

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SAINT LUCIA

SLUHCV2016/0217

BETWEEN:

RUDOLPH DOSSERIE

Claimant

and

RENWICK & COMPANY

Defendant

Before:

The Hon. Justice Godfrey P. Smith SC

High Court Judge

Appearances:

Alvin St. Clair for the Claimant

Mark Maragh for the Defendant

2018: February 12th
February 21st

JUDGEMENT

[1] **Smith J:** This case falls outside the usual run of false imprisonment cases brought against police officers in Saint Lucia. Mr. Rudolph Dosserie seeks damages, not against the police but against his former employer, Renwick & Company Ltd (“Renwick”), for false imprisonment. Neither the police officers who detained and arrested him nor the Attorney General were made defendants in the claim.

- [2] In his statement of claim, Mr. Dosserie alleged that Renwick, “maliciously and out of spite towards (him) and without good and proper cause, caused (him) to be arrested and imprisoned...subjecting him to humiliation and disgrace”. He further pleaded that Renwick “caused (him) to be wrongfully imprisoned and deprived (him) of his liberty for a period of seven (7) hours”. He was never charged with the offence that he was suspected of committing, namely, theft (of seeds) by reason of employment. Furthermore, Renwick, which had suspended him with pay pending internal investigations, eventually reinstated him after concluding, following a formal disciplinary hearing, that the evidence against him was inconclusive. Mr. Dosserie, no doubt inflamed by a sense of outrage at the ignominy of his arrest, detention and the search of his home in view of his family and neighbors, tendered his resignation. His request to Renwick for compensation was refused.
- [3] In its defence, Renwick pleaded that it made a proper report to the police for the purpose of investigation but that it had remained within the complete discretion of the police whether or not to pursue the investigation, by what means and whether to arrest and detain Mr. Dosserie in those circumstances.

Issues

- [4] The issues which arise for determination are:
- (1) Was there an imposition of constraint on Mr. Dosserie’s freedom of movement (imprisonment) and, if so, was it unlawful (false)?
 - (2) What is the test for informant liability for false imprisonment?
 - (3) Based on the test, is Renwick liable in law for false imprisonment?
- [5] The court will depart from the usual structure of first setting out the facts and, instead, first set out the law on informant liability for false imprisonment. I think this inversion is preferable so that when the facts of this case are being examined, the test and applicable principles are kept firmly in mind with a view to determining whether the test is being satisfied.

Test for Informant Liability

[6] From the decided cases placed before the Court, the most helpful and authoritative exposition on the issue of informant liability for false imprisonment is to be found in the judgment of Sir Thomas Bingham, MR, in the English Court of Appeal decision of **Davidson v Chief Constable of North Wales and another**.¹ In that judgment, Bingham MR traced the evolution of the principle beginning with the 1827 case of **Aitken v Bedwell**.² After rehearsing the facts of that case, he stated as follows:

“Accordingly, even in that early authority one sees the germ of a principle that what distinguishes the case in which a defendant is liable from a case in which he is not is whether he has merely given information to a properly constituted authority on which that authority may act or not as it decides or whether he has himself been the instigator, promoter and active inciter of the action that follows.”

[7] He then examined the 1858 case of **Grinham v Willey**³ and, after recounting the facts of that case, concluded as follows:

“In that decision also the line seems to have been drawn at the point where the person actually effecting the arrest makes the decision to do so.”

[8] Next, he analyzed the three separate judgments in the 1920 case of **Meering v Grahame-White Aviation Co Ltd**⁴ and concluded:

“In that case, therefore, although somewhat different language is used, the essential test that is applied is the same, namely whether the defendant gave the information to a prosecuting authority so that what followed was the result of that prosecuting authority or whether the defendants themselves were responsible for the acts that followed.”

[9] Lastly, the master of the rolls, referred approvingly to the following statement of Barry J in the 1952 case of **Pike v Waldrum and Peninsula & Oriental Steam Navigation Co**⁵:

¹ [1994] 2 All ER 597

² (1827) M&M 68, 163 ER 1084.

³ (1858) 4 H&N 496, 157 ER 934.

⁴ (1920) 122 LT 44.

⁵ [1952] 1 Lloyd's Rep 431.

