

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

MA343/2023

Arising in CS102/2023

In the matter between:

**EXPARTE IN THE MATTER OF DIDIER RABL  
(REPRESENTED BY ERIC RABL)**

*(rep. by Ms Efna Chang-Thiou)*

**Applicant**

and

**FORTUNATE ICON LIMITED**

**Respondent**

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**Neutral Citation:** *Didier Rabl V/s Fortunate Icon Limited (MA343/2023) (08 November 2023)*

**Before:** Esparon J

**Summary:** Application for a provisional seizure

**Heard:** 17<sup>th</sup> October 2023

**Delivered:** 19<sup>th</sup> October 2023

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**ORDER**

Application for provisional seizure.

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**ESPARON J**

**Introduction**

1. This is an Ex-parte Application of which the Applicant is seeking an Order from this Court directing a warrant to be issued to one of the process servers to seize provisionally the 21 million CoinPoker Token ( CHP) currently found on the account on the Kucoin exchange website platform, <https://www.kucoin.com> of the Respondent and that Fortunate Icon Limited, keeps possession of the provisionally seized 21 million CoinPoker Tokens ( CHP) pending further Order of the Court.

## The pleadings

2. The Application is supported by an Affidavit sworn by the deponent Eric Rabl who is duly authorized by the Applicant to swear this Affidavit on behalf of the Applicant.
3. The deponent has averred in paragraph 5 of his Affidavit that ‘the Applicant is an investor in cryptocurrencies and has in or about 2020 acquired approximately 23 million CoinPoker Tokens (CHP) in different transactions made with the Respondent’.
4. The deponent has averred in paragraph 7 of his Affidavit that ‘the Respondent trades as Kucoin (KuCoin) or KuCoin Exchange and operates the Kucoin Exchange under the website <https://www.kukoin.com>’.
5. The deponent has averred in paragraph 8 of his Affidavit that on 3<sup>rd</sup> March 2021, 7<sup>th</sup> April 2021, 10<sup>th</sup> May 2021, 02 June 2021 and 07 July 2021, Kucoin sent by way electronic mails to the Applicant warning on the delisting of CoinPoker Tokens (CHP) from its platform and that they have found that there are certain number of above-mentioned tokens in their account and that they should make sure they withdraw them before closing time and that if they do not withdraw the funds within the specified period, they are deemed to have given up the funds for good and will have no rights to claim back the funds or any other equal valued products from KuCoin.
6. The Applicant further avers in paragraph 9 of his Affidavit that all electronic mails mentioned remained unread and unanswered, however although Kucoin never received any acknowledgement electronic mail from the Applicant in response to the delisting warnings, it proceeded to delist the CoinPoker Tokens(CHP) from its platform on 28<sup>th</sup> July 2021, without making any further attempt to notify the Applicant either by post or by telephone.
7. The deponent avers in paragraph 10 of his Affidavit that ‘following the aforesaid delisting, the Applicant was unable to recover the CoinPoker tokens (CHP) on his account and wrote to Kucoin by electronic mail on 04 August 2021. KuCoin replied to the Applicant that his 23 million CoinPoker tokens were no longer listed on its platform’.
8. The deponent further avers that Kucoin still holds about 21 million CoinPoker tokens (CPH) even after its unilateral decision to delist the said tokens and that the Respondent

has misappropriated his assets which is worth more than American dollar (USD) 2 million through Kucoin and has failed and /or refused to comply with his instructions to transfer the 23 million CoinPoker (CHP) tokens to his wallet.

9. The Deponent further avers that in view of the wrongful and fraudulent acts of Kucoin, the Applicant is concerned that there is a real risk that Kucoin may attempt to transfer the assets from the Respondent and any judgment will go unsatisfied and that there is no alternative sufficient legal remedy available to quickly restrict further dealings by Kucoin with the 21 million CoinPoker tokens (CHP), pending the determination of the main suit.
10. The deponent has averred at paragraphs 19 and 20 of his Affidavit that the Applicant's intended plaint is meritorious and has good prospect of succeeding in as much as the cryptocurrency assets were fraudulently misappropriated and it will be fair and equitable and necessary for an Order of interim seizure to be granted and that the balance of convenience tilts in favour of the Applicant when assessing the competing rights of the Applicant and that of the Respondent as if it is not granted the Applicant will have no alternative remedy to recover the said assets and the Applicants intended plaint may be rendered null and nugatory.
11. The deponent further avers that as a result irreparable harm may be caused towards the Applicant's right to property and which cannot be atoned for by means of damages

### **The law**

12. Section 280 of the Seychelles Code of Civil Procedure provides that "At any time a suit has been commenced, the Plaintiff may apply to the Court to seize provisionally any moveable property in the possession of the Defendant in the suit or to attach provisionally any money or moveable property due to or belonging to the Defendant in the suit, which is in the hands of any third person.

The application shall be by petition supported by an Affidavit of the facts and shall be signed by the Plaintiff or his Attorney if any shall state the title and number of the suit.

13. Section 281 of the code of Civil Procedure provides that if the Court is satisfied that the Plaintiff has a *bona fide* claim, the Court shall direct a warrant to be issued to one of the ushers to seize provisionally such property, or shall make an order prohibiting the third person in whose hands such money or other property is from paying such money or

delivering such property to any other person pending the further order of the Court. The order shall be served on the third party by an usher of the court. The Court, before any such warrant or order is issued, may require the Applicant to find such security as the Court may think fit.

**Determination**

14. This Court takes note that there is a Plaint that has been filed before the Supreme Court in CS no 102/23.

15. I have meticulously considered the Application, Affidavit in support and submissions of counsel for the Applicant, ex-facie the Affidavit, I am satisfied that the Applicant has a bona fide claim. This Court is further satisfied that in view of the alleged wrongful and fraudulent acts of Kucoin, that there is a real risk that Kucoin may attempt to transfer the assets from the Respondent. Hence any judgment will go unsatisfied in the event that Judgment is given in favour of the Applicant. I'm also satisfied that there is no alternative sufficient legal remedy available to quickly restrict further dealings by Kucoin with the 21 million CoinPoker tokens (CHP), pending the determination of the main suit. For these reasons, I accordingly grant the Application.

16. As a result of the above, this Court makes the following Orders;

- i) I accordingly issue a warrant to one of the process servers to seize provisionally the 21 million CoinPoker Token (CHP) currently found on the account on the Kucoin exchange website platform, <https://www.kucoin.com> of the Respondent.
- ii) Fortunate Icon Limited, the Respondent, is to keep possession of the provisionally seized 21 million CoinPoker Tokens (CHP) pending further order of this Court.
- iii) I Order the Registrar of the Supreme Court to serve a copy of this Order on the Respondent, Fortunate Icon Limited, an IBC incorporated in Seychelles and represented by its director at Intershore Consult (Seychelles) Limited (Registered Agent), Room 306, Victoria, Mahe, Seychelles.

Signed, dated and delivered on the 8<sup>th</sup> November 2023 at Ile du Port.

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Esparon Judge