

THE SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 1136
MA 277/2022
(Arising in CS 134/2022)

In the matter between:

SURESH GUPTA

(Represented by Mr. Audrick Govinden)

Applicant

and

AUX CAYES FINTECT CO. LTD

(Represented by the Director of the Company)

(Trading as OKX)

A Seychelles International Business Company
Represented by its Director at the company's
Registered agent Appleby Global Services
(Seychelles) Limited, at suite 202, 2nd floor
Eden Plaza, Eden Island, PO Box 1352,
Mahé, Seychelles.

Respondent

Neutral Citation: *Suresh Gupta v Aux Cayes Fintect CO. LTD* (MA277/2022) [2022]
SCSC 1136 22nd December 2022

Before: D. Esparon

Summary: Application for Interim Writ of Injunction

Heard: 9th December 2022

Delivered: 22nd December 2022

ORDER

Application seeking for an order of interim writ of injunction pursuant to section 304 of the Seychelles Code of Civil Procedure read with section 5 and 6 of the Courts Act – Order granted – Interim Writ of injunction issued against the Respondent.

RULING

ESPARON J

Introduction

[1] This is an Ex-Parte interim injunction Application seeking for an Order from this Court to restrain the Respondent/defendant from disposing or moving and transferring certain Crypto Assets.

The Pleadings

[2] The Application is Supported by the Affidavit of Prith Pem who avers in his Affidavit that he is duly authorized to swear this Affidavit on behalf of the Applicant.

[3] The deponent avers in his Affidavit that ‘the Applicant has been lured by an Asian lady who has used all types of tricks and connivances to get him to invest \$2,666,652.91 into crypto currency which was fraudulently diverted to a crypto wallet exchange account belonging to OKX based in Seychelles Islands. When the Applicant was trying to retrieve the money, he was denied and realized that he was scammed and as such the matter has been reported to the US police.’

[4] The deponent further avers in his Affidavit that ‘the Applicant has further instructed a Canadian Blockchain expert who confirms that the squandered money is being held by OKX crypto currency exchange and wallets identified as follows;

- a) faeb61e5beab6ead6d70fdedf66130830127b99deef8604f41f9416bd9fd6a0c:
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- b) 632406faa085172f35670276f0004012fed100c7ac6ebebb0b501345fe6425ae :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- c) 6d3bfcbce6891a4fa19749b14da2cc63c492e79211cea6f8e8b94848f88e1e88 :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- d) 11924dfbafacb70dec2ac6c30e4576693071d1f9ac5845322701277616e93747 :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- e) c2ccce9203d05ebe569b87785742dcbfe3c66a7070dfaac837b089a7e9122378 :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- f) 2028aceeb821a264f0047532b69a2b77bf52d7f3b539a2340655e1bfd44b23c7 :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF

- g) d672d910ca89556b5e83efda0f9affd2c8595c9c028d2374b50e6e35788c6860 :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- h) 1d8dbc431d9e20d5c3d2f7ad716c30d7e667fe30ef05a988c0692551ce89447c :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- i) edd356b65fa3cc70b4522bd31df9536c8f5244980d9c544362535153a1173b58
: 3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- j) 762db07e2cc138ac26b75537a1e86ffa20977645848fe8a16a26f45ae51e111b :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
- k) 50ea55dcc428f8be871199822650eadbc2fc6c133525fb5cff06f7a6f9cfdd43 :
32DzMg6JoZ9EHseKtcUDER6THqqbKLQhCu
- l) b55a5e05432c0c5bbe84c5acde405f1cae2574f79357fb8404f082fa709088a :
3GjQJ9PMnkDB3v8t4pDuZ5oLpp7QW3FVWF
 - a. **Cryptocurrency Exchange: Crypto.com**
- m) 0xc05769ca520aae4a2f50acafef362be0003c44f59218ab0aa54bff01dc7d7c86 :
0x6262998ced04146fa42253a5c0af90ca02dfd2a3
- n) 0x4ae4f0b7e4642ea2214a8d5611f2c854aa14f6075584282a186d4b69160f196
6 : 0x6262998ced04146fa42253a5c0af90ca02dfd2a3'

[5] The deponent further avers in his Affidavit that 'the Applicant was contacted by an Asian lady on WhatsApp, apparently it was by mistake and became friendly. During the time she was befriending the Applicant she was fishing for information from him and convinced him that she was a Crypto expert and began to get his confidence up in trusting her by sending pictures of her and her 11 year old daughter. The Applicant started trusting her and she advised him to onramp some money through Coinbase as she would mentor him in the Crypto markets. She forwarded him a link to download and false APP named KINE Protocol (which is the same name as a legitimate business). The Applicant sent money to the wallet address that she had provided and the balance appeared in the assets tab of the wallet. She then directed the Applicant on doing a few trades and the account was making good apparent profit. Feeling more confidence in her guidance, the Applicant on-ramped more money onto the platform through Coinbase from his bank account. At a certain point after making a huge profit he decided to redeem some of his earnings. She guided him to use the APP to do this, but he received an email from the

platform apparently (kineprotocol.crypto@gmail.com) requesting the Applicant to pay Capital Gains Tax of 20% which translated to \$635,925.06 and given that he had originally put in the sum of \$1,438,000, it appeared that there was profit on top of that. After paying the Tax money the Applicant tried to redeem again and he was messaged that his online in-app credit score had reduced to 90 points from 100 and therefore he had to pay \$500,000 to bring my credit score up. He asked if by making this final payment would he be able to do a full redemption without any restrictions, they replied in the affirmative. So, he made that payment hoping that he would be able to redeem his money without any further problem. After the money has left his account, the Applicant tried again to redeem his funds and they sent him an email saying that because it was a large sum of money he would have to pay a further 10% or \$508,989.59 within 7 working days, they provided him with 2 wallet addresses. It was at that point the alarm bell was ringing and the Applicant contacted one of his friends who put him in touch with a Crypto forensic expert. After some due diligence the expert provided his findings and showed the Applicant how he was scammed and that all of his transfers had been simultaneously sent to over 100 sub wallets in OKX in the Seychelles islands.'

