

SA backs Frazer Solar's claim

... as solar firm's damages surpass M1 billion

EBOHO KHATEBE MOLEFI
and 'MATHATISI SEBUSI

MASERU - In a worrying legal turn of events, South Africa's Minister of Justice, Ronald Lamola, supports a key point of Frazer & Neill's case in which government challenges an arbitration award that now exceeds M1 billion.

The long-running legal saga arose over an alleged breach of a 2018 contract by the government of Lesotho.

The challenge emanates from Frazer Solar GmbH claims that they signed an agreement in 2018 with Lesotho to provide as many as 40 000 solar water-heating systems, 20MW of solar photovoltaic capacity, one million LED lights and 350 000 solar lanterns.

Frazer Solar then began legal action against Lesotho in 2019 after what it said were a series of contractual breaches.

The German firm won arbitration proceeding in South Africa, in which it was awarded the damages.

The company says while the German government agreed to finance the programme, the Ministry of Finance in Lesotho failed to execute the project's financial arrangement, and equally failed to engage expected legal processes.

While an assessment of the damages Frazer Solar claims to have incurred amounted to €102 million it was awarded €50 million (M856 million).

Between June 6 and 8, 2014, the Lesotho government has been pursuing an application to overturn the Frazer Solar Arbitration award before the High Court of South Africa, Gauteng Local Division, in Johannesburg, South Africa.

While lawyers presented detailed arguments for their respective cases, Frazer Solar's position is that the Lesotho government's legal challenge was lodged too late, after the fixed deadline, so it should not be allowed.

This would mean that Frazer



SA justice minister Ronald Lamola

Solar's arbitration award remains unchanged.

On the other hand, government of Lesotho claims that former Minister Temeki Tšolo who signed the deal on its behalf, was not properly authorised when he signed the supply agreement in September 2018.

This therefore means everything that followed thereafter, including the arbitration award itself and the deadline to lodge the legal challenge, should be declared null and void.

Consequently, the Frazer arbitration award would have to be overturned.

In September 2018, according to the company, following negotiations, a written supply agreement was concluded, signed by Robert Frazer on behalf of Frazer Solar, and Minister Tšolo on behalf of Lesotho.

“The financing agreement with KFW would be finalised by the Minister of Finance,” Frazer Solar says, further indicating that in October 2018, they wrote to the Ministry of Finance to establish the reasons for the delay in finalising the finance agreements.

It was told by the ministry that the project required cabinet support and leadership from the Ministry of Energy.

“However, this support had already been confirmed by the office of the prime minister, which could not explain the ministry’s refusal to execute the financial agreement,” Frazer Solar said.

Following then Prime Minister Moecketsi Majoro's alleged refusal to approve the project, Frazer Solar says they were left with no choice but to commence arbitration proceedings in South Africa.

Frazer Solar had claimed to have met with Majoro's predecessor, Prime Minister Motsoahae Thabane, and Minister in the Prime Minister's Office, Tšolo, to discuss a detailed presentation of the project and setting out the benefits, energy and cost savings it would bring about.

However, on May 26, 10 days before the hearing, Minister Lamola lodged a 46-page statement with the court focusing on the deadline issue that is a core pillar of Frazer Solar's argument – he said the deadline is valid, and there is nothing wrong or unfair

about this.

Minister Lamola's view aligns with Frazer Solar's view, and went on to seek costs from the government of Lesotho for his involvement in the case.

“In the circumstances, we submit that the Constitutional challenge is misplaced and therefore the Applicant should be ordered to pay the minister’s costs including the costs attendant for the employment of two counsel,” said the minister in his papers submitted by his counsel, Chris Georgiades SC, before the High Court of South Africa.

The minister submits that despite Lesotho argument that Frazer's application for arbitration was filed late, in the interests of international uniformity and consistency, the three-month period does not violate Section 34 of the Constitution of South Africa by denying anybody the access to courts of law.

Section 34 of the Constitution of South Africa 1996 (as amended) is about access to courts. It is under Chapter 2 of the Constitution, and provides that everyone has the right to have any dispute that can be resolved by

the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

“We have submitted that comparable foreign jurisdictions apply, more or less, the same restriction without breaching any right to access to courts. Even if the restriction violates Section 34 of the Constitution, it is for the same reasons as stated, that such a limitation is reasonable and justifiable,” Lamola says.