“The authorities cited to me, to which I need not refer in detail, establish quite clearly to my mind that a person who requests a police officer to take some other person into custody may be liable to an action for false imprisonment; not so if he merely gives information upon which the constable decides to make an arrest.”

[10] This Court was also referred to the 2016 English High Court decision of Warby J in **Barkhuysen v Hamilton**⁶ in which that judge stated, in relation to false imprisonment, that:

“The tort involves an “unlawful imposition of constraint on another’s freedom of movement...”: *Collins v Wilcock* [1984] WLR 1172, 1179. Detention by arrest involves a constraint on freedom of movement. It is therefore common ground that there was an “imprisonment” of the claimant by the police. The issues raised by the defendant are (1) whether she is responsible in law for causing or procuring the arrest, or did no more than provide information to the police for them to act on as they saw fit; and (2) whether the arrest was “false”, that is to say without lawful excuse or lawful authority. These too are issues to which I shall return after examining the facts.”

[11] Warby J, in examining the test for informant liability, also reviewed **Pike and Waldrum** and **Davidson**(supra) and stated that the test laid down in **Davidson** was the test applied by Sharp J in **Ahmed v Shafique**.⁷ After reviewing the test laid down in those decisions, Warby J then offered this interpretation of what he understood those decisions to be saying:

“The passages I have cited above might be taken to suggest that there must be some act or some words amounting to a demand, a request or an urging of the police to take action. As I understand his submission, Mr. Samson argues that this is the law. But that is not how I read these decisions. The law is put in this way in *Clerk v Lindsell* on Torts 21st ed. At 15-43 “It is not necessary that he should in terms have made a request or demand; it is enough if he makes a charge on which it becomes the duty of the constable to act.” That addresses the issue as one of substance not just form, and in my judgment it is the better view. And on that view the defendant is clearly responsible; she placed the police in a position where it was their duty to act as they did.”

⁶ [2016] EWHC 2858

⁷ [2009] EWHC 618 (QB).

[12] The question that immediately arises from Warby J's pronouncement above is: what kind of complaint or charge creates a duty on a constable to act? The answer is provided by the facts of that case. The defendant had made a serious sexual allegation against the claimant. She and the claimant were the only witnesses. Warby J concluded that the police had a duty to act in that context:

“The report must be viewed as urging the police to arrest the claimant; it amounted to an emotionally charged and, on its face, compelling plea for action to be taken. It was in substance a direct act of encouragement and procurement of the arrest and of what followed. The defendant is responsible for the arrest, and had no lawful basis for doing so. She puts forward no other answer to this claim.”

[13] This is the question I must keep in mind in examining the facts of this case: did Renwick go beyond laying information before the police for them to take such action as they thought fit and in fact directed, procured, directly requested or directly encouraged them to act by way of arresting Mr. Dosserie?

[14] In addition, (on the **Barkhuysen** approach) I will also ask myself the question: did the manner of the laying of the complaint by Renwick create a duty on the police to act by arresting and detaining Mr. Dosserie? If so, did Renwick have a lawful or reasonable basis for doing so?

[15] I now turn to examine closely the facts of the case.

The Chain of Events

At Renwick & Company

[16] The following is not in dispute. Mr. Dosserie was employed at Renwick. On the 26th August 2015 he was summoned to the office of Ms. Cheryl Renwick, the managing director of Renwick. Present in the office were Ms. Renwick, allegedly the moving spirit behind the detention and arrest; two employees of Renwick, namely, Mr. Kelvin Jean and Ms. Orister Raymond, and a police officer, Corporal Dantez. Corporal Dantez informed him that Ms. Renwick considered him a

suspect for seeds missing from the storeroom and showed him a video clip from CCTV footage. Mr. Dosserie was on video clip with a package in his hands. Corporal Dantez asked him what he had in his hand and he replied Visine AC. What the package was could not clearly be made out from the CCTV footage. This much is not in dispute.

[17] According to the witness statement of Mr. Dosserie (which stood as his evidence in chief), Ms. Raymond and Mr. Jean each put to him that it was seeds that he had in his hands but he denied it and replied that it was Visine AC. Corporal Dantez, he stated, asked him if he had ever stolen anything from Renwick. He replied that when things were placed in the rubbish he would pick them up. Neither Corporal Dantez, Mr. Jean nor Ms. Raymond was called as witnesses.

