

(3) that a copy of this Order be served on the Respondent.

ORDER

BURHAN J

[1] This is an application by the aforementioned Applicant seeking an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent from disposing of or otherwise dealing with or diminishing the value of whole or any part of the property set out in the Table to the Notice of Motion dated 2nd of March 2022.

[2] The details of the property set out in the Table to the Motion is given below

[3] THE ESTIMATED VALUE OF CRYPTOCURRENCY BEING HELD IN THE FIVE (5) WALLET ADDRESSES.

KuCoin Exchange

Wallet address: HFhRsTiGtBadlihBWFsELRJw3seyf84JYa		
Items	Description	Estimated Value
1	HATHOR (HTR)	6,210,052.42
	USD	USD 3,565,812.09
2	BITCOIN (BTC)	0.579084
	USD	USD 25,145.68
TOTAL		USD 3,590,957.77

Wallet address: HJS78EyQDcHE7imrNkxivPvQsd56iR7fS1		
Items	Description	Estimated Value
1	HATHOR (HTR)	4,949,121.49
	USD	USD 2,841,785.55
2	MONERO (XMR)	692.68
	USD	USD 119,861.34
3	BITCOIN (BTC)	3.5957
	USD	USD 156,136.83
4	TETHER (USDT)	348,963.85
	USD	USD 348,963.85
TOTAL		USD 3,466,747.57

Wallet address: HHcPx4kUmsdch Wzx6quMWjmDKYehAjtg24		
Items	Description	Estimated Value
1	HATHOR (HTR)	548,548.89
	USD	USD 314,976.77
2	MONERO (XMR)	685.13
	USD	USD 118,554.89
TOTAL		USD 433,531.66

Wallet address: HMFRXq7udi822WX2Nm6giEyoE3uywx4hCp		
Items	Description	Estimated Value
1	MONERO (XMR)	976.43

	USD	USD 169,480.56
TOTAL		USD 169,480.56

Wallet address: HSE7p7PjumTzy7gSrUqN4pWAhDTsDQzRr3		
Items	Description	Estimated Value
1	MONERO (XMR)	76.88
	USD	USD 13,303.31
2	TETHER (USDT)	138,352
	USD	USD 138,352
3	HATHOR (HTR)	569,436.40
	USD	USD 326,970.38
TOTAL		USD 478,625.69

TOTAL CRYPTOCURRENCY VALUE IN USD

TOTAL	ESTIMATED USD VALUE OF CRYPTOCURRENCY ON 02 nd MARCH 2022	USD 8,139,343.25
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WEB ADDRESS USED TO CONVERT CRYPTOCURRENCY TO USD ON THE 02 nd March 2022		
Items	Description	Web Address
1	HATHOR (HTR)	https://www.coingecko.com/en/coins/hathor
2	MONERO (XMR)	http://www.coingecko.com/en/coins/monero
3	BITCOIN (BTC)	http://www.coingecko.com/en/coins/bitcoin
4	TETHER (USDT)	http://www.coingecko.com/en/coins/tether

- [4] The Applicant also seeks an Order pursuant to Section 8 of POCA appointing Inspector Terence Roseline to be the receiver of the said property. It also seeks that notice be served on the Respondent.
- [5] Accordingly, notice was served on the Respondent and the return to service was filed in Court on the 8th of March 2022, indicating that notice had been served on Vistra Seychelles Ltd and received by one Geetha Chetty who had signed acknowledging receipt. The affidavit filed by Mr. Terence Roseline indicates that the said Vistra Seychelles Ltd is the registered office in the Seychelles of the said company Peken Global Ltd, the Respondent in this application.
- [6] Although notice was served, the Respondent failed to appear and no notice of appearance was filed by a Counsel on behalf of the Respondent. Learned Counsel for the Applicant moved that the case be fixed for Order and that the evidence of the Applicant is based on the affidavit filed by Mr. Terence Roseline.
- [7] 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.*

[8] It is apparent from the application that the value of the specified property i. e. crypto currency for which the Interlocutory Order is being sought is set out in the Table to the Motion as USD 8,139,343.25 and therefore the value in SCR exceeds well over SCR 50,000. Therefore the requirement as set out in Section 4 (b) of the POCA has been established.

[9] It is the contention of learned Counsel for the Applicant that the said property is proceeds from criminal conduct and in order to establish this fact, learned Counsel relies on the evidence in the affidavit filed by Inspector Terence Roseline dated 2nd March 2022. I will now proceed to consider the facts arising from the affidavit filed by Inspector Terence Roseline.

[10] Mr. Roseline at paragraph 5 of the said affidavit states that in his investigations, he has been in constant contact and discussion with Special Constable David Templeman who is a Financial Investigator at the Cayman Island Bureau of Financial Investigation. He refers to the statement of Mr. Templeman with relevant exhibits labelled DT1 Pages 1 to 24.