A Frazer Solar spokesperson following these developments said: “With interest accruing daily, at current exchange rates our claim now exceeds M1 billion,” adding that “Frazer Solar will keep pursuing all legal means, in any jurisdiction in the world, until we recover every penny of what we are rightfully owed.”

The government this week could not be drawn into either discussing its plans regarding the ongoing case or talking to the idea of out-of-court talks with the German company to rethink and remodel the project, with Government Secretary, Lerotholi Pheko and the Minister in the Prime Minister's Office, Limpho Tau, directing this paper to the Attorney General for a comment.

Asked to react to these latest development and outline government's next legal route Attorney General, Advocate Rapelang Motsieloa, could only say that the case has been completed and they are awaiting judgement. "That's all," he said.

Judgement in the matter was reserved.

Asked on economic implications should government be forced to fork out the M856 million to pay the Frazer Solar debt, economist and economic and political commentator, Majakathata Mokoena, said there is no way that Lesotho could lose the case.

He labelled the transaction and eventual signing of the contract between Lesotho and the German company explicit corruption.

Mokoena suggested that the South African High Court has no business in ruling or hearing the case, articulating that the case should be rightfully heard by the International Court of Justice (ICJ).

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P.O. Box 14129, House No. 14A3 Cnr Princess Margaret/Mabile Rds Old Europe, Maseru- Lesotho
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Motete Mine to hire up to 100 locals

RETHABILE MOHONO

MASERU – A new open cast diamond mine, Motete Dyke Mining, entirely wholly owned by Basotho is ready to kick start its operations in Motete, Buthe-Buthe.

The company has partnered with Univest Mining a South African mining and exploration company, with a strong commodities interest in coal, chrome, gold and diamonds. Motete Dyke Mining company has already been awarded a 10-year mining lease and this strategic partnership secures the investment to kick-start phase 1 of the project.

Univest Mining’s key competences are contract mining, commodities trading and mining consultancy services.

The lease was issued to the company after it applied for it in 2019. This followed a liquidation of another company in 2016 paving way for the floating of tenders for the Motete mining.

CEO of Univest Group Holding, Karabo Mkhabela, said they have secured investment of about US\$3 million which is equivalent to M55,147,500 million for the first phase of the mining.

“For the second phase at least US\$10 million (about M183.6 million) will be injected into the project,” he said, emphasising

that the project is soon to fully operate and change lives of Motete residents whose major need is job opportunities.

He said further that the company has already completed the road that leads to the Motete area and he expects the mining to be operational within the next six months.

“We promised to grant job opportunities to between 50 to 100 Motete residents in phase 1,” he said, explaining that they already did multiple surveys at the area and they are willing to develop local health services, education, small scale farming, and transfer skills to locals, among several other initiatives.

Lenepa Ratalane, a Mosotho shareholder in Motete Dyke, said residents in the area during the initial community consultations have identified roads as a key priority need, which the company has already delivered. This he said, is a strong commitment by the company to working hand in glove with the community on identified projects through the formation of local committees.

The committees would address development issues while

creating open communication between the company and the community.

“To reduce the high unemployment rate in Motete, we will be engaging both skilled and unskilled labour from within the community and will also engage local farmers for provision of food within the mine,” he added, emphasising that there is going to be skills transfer to unskilled community members.

“We also promise to improve agriculture in the communities focusing on health and education to ensure the development of the communities around the mine,” he said.

SA backs Frazer Solar claim



Ex-minister in the Prime Minister's Office Temeki Tsolo

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“South Africa has no authority to rule over this case, but then let us say it does and in favour of Fraser Solar, then the government of Lesotho will have to take the matter further to the ICJ. If it still loses the case, then we will have to question the ICJ because what happened here is pure corruption,” he said.

He said if Lesotho were to agree to Fraser Solar’s demands, they will be somehow supporting the corruption and might lose, among others, the African Growth and Opportunity Act and Millennium Corporate Challenge opportunities.

Since commencement of this case Fraser Solar has on several occasions attempted to seize Lesotho’s assets abroad in order to enforce payment of the €50m in contractual damages. It was even reported that they had already taken control of royalties that Lesotho earns on water and power supplies to South Africa, after a US court gave it the go-ahead last month to employ tactics similar to those used by creditors to chase countries that have defaulted on their debts.