[18] The high watermark of Mr. Dosserie's testimony – and indeed of his case – is that Ms. Renwick also put it to him that it was seeds he had in his hand and when he denied it and replied that it was Visine AC, she looked at Corporal Dantez and angrily told him: "take him down, he is all yours." Ms. Renwick denies ever saying those words to Corporal Dantez. On her narrative, Corporal Dantez asked Mr. Dosserie to accompany him to the police station for further questioning and Mr. Dosserie did so.

[19] According to Mr. Dosserie, Corporal Dantez told him "let us go", took him downstairs, directed him to the police vehicle along with another employee, James Faucher, and took them to the Major Crimes Unit in Castries.

At the Major Crimes Unit

[20] At the police station, Mr. Dosserie says that he was made to sit; Corporal Dantez prepared some paperwork; a justice of the peace eventually came; and he was allowed to leave at 5:30 p.m. A rights in custody form was in evidence before the court dated 26th August 2015 at 5:30 p.m. to Mr. Dosserie stating that he was arrested for the offence/on reasonable grounds of suspecting that he committed

the offence of stealing by reason of employment. This, presumably, was given to him at 5:30 p.m. on 26th August 2015. He was then told to report to Renwick the following day where he would receive a letter after which he was required to return to the police station.

- [21] The next day, according to his testimony, he collected a letter from Ms. Renwick around 6:30 a.m. and reported to Corporal Dantez around 7:30 p.m.; a few officers came and showed him a search warrant; they went with him to his home in Odsan; his neighbors saw him arrive with the police and his house was searched in front of his family causing him, he states, shame, humiliation and embarrassment. They returned to the police station. James Faucher was there and the police similarly left with him. On their return, at around 3 p.m., the police told them that they could both go home. They left the police station at around 4 p.m. that day.

The Disciplinary Hearing

- [22] In a letter dated 26th August 2015 from Renwick, Mr. Dosserie was informed that: as a result of breach in security at its main warehouse, “the company has launched an investigation and has requested the assistance of the royal police force”; that he was suspended with pay until 17th September 2015; that he would be required to submit a written report; that the suspension was not disciplinary action and that there would be a formal disciplinary hearing after the investigation at which he could attend with representation.
- [23] In a further letter dated 16th September 2015, Mr. Dosserie was informed that his suspension with pay was extended until further notice as investigations continued. That letter re-iterated much of what was contained in the letter of 26th August 2015.
- [24] Then in a letter dated 30th September 2015 from Renwick, Mr. Dosserie was informed of the formal disciplinary hearing set for 6th October 2015 at Renwick and

of his rights to be heard and be represented at that hearing. Attached to the letter were copies of the reports and findings of the investigation.

[25] Finally, in a letter dated the 7th October 2016 from Renwick to Mr. Dosserie, Renwick set out what transpired at the formal disciplinary hearing and concluded that: “After reviewing all pieces of evidence the company has found the evidence inconclusive and has decided to continue with you in their employ effective Monday 12th October 2015.” Mr. Dosserie felt he could no longer work for Renwick and tendered his resignation.

Unlawful Imposition of Constraint?

[26] It seems clear that, from the moment he was informed of his arrest and given the rights in custody form, there was an imposition of constraint on Mr. Dosserie. Even though he was allowed to go home that evening, he was obliged to return to the police station the following day on the instruction of Corporal Dantez in order to proceed with the investigation. He had no choice but to do so.

[27] What is less clear is whether that imposition of constraint began from the moment Mr. Dosserie left Renwick with the police on the 26th August 2015 around 12 mid-day. Mr. St. Clair, counsel for Mr. Dosserie, contended that it was plain from the surrounding circumstances that Mr. Dosserie had no choice: the various accusations leveled at him at the meeting; the presence of the police officer; the direction from Ms. Renwick to Corporal Dantez to “take him down”; the police leading him (and Mr. Faucher) to the police vehicles and taking them to the police station.

