

Frazer Solar, govt fight gets nastier

Bongiwe Zihlangu

THE long-running feud between Frazer Solar and the Lesotho government has taken an uglier, more sinister turn. This after the new Sam Matekane-led administration allegedly spurned overtures by the German company for a negotiated settlement to their dispute over the botched M1, 7 billion tender 'awarded' to Frazer Solar in 2018 for the supply of solar power to Lesotho.

In a statement this week, Frazer Solar claimed that it had enlisted the services of former British Attorney General, Sir Geoffrey Cox, to mediate in its dispute with Lesotho. It said Sir Cox had reached out to Mr Matekane last month but the prime minister had spurned his mediation offer, describing it as "inappropriate and unauthorised".

The Lesotho government confirmed yesterday that it had rejected by Sir Cox's overtures which it deemed respectful and done in bad faith. Smarting from the rejection, Frazer Solar has vowed to play dirty in its quest to enforce a 2019 €50 million (M894, 2 million) damages award to it by a South African arbitrator for the government's alleged breach of the contract. Both the M1, 7 billion tender and the damages award were nullified last month by the Lesotho High Court. However, the German company dismissed the Lesotho High Court judgment as an "irrelevant ruling". It vowed to press on with the other litigations it has instituted on the same matter in courts in South Africa, Mauritius, United States of America (US) and the United Kingdom (UK) to try and seize Lesotho's assets in those countries.

In the latest turn of events, it says in pursuing litigations in other jurisdictions, it will dig up the dirt on Lesotho government officials and expose their acts of corruption, "rampant mismanagement, misuse and likely outright theft of public funds".

This will include highlighting the disappearance of billions of maloti from Lesotho's treasury. The German company says the money could have been lost to money laundering and other corrupt activities by government officials at the expense of improving the welfare of Basotho.

Frazer Solar says by bringing these issues to the fore, it will be able to prove that it is the Lesotho government officials who are corrupt, not itself as alleged by the government. Shining the spotlight on these issues will also precipitate an investigation by US, European Union (EU) and other international investigators into the affairs of Lesotho. This could lead to the identification of corrupt Lesotho government officials who have committed acts of corruption against Basotho "far greater than just mishandling the Frazer Solar case" the German company warns. This could also be Frazer Solar's indirect way of sabotaging the new government's spirited attempts to mobilise foreign direct investment (FDI). International investors tend to shun countries regarded as highly corrupt.

Frazer Solar's dispute with the Lesotho government dates back to 2018 when the German company 'signed' an agreement with the then Thomas Thabane-led administration for the supply of solar power to Lesotho over four years. The company was in 2019 subsequently awarded €50 million (M906, 4 million) in damages by a South African arbitrator after the government's alleged breach of the deal. The damages award was endorsed by the Gauteng High Court in April 2021. However, former Prime Minister Moeketsi Majoro challenged both the tender and the award in the same court and in the Lesotho High Court. The Gauteng High Court application is pending but the Lesotho High Court last month ruled in Dr Majoro's favour.

In his Lesotho court application, Dr Majoro had argued that the solar power deal was invalid as it was "fraudulently and corruptly" signed by then Minister in the Prime Minister's Office, Temeki Tšolo, who had no powers to sign. Mr Tšolo has previously denied signing the deal on behalf of the government.

However, Dr Majoro insisted that Mr Tšolo signed and, in the process, violated national laws which stipulate how such contracts are entered into and how payments to third parties are made. He accused the former minister of acting outside his powers by "clandestinely" signing the agreement without the knowledge and approval of parliament, cabinet and himself as the finance minister at the time. He further argued that the deal should have been negotiated and signed by the Ministry of Energy and Meteorology, not by Mr Tšolo.

- as Matekane administration "rejects" mediation proposals,
- while German firm vows to play dirty and expose graft by Lesotho govt officials...

Besides launching the ultimately successful Lesotho High Court application, the previous Majoro administration had also tasked the Directorate of Corruption and Economic Offences (DCEO) to investigate and prosecute both Mr Tšolo and Frazer Solar managing director, Robert Frazer, over the 'fraudulent deal'.

