

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 09
XP 02/2023

In the ex parte matter of:

GOVERNMENT OF SEYCHELLES
(*rep. by*)

Applicant

Neutral Citation: *GOS* (XP 02/2023) [2023] SCSC 09 (16 January 2023).

Before: Burhan J

Summary: Application under Section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended.

Heard: 13 January 2023

Delivered: 16 January 2023

ORDER

I proceed to make the following orders:

- i. I issue an Interim Order pursuant to Section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended, prohibiting the Respondent 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. That on the making of an order under (i) above, Sergeant Hamzah Majah of the FCIU shall be appointed as 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 ex-parte application under Section 3 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 Interim Order pursuant to section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended prohibiting the Respondent 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) That on the making of an order under (1) above, Sergeant Hamzah Majah or such other person as this court shall direct be appointed as 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 court's directions, pursuant to Section 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended; and

(3) For an order providing for Notice of any such order to be given to the Respondents or any other person directed by the court;

(4) Such further or other order as the court shall deem just and proper in all circumstances in this case.

[2] I have considered the details contained in the affidavit dated 11th January 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: 32bzcTtYvfZb541Agy7w8zcXNhbYPjTsg1		
Items	Description	Estimated
1	BITCOIN (BTC)	4
	USD	USD 67,232.44
TOTAL		USD 67,232.44

TOTAL CRYPTOCURRENCY VALUE IN USD

TOTAL	ESTIMATED USD VALUE OF CRYPTOCURRENCY ON 05 TH JANUARY 2023	USD 67,232.44
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- [3] It is clear that the investigations done by Sergeant Majah are 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 HM2. According to his investigation on the 14th of September 2022 Yufan Dong a resident of Radnor 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 the 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 bc1qftz7lvxl5f3eshehj84rls3jffjjghygupkt04v (bitcoin account) on the 14th September 2022.
- [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 bc1qftz7lvxl5f3eshehj84rls3jffjjghygupkt04v 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 investigation by Sergeant Majah on the graphical depiction of the analysis done by Detective Schreiber (TS1) attached to Detective Shreiber’s statement HM2, revealed that the bitcoin were indeed transferred from Binance.us to OKX exchange and were in OKX Exchange wallet 32bzcTtYvfZb541Agy7w8zcXNhbYPjTsg1.
- [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 11th January 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.

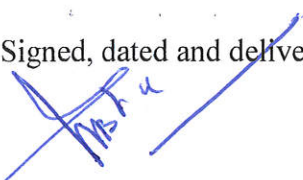
[10] Giving due consideration to all the aforementioned facts set out in the said affidavit and annexures, this court is satisfied that there are reasonable grounds to believe the Respondents OKX Exchange are in possession of specified property that is the property set out in paragraph [2] herein and 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] I therefore proceed to make the following orders:

- i. I issue an Interim Order pursuant to Section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended, prohibiting the Respondent 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. That on the making of an order under (i) above, Sergeant Hamzah.Majah of the FCIU shall be appointed as 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 16 January 2023


Burhan J