[28] Mr. St. Clair very helpfully provided the Court, after the trial, with the 1929 Canadian case of **Conn v Spenser**⁸(with a copy to counsel for Renwick) which makes the point that physical force is not necessary to detain someone. The Court pointed out that:

⁸ [1930] 1 D.L.R

“There is a great difference between the case of a person who volunteers to go in the first instance, and that of a person who, having a charge made against him, goes voluntarily to meet it. The question therefore is, whether you think the going to the station-house proceeded originally from the plaintiff’s own willingness, or from the defendant’s making a charge against her; for, if it proceeded from the defendant’s making a charge, the plaintiff will not be deprived of her right of action by her having willingly gone to meet the charge...

In order to determine this point you have to consider the surrounding circumstances and my opinion is the plaintiff being so accused of theft, by a person in authority, felt that he was compelled to give himself, as it were, into the custody or control of Mrs. Kinser and her assistant. He was required to go in a certain direction as distinguished from going in any other direction.”

[29] I am attracted to the reasoning of Macdonald J in **Conn v Spenser**. Considering all the evidence as to what transpired at the office of Renwick, the Court concludes that when Mr. Dosserie left with the police he was in fact being detained. He was required to go in the direction of the police station and not back to his job site.

[30] That issue being resolved, there is still the fundamental question of whether the constraint was lawful or unlawful?

[31] As previously stated, neither the Attorney General nor the police officers who detained and arrested Mr. Dosserie was made a defendant. As pointed out by Mr. Maragh, counsel for Renwick, Mr. Dosserie’s pleadings contain no allegation whatsoever against the police. Indeed, the Court’s review of the pleadings reveals this to be the case. Mr. Dosserie pleaded in his statement of claim that Renwick “wrongly directed, caused and or procured certain police officers to arrest the Claimant ...wrongly kept and detained him there for approximately six (6) hours” and that the “police officers on the strength of the accusations made by the Defendant obtained a search warrant...” This is probably why neither counsel addressed the Court in any substantive way on whether the arrest and detention were lawful. The Court was not referred to any statute or authority on reasonable cause for arresting a person in Saint Lucia.

[32] Section 570 (3) of the **Criminal Code** of Saint Lucia provides that:

“Where a police officer, with reasonable cause, suspects that an offence has been committed, he or she may arrest without warrant anyone whom he/she, with reasonable cause, suspects committed the offence.”

The question that therefore arises is: did the police have reasonable cause to arrest Mr. Dosserie?

[33] In his witness statement, Mr. Dosserie stated that, Mr. Linus Charles, director of operations of Renwick, had submitted a report and that “I believe that report from Mr. Charles was what convinced Ms. Renwick, Mr. Jean and other management staff of the Defendant to conclude that I had stolen seeds and for them to call the police.”

[34] The text of that report is produced in full below:

“Tuesday, 25 August 2015

To: Director of Operations

Through: Financial Controller

Subject: CCTV footage

After an audit was conducted in the cold room where the company stores various varieties of hybrid seeds, it was observed that a number of packets of seeds were missing and as a result a request was made by management for the review of the CCTV footage in that location to assist in their investigation of the missing seeds. I used that date from the 23 of July when the seeds were placed in the locked location to the 16 of July the date when it was reported missing as my points of investigation.

Upon my review of the CCTV footage the following was recognized as sufficient pieces of evidence that could have been used the [sic] question two individuals who appeared to have reacted and carried out of the room items which may have been or contained the missing packets of seeds.

1. James Faucher aka Slow: Date: 06-07-2015 entered the cold room at 13:35:47 and left at 13:41:35. Upon his departure of the rooms he left

which boxes which may have contained items which he was unauthorized to pick.

2. James Faucher: Date: 07-07-2015 entered the cold room at 13:24 and left at 13:29:49. Upon his departure the same was observed as he left.
3. Rudolph Dosserie along with a driver: Date 13-07-2015 entered the cold room at 11:54:35 and left at 12:23:34. During his departure CCTV footage was able to reveal him leaving with a box under his arm with items that was identified to have been the investigated missing seed packets which his [sic] was unauthorized to pick(Underlining supplied)

The information revealed above is information coming from CCTV system and is without bias or modification.

Yours truly
Linus Charles
IT Supervisor”

The underlined portions of the report create some ambiguity. On the one hand, the report states that there is sufficient information to question the individuals since they had in possession items which may have been the missing seeds. On the other hand, at paragraph 3 it states that the package under Mr. Dosserie’s arm was identified to have been the missing seed packets.

