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Judicial crisis as Judge Tshosa resigns

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Mokhotu speaks on ABC, DC coalition

- Says govt could have long collapsed had it not been for the DC,
- But defends coalition of the "two giants" saying it gives hope to the nation.

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Frazer fires another salvo at Majoro

... says premier created "fanciful conspiracy theories" to mislead DCEO, Basotho over botched M1, 7 billion solar deal

Pascalinah Kabi

FRAZER Solar has accused Prime Minister Moeketsi Majoro of lying to the Directorate on Corruption and Economic Offences (DCEO) and the nation about the circumstances leading to the German company being granted a court order endorsing its default £50 million (M856 million) claim against the Lesotho government.

Frazer Solar alleges that Dr Majoro had been dishonest when he told the DCEO, the nation and the Gauteng High Court that former cabinet minister, Temeki Tšolo, and other senior officials in the previous Thomas Thabane administration had concealed information about the German company's lawsuit which led to the default award of the damages.

The company says there was no conspiracy by Mr Tšolo and others to conceal the information. It insists that Dr Majoro was fully aware of the lawsuit. It says that "complacency, not conspiracy is the real reason why the Lesotho government ignored the legal processes which culminated in the damages award against it".

The damages award against the Lesotho government arose from its alleged breach of its 2018 contract with Frazer Solar for the provision of 40 000 solar water heating systems, 20 megawatts of solar power capacity, 1 million LED lights and 350 000 solar lanterns to Lesotho over four years.

Dr Majoro was finance minister at the time of the deal. He had refused to sign the financing agreement for the project. Former Minister in the Prime Minister's Office, Tšolo, had already signed the main supply agreement before Dr Majoro's refusal, the company claimed.

The damages were initially awarded in January 2020 by South African arbitrator, Vincent Maleka. Frazer Solar subsequently successfully petitioned the Gauteng High Court in April to endorse the award. The South African court also court granted Frazer Solar's application to garnish the royalties due to Lesotho in terms of the bi-national Lesotho Highlands Water Project (LHWP).

Buoyed by the court judgment, Frazer Solar also moved to seize Lesotho government assets in other countries. These include the government's shares in a Mauritian company, West Indian Ocean Cable Company (WIOCC).

The looming seizure of the assets finally jolted the government into action. Last month, it dispatched an inter-ministerial delegation for talks with South Africa to stop Frazer Solar from laying its hands on the water royalties and any other Le-

sotho assets in South Africa.

The government followed up on the talks by assembling a team of lawyers from four different law firms in South Africa to collectively formulate an application for the reversal of the court judgement garnishing the water royalties.

In his founding affidavit filed with the Gauteng High Court last month, Dr Majoro accuses Mr Tšolo of illegally signing the controversial deal with Frazer Solar.

Dr Majoro said Mr Tšolo had no right to negotiate and sign such an agreement.

The premier said the DCEO's investigations had established that there was "evidence which points in the direction of this (legal) process having been deliberately kept from the relevant officials, for a corrupt purpose".

The premier further alleges that he only learnt about the Gauteng High Court's April 2021 judgement in favour of Frazer Solar from the media on 18 May 2021.

He states that any seizure of Lesotho's assets to pay off the alleged debt to Frazer Solar "would be catastrophic for the finances of Lesotho".

However, Frazer Solar accuses the premier of lying.

"Dr Majoro has misled the DCEO," Frazer Solar says in a statement issued last week.

"He has misled Basotho and now we learn he intends to mislead the South African court as well. This pattern of inaccuracies raises serious questions over the Government of Lesotho's ability to present any

credible legal case as and when proceedings begin in South Africa.

"It is clear that complacency, not conspiracy, is the reason why the Lesotho government (GOL) has failed to engage with this legal process. This fanciful conspiracy has been dreamed up by Dr Majoro. It is an insult to Basotho, and a desperate attempt to distract attention away from the multiple opportunities he (Dr Majoro) and the GOL were offered to resolve this dispute but failed to act," Frazer Solar says.

The company accuses Dr Majoro of lying to the DCEO when he said that he was not informed or served with the court papers pertaining to Frazer Solar's lawsuit in the South African courts. The company alleges the premier is inconsistent as his recent affidavit to the Gauteng High Court acknowledges that Lesotho's Foreign Affairs and International Relations ministry did receive Frazer Solar's court papers.

"However, in Dr Majoro's affidavit to the South African Court, he confirms that the Ministry of Foreign Affairs did receive the notice of motion and founding affidavit in the application to make the arbitration award an order of court. Dr Majoro says that "All court papers received by the Ministry of Foreign Affairs by 8 December 2020 were contained in a dos-

sier. The dossier was forwarded to the Office of the Attorney General after 9 December 2020 but never reached the Attorney General."

Frazer Solar argues that the Lesotho government has to explain why these documents were allegedly never received by the Attorney General's office. It says it is not plausible to suggest that the pending legal action could have been concealed from the relevant people given the extent of Frazer Solar's efforts to inform so many ministers and ministries of the legal action.

The company says it even established that Dr Majoro had himself received notice of the pending legal action. This was "confirmed" by way of "read receipt" for documents it emailed in April 2021 and the premier's own affidavit.

"In its attempts to excuse the GOL's failure to engage with this legal process over the past two years, Dr Majoro's affidavit to the South African court relies exclusively on the notion that documents, letters, phone calls, and emails were deliberately and successfully concealed from relevant ministers and ministries by four individuals.

"This conspiracy theory does not exist in reality and is instead a fanciful product of Dr Majoro's own creation. The facts are as follows: Dr Majoro identifies four alleged participants in the conspiracy: former Minister Tšolo, former Government Secretary (Moahloli) Mphaka and their secretaries Ms Ntobaki and Ms Lebusa.

