

# Frazer Solar warns Matekane

Public Eye Lesotho

03/27/2024



## RELEBOHILE TSOAMOTSE

MASERU – Frazer Solar GmbH, a German company currently embroiled in a legal dispute with the Lesotho government, has warned that the country risks losing more money if it continues to drag its feet instead of settling the case. This is as the government has applied for leave to appeal the Johannesburg division of the South African (SA) High Court order, where Acting Judge Jacobus Johannes Strijdom rejected Lesotho's application for a rescission of an arbitration award that was later endorsed by a court.

SA arbitrator Vincent Maleka ruled in April 2021 that Lesotho breached a 2018 solar power deal it had with Frazer Solar and that it was liable for almost M850 million in damages. That award was made an order of court, and Lesotho failed in its attempt to have the order overturned, forcing it to appeal the matter. An application for leave to appeal the dismissed rescission will be moved to Tuesday next week, but Frazer Solar says Lesotho's government should be

aware that interest accumulates each and every day, and therefore, the longer the case takes, the more money the government will have to pay in the end.

“We remind Basotho that interest accrues each and every day, so the longer Prime Minister Samuel Matekane drags out the process, delaying the inevitable, the more GOL will have to pay in the end,” the company’s spokesperson said. Frazer Solar and the South African Ministry of Law and Justice, represented by Ronald Lamola, have refrained from opposing Lesotho’s application for leave to appeal.

However, Frazer Solar has expressed scepticism, stating that the Government of Lesotho’s (GOL) chances of success on appeal are minimal. According to Frazer, it would be prudent for the government of Lesotho to settle the dispute promptly to mitigate costs. However, as is often observed, common sense does not always prevail in such matters. Frazer adds that regardless, the company is “steadfast in our resolve and will persevere and pursue the Government of Lesotho for as long as it takes until we receive full payment of what we are rightfully owed.”

Frazer Solar contends that if Lesotho is granted leave to appeal the High Court judgement but loses the appeal, it would mark the conclusive end of Prime Minister Matekane’s case.

The dispute between the Lesotho government and Frazer Solar originated from a power deal signed in 2018, with the then Minister in the Prime Minister’s office, Temeki Tšolo, signing on behalf of the government. The agreement aimed to provide up to 40,000 solar water heating systems, 20 MW of solar photovoltaic capacity, one million LED lights, and 350,000 solar lanterns nationwide. Tšolo stands accused of unlawfully signing the agreement without proper authorisation or mandate.

Former Prime Minister Dr, Moeketsi Majoro successfully petitioned the Lesotho High Court (sitting as the Constitutional Court) to review and invalidate the agreement. Majoro alleged that Tšolo had violated national laws governing contract agreements and payments to third parties, acting clandestinely without parliamentary, cabinet, or ministerial approval. Despite the nullification of the deal by the Lesotho High Court, the Johannesburg High Court ruled on August 31, 2023 (made available in January 2024), affirming

the arbitration award and ordering Lesotho to pay Frazer Solar approximately M1.2 million, inclusive of legal costs.

Justice Strijdom's ruling disregarded the Lesotho High Court's decision, citing the non-binding nature of Lesotho's court decisions and the arbitration agreement specifying South Africa as the jurisdiction. Lesotho's late filing for the rescission of the High Court order was dismissed on procedural grounds, as it exceeded the stipulated timeframe. The court upheld the three-month deadline prescribed by the UNICITRAL Model Law, emphasising the fairness and justifiability of the limitation.

Legal experts interviewed by Public Eye criticised Justice Strijdom's decision, arguing that courts possess inherent jurisdiction to grant condonation based on the complexity of cases. They deemed the refusal to grant condonation as potentially violating constitutional rights to access courts and interference with the court's discretionary power. The arbitration award against Lesotho was issued in its absence due to its failure to attend arbitration meetings or oppose the application.

Previous attempts by Frazer Solar to address the issue through letters of demand were ignored by Lesotho, leading to the termination of the agreement and the subsequent initiation of arbitration proceedings.