- [6] The deponent has averred in his Affidavit that 'although there is every reason to believe that the Applicant's claim will succeed, the Applicant is concerned that there is a real risk that any judgment will go unsatisfied due to the dissipation of the Respondent's assets in the meantime and that there is no sufficient legal remedy available to restrict any further dealings pending the determination of the main suit.'
- [7] The deponent further avers in his Affidavit that 'as a result, the balance of convenience lies in favour of the Applicant.'
- [8] The Deponent avers in his Affidavit that 'such a risk is demonstrated by the fact that the forensic expert report demonstrates the ease at which the Respondent could if they wish, syphoned the money sitting in the wallets at a click of a button and that the assets are in the form of crypto which makes it even easier to shift hands within the blockchain.'
- [9] The deponent avers in paragraph 21 of his Affidavit that 'I believe that if the interim injunction is not granted, the Applicant will have no protection against further dealings with the Respondent's property which may cause irreparable harm towards the Applicant's right to property and of which cannot be atoned by damages.'

The Law

- [10] Section 304 of the Seychelles Code of Civil procedure provides that ‘ it shall be lawful for the plaintiff, after the commencement of his action and before or after judgment, to apply to the Court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such writ may be granted or denied by the said Court upon such terms as to duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.
- [11] Section 5 of the Courts Act provides that ‘ the supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and , in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the high Court of Justice in England.’
- [12] Section 6 of the Courts Act provides that ‘the Supreme Court shall continue to be a court of equity and hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the laws of Seychelles.
- [13] The effect of these provisions of the law namely section 5 and section 6 of the Courts Act is that the Supreme Court being invested with all powers which is vested or capable of being exercise by the High Court of justices in England and by virtue of that is a Court

of equity and as such has the power to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided for by the laws of Seychelles including writ of injunctions. Section 304 of the Seychelles Code of Civil Procedure reinforces the powers of the Court in cases where there is the repetition or continuance of a wrongful act or a breach of contract or injury of the like kind.

[14] The case of *Ex Parte Rodionov* (CS 121 of 2021) , E. Carolus Judge Stated that ‘in determining whether to grant an injunction or not, this court is guided by the Case of *American Cyanamid Co V Ethicon* AC 396, 1975 that requires ;

- i) A serious question to be determined in the main suit,
- ii) Inadequacy of damages to compensate the Applicant
- iii) The balance of convenience.’

[15] The Court in *ex parte Rodionov* also relied on the case of *Nathalie Lefevre V Beau Vallon properties and Ors* (MA/154/2018), where Twomey then CJ stated the following regarding the factors to be considered in deciding whether or not to grant an injunction;

‘Injunctions are equitable remedies in nature and in such applications the Court is guided by three considerations;

- i) Where there is a serious issue to be tried,
- ii) Whether damages would be inadequate to redress the harm caused by the grant of injunction,
- iii) And on a balance of convenience it would be best to grant rather than deny the injunction.’ (see *techno International VS Georges* unreported CS 147 of 2002)

[16] Further in the case of *Danjee V/s Electoral Commission* (2010 SLR 141) the Court interpreted the balance of convenience test to include the consideration of the following factors ;

- i) Whether more harm would be done by granting or refusing the injunction,

- ii) Where the risk of injustice would be greater if the injunction was granted, than the risk of injustice if it was refused
- iii) Where the breach of the parties rights would outweigh the rights of others in society.

Determination

[17] This Court notes that there is a Plaintiff filed before the Supreme Court in C.S no 134/2022 alleging that the use of the defendant's Platform has facilitated the fraudsters/scammers unlawful transfer of the Assets into the wallets and that as a result the Plaintiff has suffered loss and damages of the assets found in the wallets and which the defendant is liable to return to the Plaintiff.

[18] This Court finds that Ex- facie the Affidavit and in the light of the authorities above, this Court finds that there is a serious issue to be tried and the Applicant appears to have a bona fide claim against the Respondent in the main action or Plaintiff. I am also further satisfied that unless the Court grants an interim injunction sought by the Applicant in this matter, the Applicant will suffer substantial and irreparable hardship and inconvenience in the event that judgment is given in its favour since the Respondent has control of and has the power to dispose of the crypto currency and hence there is a real risk that any judgment which the Applicant will obtain at the trial will either go unsatisfied or to be more difficult to enforce than usual because of the unjustified dealings by the Respondent with their assets.

[19] As a result of the above, this Court shall make the following orders;

- i) I hereby issue an interim writ of injunction against the Respondent Aux Cayes Fintect CO. LTD (trading as OKX) until further order of this Court namely;
 - a) Restraining the Respondent Aux Cayes Fintect CO. LTD from disposing or moving and transferring the crypto assets as mentioned in paragraph 4 of this Ruling.
- ii) I order the Registrar of the Supreme Court to serve a copy of this Order and the Application in MA 277/of 2022 on the Respondent namely Aux Cayes Fintect

CO. Ltd , a Seychelles International Business Company hereby represented by its Director at the company's registered agent Appleby Global Services (Seychelles) Limited at suite 202, 2nd floor, Eden Plaza, Eden Island, PO Box 1352, Mahé, Seychelles.

Signed, dated and delivered at Ile du Port on the 22nd December 2022

Esparon J