Lesotho Times

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NEWS WITHOUT FEAR OR FAVOUR

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Minister Sello in sex for job storm

- As LCA boss Matela accuses him of pressuring her into a sexual relationship to keep her job,
- Minister vehemently denies the allegation.

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Keketso Sello

'Mamarame Matela

DCEO boss's woes mount

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Lesotho's foreign assets seized

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Lesotho's foreign assets seized

... water royalties and shares in a Mauritian company impounded
... to pay off a multi-million damages claim by a German solar company

Pascalinah Kabi

THERE is no letting up for Prime Minister Moeketsi Majoro and his government in the botched M1, 7 billion solar power deal with German company, Frazer Solar.

This after Frazer Solar won its bid to seize Lesotho's foreign assets as compensation for the breach of a 2018 contract it claimed to have entered into with then premier Thomas Thabane's government for the supply of solar power.

The German company has since seized royalties due to this Kingdom from the Lesotho Highlands Water Project (LHWP) and Lesotho's shares in a Mauritian based company.

Dividends from shares in the Mauritian company called West Indian Ocean Cable Company (WIOCC) and the water royalties will be used to pay part of the £50 million (M856 million) damages Lesotho owes Frazer Solar.

The seizure of the WIOCC shares came barely a week after the office of the sheriff of South Africa's Gauteng High Court garnished the water royalties due to Lesotho in terms of the LHWP agreement for the transfer of water to South Africa.

Gauteng Deputy Sheriff Khensani Ngobeni garnished the royalties over a week ago after the Gauteng High Court granted Frazer Solar's application to be compensated from the Lesotho government's water royalties. The solar company had argued that the Lesotho government had repeatedly failed to honour a January 2020 default judgement by a South African arbitrator to pay damages for the alleged breach of the 2018 deal.

The damages were awarded by a South African arbitrator in 2020 after he had considered the issue the prior year. The arbitrator, South African lawyer Vincent Maleka, was appointed by the Johannesburg Bar Council at the request of Frazer Solar who argued that the terms of its agreement with the Lesotho government provided for the appointment of an arbitrator in the event of either party breaching the contract.

Dr Majoro was finance minister at the time of the deal. He later refused to sign the financing agreement for the project aimed at providing Lesotho with 40 000 solar water heating systems, 20 megawatts of solar power capacity, 1 million LED lights and 350 000 solar lanterns over four years. Mr Thabane's office had already signed the main supply agreement, the company claimed.

The solar company argues that the Lesotho government has repeatedly failed to honour a January 2020 default judgement by Adv Maleka to pay damages for the alleged breach of the 2018 deal. It is now using the default judgment to seize Lesotho's assets.

Judge Colin Lamont of the Gauteng High Court had on 29 April 2021 granted an order for the court sheriff to garnish water royalties due to the Lesotho government from the Trans-Caledon Tunnel Authority and make the necessary arrangements to pay Frazer Solar its damages claim as well as other payments including arbitration fees. The Trans-Caledon Tunnel Authority is South Africa's implementing arm of the LHWP in terms of the treaty which was signed between the two countries in 1986.

