

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
MA 38/2023
(Arising in XP 02/2023)

In the matter of:

GOVERNMENT OF SEYCHELLES
(*rep. by Ketlyn Marie*)

Applicant

and

AUX CAYES FINTECH CO. LTD (OKX)

Respondent

Neutral Citation: *GOS v Aux Cayes FinTech* (MA 38/2023) [2023] SCSC (23 June 2023).
Before: Burhan J
Summary: Application under Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended.
Heard: 31 March 2023
Delivered: 23 June 2023

ORDER

I proceed to make the following orders:

- i. An Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent Aux Cayes FinTech Co. Ltd (OKX) Exchange from disposing of or otherwise dealing with whole or any part of the property, or diminishing the value of the property as set out in the Table appended to this Notice of Motion and paragraph [2] herein.
- ii. On making the order under (i) above, I appoint Sergeant Hamzah Majah of the FCIU to be the Receiver over all or part of the said property to manage keep possession or dispose of, or otherwise deal with any other property in respect of

which he is appointed in accordance with the courts directions, pursuant to Section 8 of the proceeds of Crime (Civil Confiscation) Act 2008 as amended;

- iii. A copy of this Order to be served on the Respondent OKX Exchange.

ORDER

BURHAN J

[1] This is an application under Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended. The Applicant the Government of Seychelles seeks the following reliefs.

- (1) For an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended prohibiting the Respondent Aux Cayes Fin Tech Co. Ltd (OKX) or any other person specified in the order from disposing of or otherwise dealing with whole or any part of the property set out in the Table to this Notice of Motion.*
- (2) An Order pursuant to Section 8 of POCA appointing Sergeant Hamzah Majah of the Financial Crime Investigation Unit (FCIU) to be the Receiver of all or part of the property to manage, to keep possession or dispose of, or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions.*
- (3) An order providing for Notice of any such order to be given to the Respondents or any other person directed by the court;and*
- (4) Such further or other order as the Court shall deem just and proper.*

[2] I have considered the details contained in the affidavit dated 14th of February 2023 of Sergeant Majah currently attached to the Financial Crime Investigation Unit (FCIU) Seychelles. It is clear on perusal of the said affidavit and annexures attached therein that Sergeant Hamzah Majah has conducted investigations in respect of the specified property as set out in the Table to the Notice of Motion given below.

OKX Exchange

Wallet address: [REDACTED]		
Items	Description	Estimated
1	BITCOIN (BTC)	4
	USD	USD 95,188.68
TOTAL		USD

TOTAL CRYPTOCURRENCY VALUE IN USD

TOTAL	ESTIMATED USD VALUE OF CRYPTOCURRENCY ON 10 th FEBRUARY 2023	USD 95,188.68
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[3] The investigation findings of Sergeant Majah are further based on the discussions and communications which he has had with Mr Michael Howard the Assistant Legal Attache for the Federal Bureau of Investigation (FBI) based in Pretoria, South Africa and details of the investigation conducted by Detective Thomas J Schreiber an investigator in the Detective Bureau of the Radnor Township Police Department who have carried out the initial investigation in this matter and thereafter passed it on to the FCIU Seychelles.

[4] The details of the investigation conducted by Detective Schreiber has been set down in an affidavit attached marked HM3. According to his investigation on the 14th of September

2022 Yufan Dong a resident of Radnor, Pennsylvania became the target of an impersonation scam which is a type of scam that involves criminals pretending to be a trusted organization such as a bank, the police or a government department. By such means, the criminals proceed to deceive and manipulate an individual, into transferring money or divulging personal and financial details. The unknown offender in this case had made a call associated with Philadelphia Police HQ to Dong and informed her that a criminal complaint was filed against her due to her identity being stolen and that her Social Security Number was compromised. Thereafter, an individual named as “Josh Robinson” and claiming to be a Social Security Agent had given instructions to her to make a wire transfer in order to secure her accounts. The said Robinson had asked Dong to wire the funds to a Hong Kong based bank account that was unsuccessful. Further instructions were given to open a crypto currency account on the Binance.us platform. Acting on these instructions Dong had wired USD 72,000 to the Binance.us account on 13th September 2022.

[5] On the 14th of September 2022, Dong was further instructed to purchase Bitcoin (BTC) using all her funds in the Binance.us account. On the instructions of Robinson she had transferred Bitcoin purchased to the Wallet [REDACTED] (bitcoin account) on the 14th September 2022. Upon completion of the transfer, Robinson told Dong that Social Security Agents would visit her at 5.00 pm that day to provide her with a new Social Security number but no such agents came. Dong attempted to contact the agents but could not and thereafter made the complaint.

