

SUPREME COURT OF SEYCHELLES

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Not Reportable  
[2023] SCSC 632  
MC29/2023

In the exparte matter of:

**MR. MICHAEL FILIPPO**  
*(Represented by Mr. Audrick Govinden)*

Applicant

In Re:

**MR. MICHAEL FILIPPO**

Applicant

And

**HUOBI GLOBAL LIMITED**  
*Represented by its Director at its registered office at  
Appleby Global Services (Seychelles) Limited.*

Respondent

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**Neutral Citation:** *Exparte Filippo* (MC29/2023) [2023] SCSC 632 18 August 2023  
**Before:** Carolus J  
**Summary:** Application for Norwich Pharmacal Order – Judicial recognition and admissibility of Power of Attorney executed in foreign non-Convention country – section 28(1) Evidence Act.  
**Heard:** 23 June 2023  
**Delivered:** 18 August 2023

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**ORDER**

The application for a Norwich Pharmacal Order is dismissed.

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**RULING**

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**Carolus, J**

- [1] The applicant Mr. Michael Filippo has filed an ex-parte application seeking a Norwich Pharmacal order for Huobi Global Limited (“Huobi”), an international business company registered under the International Business Companies Act, 2016 as amended, represented by its registered agent Appleby Global Services (Seychelles) Limited, to disclose and produce certain records and information stated in the application.

- [2] The application is made by way of Notice of Motion supported by an affidavit sworn by Mrs. Vanessa Camille on behalf of the applicant Mr. Michael Fillippo by virtue of a Power of Attorney which is exhibited to the affidavit.
- [3] In her affidavit Mrs. Camille avers that the applicant is Canadian and resides in Ontario, Canada and that he has provided her with the information to which she has deponed in her affidavit.
- [4] In essence she avers that the applicant was victim to an online scam pursuant to which he was defrauded of cryptocurrencies in which he had invested. This was done through the 'Prime Coin Website' which was represented to the applicant as a legitimate cryptocurrency broker and financial advisor with its head office in the United Kingdom, and an individual purportedly called Mila Green who represented herself as a senior financial advisor at Prime Coin. He now understands that Prime Coin was part of a scheme to defraud him and others, and that Mila Green is not the individual's real name but was used to disguise the identity of the perpetrators of the scheme. Mrs. Camille also avers that his cryptocurrencies were deposited into cryptocurrency wallets on Huobi's online exchange platform. Consequently the applicant requires documents and information in the possession of Huobi to enable him to pursue legal action against the perpetrators and to recover the cryptocurrencies of which he was defrauded.
- [5] I note that the Power of Attorney granted by Mr. Michael Filippo to Mrs. Vanessa Camille authorising her to represent him in the present Norwich Pharmacal application "*by way of deponing and signing on my behalf the affidavit required for the said application*" was made in Canada on the 22<sup>nd</sup> day of May 2023. It purports to have been signed by Mr. Michael Filippo whose signature was purportedly witnessed by "*Roma S. Mungol Barrister and & Solicitor Notary Public*" of "*Mungol Singh Law Office*". The Power of Attorney bears a red seal embossed with "*Roma Shakuntala. Mungol*" "*Notary Public Ontario*". However the signature and seal of the notary public attesting the signature of the applicant not been authenticated.

- [6] This Court must therefore determine whether the Power of Attorney is valid and the affidavit made pursuant thereto can be relied upon for the purposes of the application, in the absence of any authentication of the notarization by Roma S. Mungol.
- [7] I note that the applicant in the present case had previously in EXP 16/2023 sought to obtain a Norwich Pharmacal order on the same grounds as he is now seeking an order in the present case. Exp 16/2023 was dismissed by order of Madeleine J dated 3<sup>rd</sup> April 2023 because the signature and seal of the attesting notary public on the affidavit in support of the application, which had been sworn by Mr Michael Filippo in Canada, had not been authenticated as required by section 28(1) of the Evidence Act.
- [8] It seems that counsel for Mr Filippo has tried to get around that by getting Mrs. Vanessa Camille to swear an affidavit on his behalf in Seychelles where the attesting notary's signature would not need to be authenticated. However Mrs Vanessa Camille was authorised to swear the affidavit by virtue of a Power of Attorney which was also executed in Canada and attested to by the same Notary, without having the document authenticated as is also required by section 28(1) of the Evidence Act.
- [9] I find no necessity to go into the applicable law on the issue and its application to the present case as it was sufficiently expounded on in EXP 16/2023 relying on the case of *Nassim Onezime v. The Attorney General and the Government of Seychelles* SCA CL 03/2021 SCCA 20 (*Arising in CP 01/2021*) (29 April 2022). Despite the two aforementioned cases having dealt with an affidavit whilst the issue in the present case has to do with a Power of Attorney, the same reasoning applies as both documents were executed in a foreign country to which the Hague Convention of 5th October 1961 on Abolishing the Requirements of Legislation for Foreign Public Documents ("the Apostille Convention") does not apply, and are subject to the requirements of section 28(1) of the Evidence Act.
- [10] In Exp 16/2023, Madeleine J stated -

*10. In the present application, the supporting affidavit was deponed, signed and notarized in Canada. It is a fact that Canada is not party to The Hague Convention,*

*and that the signature and seal of the attesting notary public Roma S. Mungol could not have been authenticated by way of an apostille.*

*11. Contrary to Counsel's submission that notarization alone would suffice for the court to exercise its discretion and admit the supporting affidavit, the provisions of section 28 of the Evidence Act are mandatory. Thus, to be admissible in Courts in Seychelles, the present affidavit must comply with section 28(1) of the Evidence Act.*

*12. As in Nassim Onezime (supra), a notary public from Canada also do not fall in the category of officers mentioned in section 28(1) of the Evidence Act whose documents or affidavits purporting to have his seal and signature would be admitted in evidence without proof of his seal, signature or of his official character. This leaves this Court with an affidavit purportedly attested by a notary public in Ontario, Canada but whose official character as notary public as at 2<sup>nd</sup> March 2023 and the genuineness of his seal and signature cannot be verified in Seychelles.*

*13. Further, the Court is of the view that other methods could have been used to authenticate the signature and seal of the attesting notary public to render the affidavit admissible in Courts in Seychelles. Notably, authentication by the relevant Canadian Government authority or legalization by the Seychelles embassy/consulate/mission (as applicable) in Canada and the Ministry of Foreign Affairs in Seychelles.*

*14. For the above stated reasons, the affidavit in support of the application in its present form is inadmissible. It offends the mandatory provision of section 28 of the Evidence Act. As a result, the Application is not supported by an affidavit and must be dismissed.*

[11] For the same reasons as stated above, the Power of Attorney cannot be relied upon, and rendering the affidavit of Mrs. Camille which she was authorised to make by virtue of the said Power of Attorney invalid and inadmissible. As in Exp 16/2023, the application is therefore unsupported and must be dismissed.

[12] It is also arguable whether the affidavit evidence of Mrs. Camille would have been admissible even if the Power of Attorney had been found to be valid, in light of the provisions of section 122 of the Seychelles Code of Civil Procedure. However the Court is

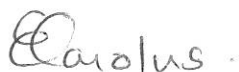
not required to make a determination on this issue given its finding in regards to the Power of Attorney. Section 122 requires that:

*“Affidavits shall be confined to such facts as a witness is able on his own knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds may be admitted.”*

Emphasis added.

[13] Accordingly the application is dismissed.

Signed and delivered at Ile Du Port this 18<sup>th</sup> August 2023.



**E. Carolus**

**Judge**