"The secretaries claim that at all times they were only following the directions of their superiors. The GOL's position is that Mr Tšolo and Mr Mphaka were able to intercept and conceal all documentation related to the case with complete precision on every single occasion over the last two years, while somehow exacting enough control over anyone within the government from ever talking about it or taking any action.

"Taking these points into consideration, it is impossible to see how any of the four individuals could have seized all crucial information, as Dr Majoro alleges, including from Dr Majoro himself. Furthermore, with the exception of Mr Tšolo, none of the individuals held positions of sufficient power or influence to conceal legal documents or prevent further enquiries across multiple ministries," Frazer Solar states.



MOEKETSI Majoro.

Mohalenyane Phakela

MAGISTRATES and the Law Society of Lesotho have questioned the criteria used by the Judicial Service Commission (JSC) to shortlist six candidates from an initial 36 who had applied for the seven vacant High Court judges' posts.

Law Society president, Tekane Maqakachane, this week told the *Lesotho Times* that they had sought audience with JSC chairperson and Chief Justice Sakoane Sakoane over the issue. Advocate Maqakachane said they want clarity as to how the JSC arrived at the decision to shortlist the six candidates.

This after the JSC snubbed some top lawyers and all magistrates including the country's three highly experienced Chief Magistrates 'Matankiso Nthunya, 'Makamong Mokgoro and Manyathela Kolobe from its shortlist announced over the weekend.

Ombudsman Tšelisio Mokoko, a former Defence and National Security principal secretary, was also overlooked along with Former Prime Minister Thomas Thabane's daughter, 'Mabatsoeng Hlaele. Advocate Hlaele, the wife to ruling All Basotho Convention (ABC) secretary general and former law minister, Lebohng Hlaele, is a seasoned lawyer and law

Magistrates, Law Society "shocked" by JSC snub in judges' recruitment

lecturer at NUL.

They had all submitted their applications but the JSC only shortlisted Fumane Malebana Khabo, Moneuoa Kopo, Realeboha Mathaba, Makhele Julius Sekati, Kuena Mabotsoa Thabane and Mamotšselisi Khiba.

The names of the six are contained in circular by JSC secretary, 'Mathato Sekoai, to the Attorney General, Rapelang Motsieloa; Law and Justice principal secretary, Lebeko Sello; the Dean of the law faculty at the National University of Lesotho (NUL); the president of the Law Society of Lesotho and all legal practitioners. The 22 July 2021 circular is also addressed to civil society groups and the public at large.

"On 15 February 2021, the Judicial Service Commission published an advertisement calling for nominations and applications to fill seven vacancies of puisine judges of the High Court," Advocate Sekoai states in her circular.

"The closing date for the submission of applications and nominations was the 16th of March 2021 and the advert attracted a total of 36 can-

didates.

"At its 204th meeting held on 22 July 2021, the Commission considered the applications and nominations and came up with the six candidates who have met the shortlisting criteria published under the Judicial Service Commission Circular N0.1 of 2021 dated 31 March 2021. The six are Fumane Malebana Khabo, Moneuoa Kopo, Realeboha Mathaba, Makhele Julius Sekati, Kuena Mabotsoa Thabane and Mamotšselisi Khiba. The interviews for the candidates will be held on 16 August 2021," Adv Sekoai states.

In a subsequent interview with the *Sunday Express* over the weekend, Adv Sekoai said "the number of those who will make it to the High Court bench will be determined by how many of the shortlisted six will pass the interview".

Adv Mathaba is a former Acting Commissioner General of the Lesotho Revenue Authority (LRA) while Mr Kopo worked as LRA Senior Manager: Internal Affairs.

Ms Khabo is Labour Court president while Mr Sekati works at the

Law Office in the Ministry of Law and Justice. Ms Thabane is a former NUL law lecturer who is now in private practice. Ms Khiba, a former LRA board member, is now in private practice. On the face of it, all six have basic credentials enabling them to meet the minimum requirements for appointment.

While all have the relevant law degree, only Ms Khabo appears to possess some form of experience in adjudicating cases in the courts as she is the Labour Court president.

The shortlisting of the six and the snubbing of seasoned magistrates has raised eyebrows among legal analysts, lawyers and magistrates themselves. (See analysis on Page 15).

The magistrates, through their association, Judicial Officers Association of Lesotho (JOALE), argue that their members were overlooked despite boasting an average 15 years' experience of adjudicating cases.

"We do not know what criteria was used to shortlist those six people," JOALE president, Peete Molapo, said in an interview with the *Lesotho*

Times this week.

"I doubt there was any criteria in the first place. In the beginning, the recruitment process was transparent as people were given the opportunity to apply. But we were shocked when it got to the shortlisting stage.

"The shortlist is highly questionable because none of the magistrates to have made it. There are so many who qualify with over 15 years of experience and they ought to have been given the opportunity to prove themselves in the final interviews. Even in terms of education, most magistrates have masters' degrees.

"This is why we say the criteria has shocked us, if ever it all it was there," Magistrate Molapo said.

On his part, Law Society president, Adv Maqakachane, said they had sought an audience with Justice Sakoane.

"As the Law Society, we had been made aware of the suspension of the recruitment process but a few days ago learned of the shortlisting of six candidates. This caused our members to have several questions regarding the shortlisting and we have asked for an urgent meeting with the chief justice.

"We have asked for this meeting to establish what transpired and that is all I can say for now," Adv Maqakachane said. (See analysis on Page 15).