

SUPREME COURT OF SEYCHELLES

Reportable
[2023]
MA408/23

In the matter of:

Dr Samson Liu
(rep. by Ephna Chang-Thiou)

Petitioner

Neutral Citation: *Ex Parte: Dr Samson Liu* (MA 408/2023) [2023] (20th
December 2023).

Before: Pillay J
Summary: Provisional Seizure
Heard: 18th December 2023
Delivered: 20th December 2023

ORDER

[1] I make an Interim Order to seize provisionally the 337, 099.1 USDT currently found on the account on Binance exchange, website platform, [REDACTED] of the Respondent,

(1) Wallet [REDACTED]

(2) Wallet [REDACTED]

[2] The Respondent shall keep possession of the provisionally seized 337, 099.1 USDT referred to above until further order of the Court.

[3] The Order shall be served on the Respondent immediately and returnable on 5th February 2024 at 9am for the Respondent to appear in order for the matter to be heard inter partes.

JUDGMENT

PILLAY J:

[1] This is an *ex parte* application under section 280 of the Seychelles Code of Civil Procedure CAP 213 (hereinafter referred to as the "SCCP"). The Petitioner is the plaintiff in the main case bearing CS126/23. The Petition is supported by an affidavit, dated 4th November 2023, sworn by the Petitioner before Notary Janessa West of the State of Missouri in the United States of America, bearing Apostille number 2481932 dated 6th November 2023.

[2] The Petitioner seeks to hear the application urgently and initially *ex parte* and subsequently *inter partes*.

[3] The Petitioner seeks an order of the Court to provisionally seize the crypto currency found on the Binance exchange a website platform, [REDACTED] namely:

a) *Wallet* [REDACTED]

b) *Wallet* [REDACTED]

[4] Section 280 and 281 of the Seychelles Code of Civil Procedure ("SCCP") provide as follows:

280. *At any time after a suit has been commenced, the plaintiff may apply to the court to seize provisionally any movable property in the possession of the defendant in the suit or to attach provisionally any money or movable 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, and shall state the title and number of the suit.*

281. *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 movable 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.*

[5] Per the decision of her Ladyship Carolus in *Sun Excavations (Pty) Ltd v Associated Construction & Investment CO LLC (CC 05/2017) [2020] SCSC 668 (18 December 2020)* “The purpose of that procedure [of provisional seizure] is to ensure that such property is not disposed of by the defendant pending the determination of the case thereby ensuring that the plaintiff if successful is able to enjoy the fruits of the judgement given in his or her favour.”

[6] In the case of *Alexander v Farisco Construction & Maintenance Pty Ltd (MA 186 of 2022) [2022] SCSC 832 (20 September 2022)* Adeline J held that “the pre- requisite for obtaining an order of provisional attachment and or seizure is statutory based, and are laid down in Articles 280 and 281 of the Seychelles Code of Civil Procedure. Articles 280 and 281, set out the requirements for the making of the order, and these requirements are:

(3) that a suit has been commenced, and

(4) the applicant / petitioner has a “bona fide” claim.

[7] His Lordship Adeline J went on to add that on a “reading of the statutory provisions of Article 281, clearly and expressly state, that where those two requirements are met, the Court “shall direct the warrant to be issued”. That indicates, the mandatory nature of such direction, the Court having no discretion to take into account other factors, although, under the provisions of Article 281, “the Court before any such warrant or Order is issued may require the Applicant to find such security as the Court may think fit”.

[8] By the fact that the Petitioner seeks to hear the application ex parte and subsequently inter partes indicates that what is sought at this juncture is an interim order pending the hearing of the application inter partes. At this stage the Court will not go into the merits of the application as to whether the Petitioner has a bona fide case in the main matter. In my view, at this stage the Court needs to be satisfied that a suit has been commenced and the application meets the requirements of section 280 of the Seychelles Code of Civil Procedure in that it is made by way of Petition supported by an affidavit.

[9] On a perusal of the application the requirements of section 280 of the Seychelles Code of Civil Procedure are met. Furthermore, the Petitioner avers that “this application is one of

urgency since it involves cryptocurrency assets which can easily be immediately transferred and dealt with in a matter of seconds online and the Applicant has no alternative means to restrict any dealings with his aforesaid USDT pending the determination of the intended main suit.”

[10] Being satisfied that there is a main case pending, CS 126/23 and that cryptocurrency can easily be transferred and dealt with in a matter of seconds I find it necessary for an interim order provisionally seizing the crypto currency in question be issued.

[11] Accordingly, in terms of section 281 of the Seychelles Code of Civil Procedure, I make an Interim Order to seize provisionally the 337, 099.1 USDT currently found on the account on Binance exchange, website platform, [REDACTED] of the Respondent,

(5) Wallet [REDACTED]

(6) Wallet [REDACTED]

[12] The Respondent shall keep possession of the provisionally seized 337, 099.1 USDT referred to above until further order of the Court.

[13] The Order shall be served on the Respondent immediately and returnable on 5th February 2024 at 9am for the Respondent to appear in order for the matter to be heard inter partes.

Signed, dated and delivered at Ile du Port on 20th December 2023

