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# Lesotho Times

January 18 - 24 2024

Vol 16 Issue 42

NEWS WITHOUT FEAR OR FAVOUR

 M7.00

 R 10.00

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TEMEKI  
Tšolo.

MOEKETSI  
Majoro.



SAM  
Matekane.

# Lesotho suffers bloody setback

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# Lesotho suffers bloody setback



MOEKETSI Majoro.

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the appeal case will be financed by the African Legal Support Facility.

"We are currently drafting the appeal papers which will be submitted within time before the 3rd of February 2024," Adv Motsieloa said.

"We are not happy about the verdict hence we have decided to appeal the matter. We are being represented by the South African lawyers because the case is being heard in South Africa.

"We met with them yesterday (Tuesday) and discussed this matter and the final decision was that we appeal the judgement," Advocate Motsieloa said.

He said they were being assisted by the African Legal Support Facility. Lesotho was a member of the Facility, which supported African governments and other institutions with capacity building initiatives, among other things.

"I do not want to get into the details of the appeal because I do not want to jeopardise our case. We lost the case and we made a decision in consultation with our lawyers to appeal," he said.

However, Frazer Solar remains adamant the appeal would be a "futile exercise".

Frazer Solar spokesperson, Neil Cameron, told the *Lesotho Times* the best the Matekane government could do was to settle the matter with his company failing which the debt would keep on escalating with interest and legal costs.

Mr Cameron said Lesotho's appeal had no prospects of success whatsoever.

"Failure to pay the full legal debt owed to FSG would, among other things, have a negative impact on Lesotho's credit rating and desirability as a destination for foreign investment," Mr Cameron said.

He said they urge Prime Minister Matekane to acknowledge reality that Lesotho had lost and to reach out to them to settle the matter. Each day that goes by without a settlement, the amount of money owed to FSG increased, he said.

"We estimate that the total debt owed to us, including interest and costs, is in the vicinity of €58 million (M1.2 billion).

"As for Frazer Solar's future intentions, failing settlement, we will continue to enforce our legal rights with renewed vigour on the back of this overwhelming legal victory.

"We will restart asset seizure actions in every country in the world where Lesotho has assets until we receive every single cent of what is rightfully owed to us," Mr Cameron said.

He described the ruling as an overwhelming defeat for Lesotho. It had lost on all legal arguments it raised, he said. Lesotho's narrative of fraud, corruption and deceit in the deal, which had been driven by former Prime Minister Moeketsi Majoro, who had initiated the legal challenge in South Africa, had been completely debunked, Mr Cameron said. He said Dr Ma-

majoro's attempts to intimidate Frazer Solar executives with "bogus" criminal charges had failed. Former Minister in the Prime Minister's Office, Mr Tšolo, had been "completely cleared of the criminal charges", Mr Cameron claimed.

"Tšolo deserves an apology and restitution from the government for the false accusations made against him by Dr Majoro.

"To be crystal clear, we say Dr Moeketsi Majoro's actions and inactions are the sole cause of the situation Lesotho finds itself in today," he said.

Mr Tšolo allegedly "unilaterally" awarded the solar power contract to Frazer Solar in September 2018 while he was the Minister in then Prime Minister Thomas Thabane's office.

Mr Tšolo has been accused of unlawfully signing the solar deal, hence he was criminally charged for fraud in the Maseru Magistrates Court in December 2021. Mr Tšolo was accused alongside Frazer Solar boss, Robert Frazer. The Directorate on Corruption and Economic Offences (DCEO) had secured a warrant for Mr Frazer's arrest in April 2022. The criminal case against him and Mr Tšolo has since been moved to the High Court and is awaiting to be enrolled for commencement.

Before the measures against Messrs Tšolo and Frazer, a South African arbitrator, Vincent Maleka, had ruled that the Lesotho government had breached its 2018 solar power deal with the German company. He had awarded Frazer Solar M870 in damages for Lesotho's reneging on the multifaceted renewable energy deal for the supply of solar products.