- [35] The police responded to a request from Renwick to investigate the matter. Mr. Dosserie was summoned to the office. They viewed the CCTV footage in his presence. They interrogated him. In evidence before the Court was a report from Mr. Fanis establishing that seeds were missing. Unlike the 2009 case of **Nyondo v Zesco Limited and Attorney General**⁹from High Court of Zambia (which we shall return to later in the judgment) in which the claimant had been arrested for theft of an item from his employer which was later discovered to not have been missing at all, in this case the seeds were missing. Under these circumstances, Mr. Dosserie was detained and escorted to the station. There, he was arrested and later released. The following day he was once again detained and his house

⁹ 2009/HK/642

searched in his presence on the strength of a search warrant. He was later released without charge.

[36] I remind myself that the test of whether there is reasonable cause for the arrest of a person is an objective one. The question is whether a reasonable man, assumed to know the law and in possession of the information which was in fact possessed by the police officers, would believe there was a reasonable cause for the arrest and detention. It cannot be simply if the police officers think they have reasonable cause to arrest. On the evidence reviewed above – the Linus Charles report, the Fanis report, the CCTV footage – I am of the view that the police had reasonable cause to suspect that Mr. Dosserie might have been involved in the theft of the missing seeds. I do not think that it was unreasonable of them, given those circumstances, to have detained Mr. Dosserie for further questioning. I therefore find that their detention of him was lawful. In any event, if I am wrong on this, the Claimant did not claim against the police or make any allegations against them in his pleadings.

If Arrest lawful, can Renwick be Liable?

[37] That, however, does not dispose of the matter. Mr. Dosserie's case is that the police officers were catalyzed by Renwick to arrest him on suspicion of a crime for which he was never charged and for which he was exonerated at the disciplinary hearing and reinstated. But having already found that the police officers lawfully detained Mr. Dosserie, is it open to the court to find Renwick liable in damages for an act pronounced to be lawful? The learned trial judge in **Davidson** had commented that: "a somewhat anomalous situation arises if the appellant's case is correct, since the defendant would be liable for an act of persons who were not themselves liable in respect of what they had done."

[38] I think that the answer to this question has been foreshadowed to some extent by the reference earlier in this judgment to the case of **Barkhuysen v Hamilton**. The court found that the defendant who made an emotionally charged sexual

allegation against a claimant in circumstances where they were the only witnesses created a duty on the police to act, that is, to arrest the alleged offender. If it is later discovered that a complaint of that kind was false and motivated by spite or ill-will, the informant could be held liable in damages for false imprisonment even though it is found that the police had acted lawfully based on a reasonable cause to suspect that an offence had been committed. I therefore conclude that even though I have found that the police acted within the law in arresting Mr. Dosserie, Renwick may still be found liable if it is established that it procured that arrest and detention.

Was the Arrest Procured?

[39] We therefore arrive, finally, at ground zero of this case and to the question whether Renwick went beyond laying information before the police for them to take such action as they thought fit and in fact directed, procured, directly requested or direct encouraged the police to arrest and detain Mr. Dosserie. Was what followed after they left the Renwick office the decision of the police or did Renwick place them in a position where they were under a duty to act?

[40] Mr. Dosserie's contention is that when all the evidence is taken in the round – the fact that he was summoned to the office; a video clip of in the storage room was shown; accusations were leveled at him by three representatives of Renwick in the presence of Corporal Dantez; Corporal Dantez questioned him; Ms. Renwick instructed Corporal Dantez to “take him down, he is all yours” – it is clear that his arrest was directed, procured or at least directly encouraged or procured. If in fact Ms. Renwick did utter those words, then, in my view, the case would be made out that she directed his arrest or, at a minimum, directly encouraged it. But Ms. Renwick flatly denies making such a statement. I therefore now have to decide whether I believe Mr. Dosserie or Ms. Renwick. In doing so I am required to assess their credibility as oral witnesses.

[41] Deciding which narrative is the truthful one presents me with a serious challenge since I found them both to be strong and credible witnesses. How much emphasis should I place on perceived demeanor? And, what is meant by demeanor anyhow? Lord Bingham offered this answer: “his conduct, manner, bearing, behavior, delivery, inflexion; in short, anything which characterizes his mode of giving evidence but does not appear in a transcript of what he actually said.”¹⁰

[42] This calls to mind the rather expansive – but useful – statement on assessing witness credibility made by Lord Pearce in the House of Lords in **Onassis v Vergottis**¹¹:

“Credibility’ involves wider problems than mere ‘demeanor’ which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over-much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases that, with every day that passes, the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process.”