A warrant for Mr Frazer's arrest has since been issued by the Maseru Magistrates' Court. However, Frazer Solar has scoffed at the warrant against its boss. It has also rejected the Lesotho High Court judgment as "irrelevant", vowing to press on with other litigations it has instituted on the same matter in courts in SA, Mauritius, US and the UK to seize Lesotho's assets in those countries if it gets favourable judgments.

A week before the Lesotho High Court judgement, Frazer Solar had demonstrated its capacity for skulduggery and dirty tricks by clandestinely approaching the Belgian courts to endorse the €50 million damages award. The Lesotho government only discovered the German company's moves when some of its embassy officials in Belgium unsuccessfully tried to transact with the embassy's bank only to find that the account had been frozen at Frazer Solar's instigation. The account was later unfrozen and the angry government accused Frazer Solar of acting in bad faith by approaching the Belgian court without its knowledge.

Having got no joy with Dr Majoro, Frazer Solar had initially sought a diplomatic solution with new Prime Minister Matekane. However, its efforts have so far been unsuccessful, leading the company to renew its dirty tactics campaign. It issued two statements in the space of four days highlighting its anger with the Matekane administration. It expressed its resolve in those statements to wage a dirty war against the government in its bid to get compensation. In one of the statements, the German company accuses Mr Matekane of snubbing Sir Cox whom it had roped in to negotiate an amicable settlement of the disputed 2018 solar power tender.

"An attempt made by Britain's former Attorney General Sir Geoffrey Cox to mediate in the ongoing legal dispute between Frazer Solar and the Kingdom of Lesotho has been rejected by Prime Minister Sam Matekane," Frazer Solar states.

"Sir Geoffrey was invited by Frazer Solar to reach out to Mr Matekane as an independent mediator, not as a legal representative of the company. Sir Geoffrey is well suited to this role as he has been a practicing barrister for 40 years and was appointed Queen's Counsel (now King's Counsel) in 2003. During the past 19 years, Sir Geoffrey has represented governments, corporations and individuals in negotiations, mediations and international arbitrations and other matters around the world. Sir Geoffrey has been a British Member of Parliament since 2005, and served two British Prime Ministers as Attorney General from 2018 to 2020. Via lawyers, Mr Matekane rejected Sir Geoffrey's offer, labelling it as 'inappropriate' and 'unauthorised'."

"Sir Geoffrey's offer to act as an impartial mediator should have reminded Mr Matekane that the ongoing dispute is a serious matter with real consequences, and that it is not something that can be ignored or wished away. The recent ruling by the High Court of Lesotho is irrelevant because it was made too late, almost three years after the independent arbitrator's ruling. In addition, the High Court has no jurisdiction over an international arbitration process that will continue to be recognised as valid by jurisdictions around the world. The fact remains that the Government of Lesotho owes Frazer Solar €50 million plus costs and interest.



TEMEKI TŠOLO.

"Although this problem was not caused by Mr Matekane, he is fully responsible for its resolution. As we enter 2023, Frazer Solar will expand its legal battle into new jurisdictions, with future investigations likely to bring international scrutiny onto allegedly corrupt financial dealings involving Lesotho government officials," Frazer Solar further states.

This publication's attempts to obtain comment from Sir Cox about Frazer Solar's claims were fruitless as he did not respond to questions sent to him via email yesterday.

On his part, Attorney General Rapelang Motsieloa said although the premier had indeed received a letter from Sir Cox, they felt that Frazer Solar was not acting in good faith, chiefly because they approached Mr Matekane directly instead of engaging the state lawyers since they knew there were pending judgements in the Lesotho High Court and several other jurisdictions. In any event, Sir Cox should not have demanded to meet the prime minister of a sovereign country in another country (South Africa) as he had done, Advocate Motsieloa said.

"Yes they (Frazer Solar) did make an attempt (to negotiate) but what I didn't like was that Cox wrote to the prime minister saying he should come to Johannesburg for a meeting," Adv Motsieloa said in an interview yesterday.