International asset seizures

have increasingly become part of enforcing contracts against governments, including in Africa.

Frazer Solar GmbH has also labelled as trumped-up and baseless charges made by the Directorate on Corruption and Economic Offences (DCEO) against its managing director, Robert Frazer, relating to contract.

Frazer Solar also demands the DCEO to provide them with the status of its investigation into the controversial M2.8 billion deal awarded by the government in April 2019 to a Chinese contractor for the Ha Ramarothole Solar PV Park in Mafeteng.

The company maintains that the decisions taken by former Prime Minister Majoro clearly link its own solar power project with the expensive Chinese alternative preferred by Majoro, which is plagued by allegations of overpayments and corruption estimated at M1.7 billion. The say Majoro supported the costly Mafeteng project instead of Frazer Solar’s proposal.

They further note that that the DCEO has brought up these ‘trumped-up’ charges against Frazer solely in an attempt to pressure the company from

enforcing its lawful award for €50 million, damage his reputation and restrict his liberty, as no evidence has ever been provided to substantiate these ‘ridiculous allegations’, including in the High Court of Lesotho.

Frazer Solar confirms that the DCEO’s actions will have no effect on the company’s ongoing enforcement proceedings to seize assets owned by Lesotho in jurisdictions around the world. The company says its personnel will not be covered by the use of coercive and corrosive tactics usually employed by failing authoritarian regimes.

Frazer Solar made strong calls upon the DCEO to provide an update on its investigation into the government’s decision to award the Mafeteng solar power project to Chinese contractor Sinoma Tbea Consortium.

Shortly before the DCEO began this investigation in December 2020, serious allegations were made linking government officials to overpayments and bribes.

The company maintains that the decisions taken by Majoro when serving as finance minister and prime minister are at the heart of both the Frazer Solar and Sinoma Tbea controversies.

In a statement issued on November 11, 2022, by the DCEO, the anti-graft agency noted that on April 28 of the same year a warrant of arrest against Frazer was issued for him to appear before the court.

According to the statement, efforts are being made for the arrest of Frazer through relevant international bodies.

The statement was issued to update the nation on former Minister Tšolo and Frazer charges of fraud, corruption, and abuse of power in the court of Lesotho.

Construction of the Ha Ramarothole Solar Park has reached completion and was on Monday this week handed over to the Lesotho government by TBEA Xinjiang at a ceremony held at Ha Ramarothole in Mafeteng.

LEC boss agrees on mutual separation with board



Mohato Seleke

MOSA MAOENG

MASERU - The Lesotho Electricity Company (LEC) and its Managing Director, Mohato Seleke, have agreed to a mutual separation with effect from June 1.

According to the LEC management Seleke has started serving notice for one month until June 30. The recruitment process for the position of a new managing director will soon be expedited by the company’s board of directors.

The LEC board has thanked Seleke for his hard work, dedication, and professional contribution in ensuring business continuity for the LEC during his tenure.

“We wish you well in your future endeavours,” the statement said.

Seleke joined the LEC in January 2021 from Lesotho National Development Corporation where he served as CEO.

He has worked in numerous consulting assignments for both local and international organisations in the areas of corporate finance, investment, and international trade and technology integration. Amongst others, he has consulted for the Commonwealth, United Nations Development Programme, the Southern African Customs Union and CARE, and brought with him to the LEC a

wealth of experience in corporate governance having served as a director and chairperson for a number of reputable local companies and regional organisations.

Seleke holds a Masters degree in Business Administration from the University of the Free State (UFS) and also graduated from the National University of Lesotho with B.Sc. in Mathematics and Statistics.

He further completed advanced training in Operations Management and Logistics and Lean Management with both UFS and University of Cape Town Graduate School of Business, respectively.

He leaves the utility company at a time it is wrestling with a long outstanding M239 million debt owed by government, private and domestic users, which has led to fears of load-shedding should the defaulters fail to settle their debts.

Seleke has recently announced the LEC cash flow was strained and this was hampering their efforts to provide quality services and reach more consumers.

The government owes LEC a massive M80 million in unpaid electricity bills while private companies and some embassies owe M57 million. Individual users owe an additional M102 million, part of it dating back to 2018/29, with efforts to collect this debt unsuccessful to date.