[43] Mr. Justice MacKenna, writing extra-judicially, commented as follows:

¹⁰Bingham, *The Business of Judging*, (Oxford) p. 8.

¹¹ [1968] 2 Lloyd's Rep. 403 at p.431

“I doubt my own ability, and sometimes that of other judges, to discern from a witness’s demeanor, or the tone of his voice, whether he is telling the truth. He speaks hesitantly. Is it the mark of a cautious man, whose statements are for that reason to be respected, or is he taking time to fabricate? Is the emphatic witness putting on an act to deceive me or is he speaking from the fullness of his heart, knowing that he is right? Is he likely to be more truthful if he looks me straight in the face than if he casts his eyes on the ground, perhaps from shyness or natural timidity? For my part, I rely on these considerations as little as I can help.”¹²

[44] Both Mr. Dosserie and Ms. Renwick, in turn, were cross-examined. They presented their evidence confidently, directly, without hedging, without any apparent discomfort or evasiveness and appeared to answer all questions in a fulsome and cooperative manner. Neither seemed to be attempting to fabricate or mislead the court. In terms of their demeanor, they seemed equally credible as witnesses. This being equal, how am I to proceed now? I feel that at this juncture I have no choice but to consider the tableau of the case, what Lord Devlin once characterized as the “text with illustrations” of the case.

[45] In doing so, I am impressed by the fact that Renwick, at all times, appeared to have acted fairly and in a measured and reasonable manner towards Mr. Dosserie. He was called to the meeting. He was shown the video clip and asked what he had in his hand. His eyeglasses were fetched for him. True, Renwick employees leveled accusations at him that what he had in his hand was a package of seeds. After he was escorted away by the police, he was given a letter informing him that he was suspended with pay, but that the suspension was not a disciplinary action. He was given a further letter extending the suspension with pay pending continuing investigations. He was given notice of the formal disciplinary hearing and time to prepare. At the formal disciplinary hearing the evidence was reviewed, he was given an opportunity to be heard and he was informed the following day that he was reinstated because the evidence was inconclusive.

¹² ‘Discretion’, *The Irish Jurist*, vol IX (new series) 1 at p. 10.

- [46] In his statement of claim, Mr. Dosserie had alleged that Renwick acted “maliciously and out of spite” towards him. This appears to the Court to be incongruous with the actions taken by Renwick just outlined above. Their actions do not betray malice, spite or an out-to-get-him attitude. Similarly, that Ms. Renwick would have peremptorily commanded the police to “take him down, he is all yours” seems to be at odds with how they later treated him.
- [47] Ms. Renwick under cross-examination said they did not know that he had been arrested or that his house had been searched. Ms. Renwick also volunteered under cross-examination that, while they were questioning Mr. Dosserie in one room, Mr. James Faucher, another employee, was being questioned by another police officer in another room and had apparently confessed. Ms. Renwick stated that they were unaware that Mr. Faucher had confessed. She testified that once Mr. Dosserie and Mr. Faucher had been escorted to the police station, they were no longer involved and did not know what happened with the police thereafter. They went on to pursue their own internal, disciplinary proceedings.
- [48] I am, regrettably, unable to discern where the truth on this singular point lies. But I hasten to take solace in the fact that no less a judicial mind than Lord Denning once said: “The due administration of justice does not always depend on eliciting the truth. It often depends on the burden of proof.”¹³ Since I cannot establish the “truth” of what did or did not happen, I am left to decide whether or not the party upon whom the burden of proof lies has discharged it to the required degree of probability. I am not satisfied that, on a balance of probabilities, Mr. Dosserie has proved that in fact Ms. Renwick uttered those words.
- [49] Are the remaining circumstances – the fact that he was summoned to the office; a video clip of him in the storage room was shown; accusations were leveled at him by three representatives of Renwick in the presence of Corporal Dantez; Corporal

¹³*Air Canada v Secretary of State for Trade* [1983] 2 AC 394 at p. 411.