[11] In his affidavit Mr. Roseline states that Hathor Labs is a Virtual Asset Service Provider registered in the Cayman Islands incorporated on the 8th of April 2019. At paragraph 14 of the affidavit he states that Hathor Labs is a developer responsible for creating and maintaining the Hathor Network which allows users the ability to transfer value without fees with tokens. The said tokens are referred to as HTR. The said HTR tokens are required to transact on the network. The value of the token will increase when the demand for the tokens increase. Mr. Roseline further states that there had been a computer hacking on their system that illegally created duplicate tokens, an act that

compromised Hathor Labs business interest and devalued investors' holdings, due to reduction of trust within the network.

[12] Investigation revealed that the Hathor Network had been illegally accessed and 115 million counterfeit HTR tokens valued at USD 69 million created by using a flaw in the network code by 'double spending' those already in their possession. He further explains at paragraph 18 that double spending occurs when someone alters the respective network and inserts a special one that allows them to reacquire their crypto currency. Such an act would enable the person to reacquire any crypto currency they have spent and use it again. It is further averred in the affidavit between the period 07.50 GMT on 9th October and 21.05 GMT on 11th October 2021, 18,943,721.94 counterfeit HTR tokens (valued at USD 11.36 million) were deposited into the KuCoin virtual currency exchange a primary business partner for the HTR token. The said KuCoin is owned and administered by Peken Global Ltd an International Business Company registered in the Seychelles. The registered agent is Vistra (Seychelles) Ltd.

[13] As set out in paragraph 22 of the aid affidavit, it is further averred that the said HTR tokens were deposited in the following currency wallets at Ku Coin virtual currency exchange.

- 1) **HFhRsTiGtBadlihBWFsELRJw3seyf84JYa**
- 2) **HJS78EyQDcHE7imrNkxivPvQsd56iR7fS1**
- 3) **HHcPx4kUmsdchWzx6quMWjmDKYehAjtg24**
- 4) **HMFRXq7udi822WX2Nm6giEyoE3uywx4hCp**
- 5) **HSE7p7PjumTzy7gSrUqN4pWAhDTsDQzRr3**

[14] Administratively KuCoin on being informed of the hacking have frozen the said wallets however prior to the freeze 6,666,563.16 counterfeit tokens (value at USD 2 million) were sold to various third parties, bonafide users of KuCoin. The said tokens were exchanged for three types of virtual currency namely Bitcoin, Tether (USDT) and Monero (XMR). However the balance 12,277,158.78 counterfeited HTR tokens and /or

proceeds remain frozen in the wallets mentioned in the aforementioned wallets. After discovering the flaw Hathor Labs took corrective action that resulted in 115 million counterfeited tokens being invalidated and made worthless.

[15] Thereafter further discussion with the Financial Intelligence Unit in the Seychelles resulted in the filing of a case XP 25/2022 seeking an Interim Order which was given on the 4th of February 2022.

[16] Based on further investigations on receipt of the Interim Order Mr. Terence Roseline informs court in his affidavit that there were two other crypto currencies in the relevant wallets. They have been identified as Bitcoin (BTC) and Tether (USDT). He further states that as of 2nd March 2022 the total crypto currency value in the wallets as detailed in the Table to the Motion is estimated to be USD 8,139,343.25.

[17] I am satisfied on the information contained in the affidavit that there are reasonable grounds to believe that the property set out in the Table to the Notice of Motion as set out in paragraph 3 herein constitutes, directly or indirectly, benefit from criminal conduct. I am also satisfied that the value of the impugned property is not less than SCR 50, 000.00.

[18] In the case of 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*”

[19] The Respondent in this case has failed to attend Court and challenge the contents of the affidavit of Mr. Terence Roseline.

[20] For the aforementioned reasons. I am satisfied that the belief evidence by way of affidavit of Mr. Terence Roseline can be accepted as it is supported by the sworn statement of Special Constable David Templeman and other attached documentation on which grounds his belief evidence is based. I am also satisfied that the Applicant has established that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00.

[21] By his absence the Respondent has failed to give any credible explanation. The Respondent has failed to establish that the specified property is not from proceeds of crime.

[22] I therefore proceed to accept the belief evidence of Mr. Terence Roseline and grant the reliefs as prayed for by the Applicant and issue:

- 1) an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent or such other person having notice of the making of this Order, from dispensing of or otherwise dealing with or diminishing the value of whole or any part of the property i. e set out in the Table to the Notice of Motion and described in paragraph 3 herein.
- 2) an Order pursuant to Section 8 of the POCA, appointing Inspector Terence Roseline to be a 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 and further order,
- 3) that a copy of this Order to be served on the Respondent.

Signed, dated and delivered at Ile du Port on this 12th day of August 2022.

M. Burhan J