"We took serious exception to that behaviour. We didn't think that letter and the offer to negotiate was done in good faith. The letter was written days before the Lesotho High Court issued its judgement which came out in favour of the government. Before the judgement came out, they (Frazer Solar) were saying that they wanted to negotiate but when the verdict came out they dismissed it as irrelevant and vowed to continue with litigations in other jurisdictions. This can't be the behaviour of people who genuinely want to negotiate. Besides, they wrote directly to the prime minister instead of approaching our lawyers. That would have been the right thing to do considering that we already had cases before the courts. And how does anyone ask the prime minister of a sovereign country to come to another country if they indeed wanted to talk. I think these (Frazer Solar) guys just want to tarnish the image of the country with their campaign and the media shouldn't be entertaining

them," Adv Motsieloa added.

In another statement, Frazer Solar vows to fight fire with fire. It claims that since the Lesotho government's argument against the damages award is premised on the claim that the 2018 'tender' was "fraudulently and corruptly agreed" with Mr Tšolo, it will bring corruption claims of its own against Lesotho government officials when the matter is heard in various jurisdictions around the world.

This will include shining the spotlight into what it claims is the disappearance of over M16, 1 billion in public funds under the Majoro administration. The German company alleges the money could have been laundered by officials in the previous government.

Although Auditor General Monica Besetsa has reported about the missing M6, 1 billion under the Majoro government, Frazer Solar ups the figure to M16, 1 billion. To arrive at this astronomical figure, the German company includes among other amounts, the M3 billion that the previous government said it expected to fork out for its 2021 decision to prematurely terminate the Tšepong Consortium's contract to operate Queen Mamohato Memorial Hospital (QMMH) on behalf of the state.

"Frazer Solar advises that in addition to pursuing seizure actions against Lesotho government assets in a growing number of international jurisdictions, it will extend its legal proceedings to shine a spotlight on the activities of Lesotho government officials. As the Frazer Solar case continues to wind its way through various international jurisdictions, the spotlight will increasingly focus on Lesotho's missing billions. This is especially so as the government's defence against Frazer Solar is tied solely to allegations of corruption (by Frazer Solar), thus guaranteeing that similar allegations (against Lesotho officials) are brought to the attention of international investigators who will be duty bound to investigate.

"This will ultimately lead to the identification of the officials responsible for defrauding Basotho — whoever they are and on a much wider scale than those responsible for mishandling the Frazer Solar case — individuals who have stuffed their own pockets with billions of illegally obtained maloti.

"The reality is that our case is symptomatic of the wider problem within Lesotho's government of rampant mismanagement, misuse and likely outright theft of public funds. Under the administration of former Prime Minister Moeketsi Majoro, it is widely reported that more than M16, 1 billion of government money (around US\$930 million) has been mishandled or has gone missing. This total includes M3, 4 billion and M6, 1 billion of government funds unaccounted for in financial years 2019/20 and 2020/21 respectively; the likely M3 billion termination fee to remove the organisation (Tšepong Consortium) responsible for running the Queen Mamohato Memorial Hospital and M1 billion in publicly reported cost overruns and delayed payments to suppliers."

The German company claims that a corruption probe will not only expose rogue officials in the previous and current government, it would also help recover Lesotho's 'missing billions' which could have been stashed in offshore accounts by the corrupt officials.

"The M0, 9 billion Frazer Solar arbitration award constitutes around six per cent of the total funds apparently squandered by the Majoro government...M16 billion is a huge amount of money to be unaccounted for and it must have gone somewhere, most likely overseas.

"This opens the very real potential for the involvement of law enforcement agencies in the United States, the European Union and other jurisdictions to track where the money has gone and who has it. Corruption, wire fraud and money laundering are serious crimes and are bound to attract the attention of well-resourced international investigators who won't leave a stone unturned.

"Unless the new Prime Minister Sam Matekane is truly committed to tackling these historic injustices himself, Frazer Solar will seek the support of international law enforcement agencies, which could have serious and far-reaching consequences for many former and current government officials," Frazer Solar warns.