[6] Using the “Blockchain” which is a master ledger that records all prior transactions and activities of the bitcoin currency at any given time, Sergeant Majah was able to verify that the funds were transferred to the wallet [REDACTED] on the 14th September 2022. Thereafter Detective Schreiber had requested the FBI Virtual Currency Response Team to conduct a crypto currency tracing analysis. The analysis revealed that the funds originated from the victim Dong, had flowed through Binance.us and ended up in OKX exchange. Further details are set out at paragraph 12 of the affidavit of Mr Schreiber on the graphical depiction of the analysis done by Detective Schreiber (TS1) attached to

Detective Shreiber's statement HM3, revealed that the bitcoin were indeed transferred from Binance.us to OKX exchange and were in OKX Exchange wallet [REDACTED].

[7] Sergeant Majah was further informed by Detective Shreiber that he had established contact with OKX and OKX confirmed that the crypto currency wallets mentioned is under their control in the OKX crypto currency exchange. The FCIU sent a letter to OKX requesting further details on the account holders and history of the accounts. The FCIU had received feedback from OKX that the accounts was frozen at the request of Detective Schreiber and that he was working with the FCIU on this investigation.

[8] Based on the aforementioned investigations, statements and documents it is the belief of Sergeant Majah that under Section 9 of the Proceeds of Crime (Civil Confiscation) Act;

- i. That OKX is in possession or control of specified property that is to say the property set out in the Table appended to the Notice of Motion and that the said property constitutes direct or indirect benefit from criminal conduct.
- ii. That the Respondent OKX Exchange, is in possession or control of specified property and that is to say the said property mentioned in the Table appended to the Notice of Motion and that the property is the proceeds of criminal conduct namely impersonating public officers, theft of crypto currency and money laundering.
- iii. The total value of property mentioned in (i) and (ii) above is not less than SCR 50,000.

[9] Learned Counsel Ms Ketlynn Marie moving for the aforementioned orders, relies on the contents of the affidavit filed by Sergeant Majah dated 14th February 2023 and other annexed documents referred to herein in the said affidavit, to establish that there are clearly reasonable grounds for suspecting that the said specified property referred to above at paragraph [2] herein and in the said Table to the Notice of Motion, constitutes benefit accrued from criminal conduct, namely impersonating public officers, theft of crypto currency and money laundering and also to establish that the specified property in the Table of the Notice of Motion has a total value of more than SCR50,000.

[10] Giving due consideration to all the aforementioned facts set out in the said affidavit and annexures, this court is satisfied that there are reasonable grounds to believe the Respondents OKX Exchange are in possession of specified property that is the property set out in paragraph [2] herein and in the Table to the Notice of Motion and that the said property constitutes direct or indirect benefit from criminal conduct referred to above. This court is further satisfied that that the total value of the property mentioned in the said Table is over SCR 50,000.00.

[11] The law as contained in the Section 4 of the POCA requires proof that:

a) *A person is in possession or control of–*

(i) *Specified property and that the property constitutes, directly or indirectly benefit from criminal conduct; or*

(ii) *Specified property that was acquired , in whole or in part , with or in connection with the property that directly or indirectly constitutes benefit from criminal conduct and*

(b) *The value of the property or the total value of the property referred to in sub paragraphs (i) and (ii) of paragraph (a) is not less than R 50,000.*

[12] It is apparent from the application that the amount of cash sought to be forfeited also referred to herein as specified property is USD 95,188.68 and in accordance with Section 4 (b) of the Act is not less than SCR 50,000.00

[13] In the case of **Financial Intelligence Unit v Contact Lenses Ltd & Ors [2018] SCSC 564 at [15]** it was held that *“once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the Respondent to show that it is not”*

[14] The Respondent in this case though served with notice of the Section 4 application on the 15th of February 2023 as borne out by the report of Sergeant Dave Jeanne but failed to show up in Court or file a reply.

[15] For the aforementioned reasons, I am satisfied that the belief evidence by way of affidavit of Sergeant Majah can be accepted, as it is supported by the annexed documentation on which grounds his belief evidence is based. I am further satisfied that the Applicant has

established that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00.

[16] I therefore proceed to grant the following reliefs as prayed for and issue:

- i. An Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCCA) as amended, prohibiting the Respondent Aux Cayes FinTech Co. Ltd (OKX) Exchange from disposing of or otherwise dealing with whole or any part of the property, or diminishing the value of the property as set out in the Table appended to this Notice of Motion and paragraph [2] herein.
- ii. On making the order under (i) above, I appoint Sergeant Hamzah Majah of the FCIU to be the Receiver over all or part of the said property to manage keep possession or dispose of, or otherwise deal with any other property in respect of which he is appointed in accordance with the courts directions, pursuant to Section 8 of the proceeds of Crime (Civil Confiscation) Act 2008 as amended;
- iii. A copy of this Order to be served on the Respondent OKX Exchange.

Signed, dated and delivered at Ile du Port on 23 June 2023

Burhan J