel Khan, agreed with the position first enunciated by Volney that the only way to fix the problem is for Parliament to come together and pass law for her to continue the matters. The ball, he said, is in the hands of the Prime Minister.

"He will have to pass legislation and make it retroactive to have Ayers-Caesar reinstated to continue

the matters," Khan said.

This view was shared by the former chief justice, who said, "Parliament will have to bring legislation to deal with this mess which the CJ has created."

Asked how the Parliament could fix the problem, the T&T Guardian was told much like in the section 34 matter, the Administration of Justice Act, in this case the Summary Courts Act, will have to be amended retroactively to give Ayers-Caesar the power to restore her to the bench to continue the matters.

Questions are being raised as to whether the Judicial Legal and Services Commission actually met on the issue before Ayers-Caesar resigned.

Attorney Gerald Ramdeen said yesterday the JLSC must issue a statement clearing the air and say "did they meet, did they seek advice and who gave the advice, did they take time to consider the implications of the decisions?"

TOASTING FASHION

Finance Ministry valuers to citizens