Frazer Solar had in April 2021 successfully petitioned the Gauteng High Court to endorse the arbitration award as an order of court to enable it to garnish Lesotho's revenue from the sale of water to South Africa in terms of the Lesotho Highlands Water Project treaty entered into by the two countries in 1986.

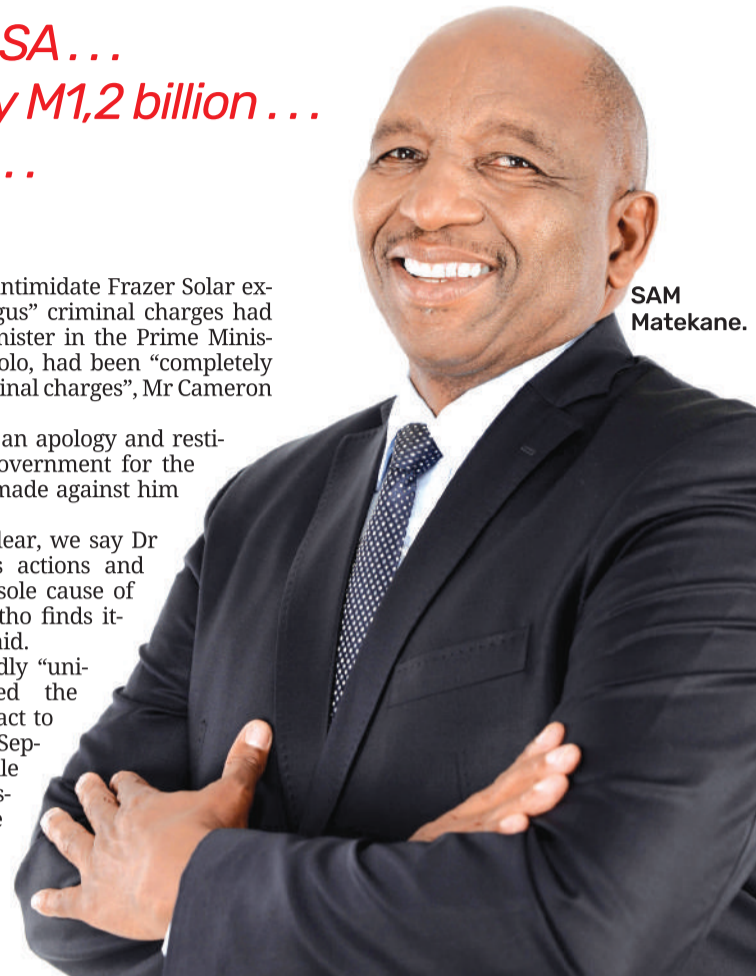
Dr Majoro had petitioned the same Gauteng High Court to reverse its decision. That is the case Lesotho has now lost.

While awaiting the outcome of the South African case, Dr Majoro had successfully challenged the validity of the contract signed by Mr Tšolo and Frazer Solar in Lesotho's own courts and obtained a favourable judgment.

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 argued that the deal should have been negotiated and signed by the Ministry of Energy and Meteorology, not by Mr Tšolo.

The Lesotho Constitutional Court had in November 2022 declared the contract invalid and disregarded the arbitration award.

Nonetheless, the Gauteng High Court has now upheld the January 2020 arbitration award, leaving Leso-



SAM Matekane.

tho in real trouble. Frazer Solar can use the South African judgment, unless it's reversed on appeal, for its assets seizure project. South Africa is bound by the decisions of its own courts and not Lesotho's courts. Frazer Solar can thus legitimately attach the water royalties, making AG Motsieloa's appeal bid imperative.

Mr Cameron said the South African judge's ruling aligned perfectly with what Frazer Solar had been saying about the legitimacy of the contract all along. It should be no surprise to anyone that Frazer Solar had won the case.

He said Basotho should blame Dr Majoro for their government's failures.

"In our opinion, it is clear Dr Majoro, through hubris or poor advice, has mishandled the matter from the outset. As we have repeatedly stated, Dr Majoro has made many statements, which are untrue and which have now been proven to be untrue in a legitimate court of law.

