

MEDIA UPDATE – 09 NOVEMBER 2021

MAJORO ABANDONS FIGHT FOR ROYALTIES, GIFTS CRITICAL WIN TO FRAZER SOLAR

Overview

To avoid losing, the Government of Lesotho has offered to delay proceedings in the South African High Court – suspending its demands to restore water royalties after their legal seizure by Frazer Solar (FSG).

A spokesperson for FSG said:

‘Lesotho Prime Minister Moeketsi Majoro’s legal team have offered to delay a critical hearing in the South African High Court two days before it was due to start, gifting Frazer Solar a critical win in its ongoing legal dispute. The decision belies previous statements about the urgency of freeing up much-needed funds. If the Prime Minister was so sure of his case, why offer the delay? It’s not the action of a man who expects to win. Despite months of rhetoric from Dr Majoro on the strength of his government’s case, at the first real test, he has wavered.

‘We have no difficulties with GOL’s demand that the hearing be delayed and royalties remain frozen. In one fell swoop, they have undermined their own case for urgency and their allegedly dire need for the financial royalties.’

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Background

In 2018, Frazer Solar GmbH (‘FSG’) signed a binding agreement with the Government of Lesotho (GOL) to develop a major solar energy project with financing from the German government. The project was approved at the express instruction of the Prime Minister Thomas Thabane, but Lesotho’s then Minister of Finance – Dr Moeketsi Majoro – withheld his support. This led to a legal dispute between FSG and the GOL, and in 2020 FSG was awarded 50 million Euros by an independent arbitrator.

Frazer Solar started activities to enforce the arbitral award in May 2021 with global seizures of GOL assets, including the Lesotho Highlands water royalties paid by South Africa to Lesotho. Frazer Solar also obtained a Court Order to seize the royalties being paid by Trans Caledon Tunnel Authority (TCTA) to Lesotho. GOL responded to the TCTA court order in June 2021 with an urgent stay application to stop the seizure and resume payment of the royalties. In August 2021, the South African High Court set 10 November 2021 as the date for the stay application to be heard. By this time, GOL had been joined by the Lesotho Highlands Development Authority (LHDA) and TCTA to fight against FSG.

All parties agreed to the November hearing date.

Legal Proceedings – South Africa

Despite all parties agreeing to the timeline for the hearings, on 29 October 2021 – just six working days before the agreed hearing date – the South Africa government and the Ministry of Water and Sanitation (SAG) submitted an application to join proceedings and participate in the 10 November hearing.

This highly irregular step was intentionally taken to delay the court hearing. As it provided insufficient time for FSG to address the application ahead of the hearing, FSG had no option but to request an urgent case management meeting with the Judge. FSG offered two options for the Judge to consider:

- Either the hearing proceeds as planned without SAG;
- SAG be allowed to join but the hearing date be delayed.

On Monday 8 November, two days before the hearing was due to start, the Court ordered a delay with a new hearing date yet to be determined but likely to be in 4-5 months.

Late Involvement by SAG a Smokescreen for Defeat

Frazer Solar maintains that the late involvement of SAG is nothing more than a tactical ploy to engineer a delay in the South African legal proceedings, as GOL believed it was likely to lose resoundingly.

Despite Frazer Solar providing two clear options to the Court, GOL only acknowledged one, a delay. As GOL wrote in its letter to the Judge:

1. No case management meeting is required at all, as
2. GOL agrees to a delay
3. A new hearing date can be set in the future
4. Meanwhile all interim arrangements stay in place
5. Frazer Solar is likely to 'have no difficulties' accepting this proposal

The fact that GOL did not want to have a meeting with the Judge, who may then have decided for the hearing to proceed as planned, shows that it was running scared of proceeding with its case in court this week.

'In our opinion, Dr Majoro did not want to face the very real prospect of losing this week, so he has now ensured that the case will not proceed for several months,' says Frazer Solar.

In order to ensure that FSG agreed to the delay, GOL made the unsolicited concession that it will not seek release of the royalties, thereby nullifying its reason for seeking an urgent stay application in the first place.

'Under the smokescreen of the SAG application, GOL's decision to push for a delay completely undermines their argument for 'urgent' financial relief contained in the stay application. If Mr Majoro truly believed his allegation that the ongoing withholding of royalty payments has serious economic consequences for GOL, why has he effectively delayed the pursuit of these funds for several months? It's an apparently contradictory move that makes no sense unless he has doubts about his chances of success.' says Frazer Solar.

Next Steps

FSG believes its case will inevitably prevail. Each day that goes by, the final amount payable by GOL keeps increasing.

'Facing the risk of an imminent defeat, Dr Majoro chose to run. However, sooner or later Dr Majoro will face thorough legal scrutiny of this problem of his own making. The sooner he realizes this, the better for all Basotho,' says FSG.

Ends

For further information on the facts and history of proceedings between Frazer Solar and the Government of Lesotho, please visit: <https://www.frazersolarvlesotho.com/>



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THE HONOURABLE MR JUSTICE K. MATOJANE

Attention: Registrar / Secretary to the Honourable Mr Justice K.

Matojane

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Dear Ms. Dludla

THE KINGDOM OF LESOTHO // FRAZER SOLAR GMBH & OTHERS (CASE NO. 2020/33700); TRANS-CALEDON TUNNEL AUTHORITY // FRAZER SOLAR GMBH & OTHERS (CASE NO. 2021/35990); MINISTER OF WATER AND SANITATION & ANOTHER (“SAG”) // TRANS-CALEDON TUNNEL AUTHORITY & OTHERS (CASE NO. 2021/35990)

1. We refer to the above matters, and the letter addressed to you on 2 November 2021 by the attorneys for Frazer Solar GmbH (“**Frazer**”).
2. We act for the Kingdom of Lesotho. The Kingdom of Lesotho is the applicant in case 2020/33700 (the Lesotho Stay Application), and the second respondent in case 2021/35990 (the TCTA Application and the SAG intervention application). These applications are enrolled for hearing on 10-12 November 2021.
3. We note that Frazer has requested an urgent case management meeting with His Lordship Mr Justice Matojane, with a view to seeking a postponement of the Lesotho Stay Application, the TCTA Application and the SAG intervention application.
4. We will, of course, make ourselves available for an urgent case management meeting, as Frazer has requested, should His Lordship convene one.
5. However, in an effort to assist and perhaps even avoid the need for a case management meeting, we record for the benefit of all parties that the Kingdom of Lesotho is willing to agree to Frazer’s request to postpone the matters set down for 10 -12 November 2021, subject to the following:

- 5.1. it is agreed that the parties will liaise with one another to find new dates for these applications presently set down for 10-12 November 2021, which dates suit all counsel.
- 5.2. It is agreed, for the avoidance of all doubt, that the existing interim regime, provided for in paragraph 4 of the order made by His Lordship Mr Justice Strydom on 1 July 2021 (attached as annexure A, for ease of reference), remains in place.
6. Given the approach in Frazer's letter we presume that it would have no difficulties with these proposals. We similarly cannot conceive of any objection by the parties involved.
7. We respectfully ask that the above be brought to His Lordship's attention.

Yours faithfully

ENSafrica

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sent electronically without signature