

▲ Judge at hearing of accused teens detained at YTC...

Travesty: minors in place for convicts

SAN FERNANDO

Stories by Susan Mohammed
susan.mohammed@trinidadexpress.com

HOW CAN the State implement legislation when things are not in place to carry it out?

This was the question asked by Justice Frank Seepersad yesterday, during the hearing of an application for judicial review filed by Senior Counsel Anand Ramlogan, on behalf of two teenagers being detained at the Youth Training Centre (YTC) in Arouca.

Ramlogan is contending the teenagers should not be kept at YTC where convicted criminals are imprisoned but instead be housed at a community residence as provided in the Bail Amendment Act, in relation to minors.

Seepersad, sitting in the San Fernando Civil Court, said it would be a "travesty" if the State were sending minors to a place for convicts while they (minors) were awaiting trial.

This is the third such case to arise before the High Court within

the last two months.

In August, Justice Vasheist Kokaram heard a petition from Ramlogan, challenging a murder accused teenager's detention at YTC, deeming it unlawful and unconstitutional.

Kokaram said the attorney had raised a valid claim and noted accused children under 16 should be detained at community residences although none have been approved by the authority.

A similar case was raised before Justice Devan Rampersad, also filed by Ramlogan.

Double-barrelled claim

Ramlogan told Justice Seepersad it was a "double-barrelled claim", in which he was also seeking redress pursuant to Section 14 of the Constitution, in respect of the violation of the teenagers' constitutional

rights as a consequence of the denial of bail pursuant to Section 5 (5) of the Bail Act.

Ramlogan filed the application on behalf of the father and mother of two 15-year-old boys who are incarcerated at YTC, at Golden Grove, Arouca.

On August 14, both teenagers were charged with two counts of assault with intent to rob.

One of them is also charged with possession of a firearm and possession of ammunition.

Four days later, the teenagers appeared in court before Deputy Chief Magistrate Mark Wellington, who denied them bail and remanded them into custody at YTC, until September 15.

The father of the first claimant is seeking reliefs—for a declaration that Wellington had no power or authority in law to order that the two young men be detained at YTC;

a declaration that Wellington's decision made on August 18 to remand them to YTC was illegal and unlawful; an order quashing Wellington's decision to remand them at YTC until September 15; and an order quashing the warrant issued by Wellington to remand them to YTC.

Breach of rights

The mother of the second claimant is contending that her son's detention at YTC is a breach of his constitutional rights and freedoms guaranteed under portions of the Constitution, a declaration that the State failed to provide a licensed community residence upon the coming into force of the Children Act 2012 and the Children's Community Residences, Foster Homes and Nurseries Act 2000, to which her son could be remanded, pending the hearing and determination of the preliminary enquiry; and monetary compensation for damages and for breach of his constitutional rights.

The mother of the second claimant is contending that her son's detention at YTC is a breach of his constitutional rights and freedoms guaranteed under portions of the Constitution, a declaration that the State failed to provide a licensed community residence upon the coming into force of the Children Act 2012 and the Children's Community Residences, Foster Homes and Nurseries Act 2000, to which her son could be remanded, pending the hearing and determination of the preliminary enquiry; and monetary compensation for damages and for breach of his constitutional rights.

For this matter, Seepersad said no leave for judicial review was necessary, but a constitutional motion ought to be filed. Ramlogan agreed with the judge.

Ramlogan is seeking an order deeming the matter fit for urgent and early hearing, costs to be assessed and such further or other relief as the court may deem fit in the circumstances of the case.

Seepersad said on the issue of community residences, while the magistrate may have acted in conformity of the legislation which mandates to refuse bail, the issue is where to send the accused teenagers.

Ramlogan said under the Children Act 2012 and the Community Residences, Foster Homes and Nurseries' Act of 2000, to which the teenagers could be remanded, a community residence is defined by a child's home or rehabilitation centre.

The judge granted leave and requested that a substantive application be filed by October 2.

The hearing was fixed for October 6.