"Dr Majoro said Tšolo was not authorised to sign the contract, but the court found he was authorised.

"Majoro said no one in the government knew about the contract, but the court found this to be untrue. Majoro alleged corruption and fraud, yet this was never raised at trial as there was no evidence to substantiate these false claims.

"Majoro said Lesotho government was not aware of the legal proceedings, but the court found Majoro knew everything but chose to do nothing," Mr Cameron said.

He added: "Dr Majoro believed the Lesotho High Court ruling to nullify the contract would be relevant, but it was not. Perhaps one of Majoro's bigger miscalculations was the inclusion of the South African Ministry of Justice.

"It is likely Dr Majoro sought to include the South African government as he thought they would support Lesotho's case. However, this backfired on Majoro and torpedoed the government of Lesotho's case when the court agreed completely with Frazer Solar's own legal argument."

Mr Cameron said the Lesotho government had previously ignored the legal proceedings which led to the arbitration award. He said the Lesotho government had belatedly sought to nullify the arbitration award, and it mistakenly believed that its belated participation would achieve that.

Efforts to get Dr Majoro to comment on this major setback were not fruitful yesterday as his phone rang unanswered. He is nonetheless no longer PM and the problem is now on Mr Matekane's desk.

Acting Judge in the Gauteng Division, Jacobus Johannes Strijdom, dismissed Lesotho's application to set aside the arbitration award with costs.

Mathatisi Sebusi/ Mohloai Mpesi

LESOTHO has suffered a bloody nose after a South African court ordered the government to pay a controversial German company, Frazer Solar, €58 million (about M1,2 billion) for a botched solar power supply deal.

The decision by the South African High Court marks a dramatic turn in a long running legal battle in which Lesotho had sought to extricate itself from the controversial deal signed in 2018 by then Minister in the Prime Minister's office, Temeki Tšolo, with the German company, Frazer Solar GmbH (FSG).

The government had argued the deal was illegal as Mr Tšolo had no authority to sign the "fraudulent" transaction.

Frazer Solar had nonetheless embarked on a mission to seize Lesotho's foreign assets after it originally won a M870 million arbitration award in 2021 after accusing the government of reneging on the deal. But the assets seizure mission had been iced after Lesotho challenged the arbitration award in the South African High Court.

The government has now lost the case. It has been ordered to pay the whopping M1,2 billion amount it can hardly afford in light of its near empty coffers. The penalty figure has escalated from M870 million to M1,2 billion with interest and legal costs. Unless it succeeds in reversing the decision on appeal, then Lesotho is in real trouble.

An emboldened Frazer Solar told the *Lesotho Times* yesterday the only realistic option for Lesotho was for Prime Minister Sam Matekane's government to approach it for an agreement on payment terms.

Unless this happened, Frazer Solar vowed to confiscate the country's foreign assets abroad.

The government had succeeded in delegitimizing the Frazer Solar deal in Lesotho's courts which had nullified the contract entered into by Mr Tšolo as illegal and unconstitutional. But Frazer Solar said that decision was "irrelevant". It would rely on the latest judgment upholding its arbitral claim to seize Lesotho's assets unless the government pays.

Indeed, Frazer Solar can easily use the decision of the South African courts to enforce its attachment order against Lesotho's assets in that country. South African institutions are bound by the decisions of their courts not Lesotho's courts. That makes Lesotho's appeal against the judgment vital.

Attorney General, Rapelang Motsieloa, said the government would appeal the Gauteng High Court's decision to refuse to overturn the arbitration award to Frazer Solar GmbH (FSG).

The ruling was delivered to the parties this week after the case was heard by the South African court on 6 and 7 June 2023.

Speaking to the *Lesotho Times* yesterday, Advocate Motsieloa (KC) said the government would be noting its appeal before 3 February 2024. The government will engage South African lawyers for assistance, and



TEMEKI Tšolo.