Dantez questioned him – enough to amount to directing, procuring, directly requesting or directly encouraging the police to arrest Mr. Dosserie?

[50] Did that scenario place Corporal Dantez in a position where he was under a duty to act or had no choice but to act? I am of the view that those circumstances at the Renwick office certainly demonstrate that there was an investigation as to whether Mr. Dosserie stole the seeds. It might even suggest that there was an attempt to browbeat him into confessing if indeed he had filched the seeds. Was Corporal Dantez being directed or, his assistance having been requested, was he in charge of events at the Renwick office? According to Mr. Dosserie's evidence, when he entered the room Corporal Dantez announced that Mr. Dosserie had been called in on suspicion of having taken the seeds. Corporal Dantez then proceeded to show him the video clip and asked him questions. It therefore appears to the Court that Corporal Dantez was in charge of the investigation, even if other employees of Renwick asked questions or leveled accusations. Mr. Dosserie maintained his innocence and no conclusion appears to have been reached at the Renwick office.

[51] I do not see how such a scenario could have created a duty on the police to act or left them no choice but to act. Corporal Dantez saw the CCTV footage himself. It was not as if a sole eyewitness at Renwick reported to him that Mr. Dosserie was identified as the person who took the seeds, in which case a duty might be said to have been created on the police to act. In this case, Corporal Dantez had the opportunity to assess the evidence himself. The fact that Mr. Dosserie was asked multiple times whether the package under his arm was seeds suggests that there was uncertainty. The fact that the police took him to the station for further questioning and got a search warrant suggests that, at the time they left the Renwick office, they had not determined whether Mr. Dosserie had taken the seeds. In another room at the Renwick office, another police officer was simultaneously questioning Mr. Faucher. On these particular facts, I am not satisfied that Mr. Dosserie has proven, on a balance of probabilities, that Renwick

directed, procured, directly requested or directly encouraged the police to detain him. I think that what occurred at the Renwick office was a laying out of the available information to the police in the presence of Mr. Dosserie coupled with an investigation, at the conclusion of which Corporal Dantez took the decision to detain Mr. Dosserie and take him to the station. Mr. Faucher was also detained and taken to the police station. The officers took the decision to detain both men and escorted them to the station.

Reasonable Ground to Involve Police?

- [52] Mr. St. Clair relied on the case of **Nyondo** (supra) in which a private company and the Attorney General (on behalf of police officers) were both successfully sued for false imprisonment of the claimant arising from allegations of theft of a transformer from the company, which in fact turned out to not have been missing at all. The question in that case was whether, in all the circumstances, the objective information available to the constable supported reasonable grounds for suspicion that an offence had been committed. The court found that there were no such reasonable grounds since the transformer suspected to have been stolen had in fact been removed from stores, following laid down procedure, and installed by the company at a client's farm.
- [53] Mr. St. Clair therefore submits that there was no reasonable ground for Renwick to call the police when it did and was negligent in doing so. He submitted that at the disciplinary hearing it was established that Renwick had in fact received an order to supply a package of Visine AC and that this was evidence that was available at the time that the police were called in. Had Renwick been diligent in going through its records and reviewing that order, contends Mr. St. Clair, Renwick would not have suspected Mr. Dosserie and called in the police. When this was put to Ms. Renwick in cross-examination she denied that suggestion.
- [54] In any event, there is a sharp distinction to be drawn between Nyondo and this case. In Nyondo, there was no transformer actually missing. In this case, it is not

in dispute that seeds had been stolen from the storeroom. The fact that there was an order received to supply Visine AC and Mr. Dosserie stoutly maintained that what he had in his hand as seen on the CCTV footage was Visine AC, does not mean that he was automatically excluded as a suspect based on the fact that only he and Mr. Faucher entered the storage room at the time the seeds were assessed as having gone missing. I therefore do not think that it was unreasonable for Renwick to have called in the police at the time when it did.

[55] Mr. Dosserie had claimed damages for trespass arising from the search of his premises, but abandoned this in his closing submissions.

Disposition

[56] Based on the conclusions reached above, I therefore make the following orders:

- (1) The Claimant's claim is dismissed.
- (2) There shall be no order as to costs.

Godfrey P. Smith SC
High Court Judge

By the Court

Registrar