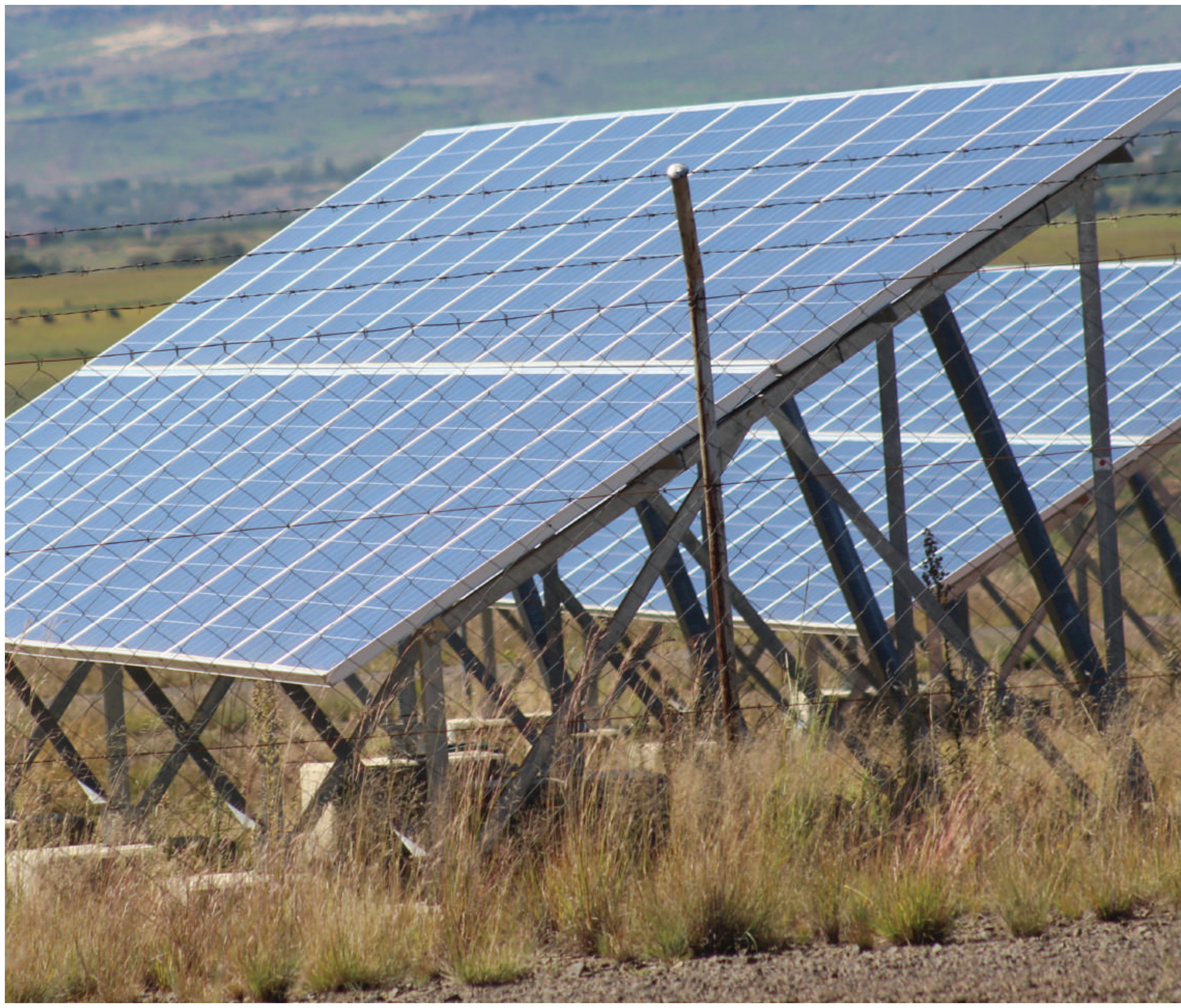
According to the court registrar's instructions to the sheriff, the garnished monies should facilitate the payment of the £50 million damages to Frazer Solar, a pre-award interest of £754 273 (M12 921 224) and a post-award interest of M1 134 109.

There is a further £650 800, 71 (M9 059 145) to be paid as costs of the arbitration and another M422 337, 50 in fees of the arbitrator.

The Lesotho government could pay far more after the court registrar also said, "all other costs and charges of the applicant (Frazer Solar)" must be borne by the Lesotho government.

The court registrar's letter follows the 29 April 2021 Gauteng High Court judgement in favour of Frazer Solar's application for the enforcement of the damages awarded to it by Advocate Maleka.

As if the loss of water royalties is not enough, the government's shares in the WIOCC in Mauritius have now been seized by Frazer Solar. A Frazer Solar source who cannot be named because he is not authorised to speak to the media this week told the *Lesotho Times* that the government assets were seized after the Supreme Court of Mauritius on Tuesday said that it recognised the January 2020 arbitral award by the South African arbitrator in favour of Frazer Solar.



THE solar panels at Moshoeshoe I Airport. (file pic)

"On 19 May 2021, lawyers acting for Frazer Solar GmbH (FSG) received confirmation from the Supreme Court of Mauritius that FSG's arbitral award had been recognised and was enforceable against assets held by the Kingdom of Lesotho in the jurisdiction of Mauritius.

"Enforcement activity is currently underway concerning the Government of Lesotho's shareholding in WIOCC, via the Lesotho Communications Authority. On 25 May 2021, service was made on WIOCC and the Government's shareholding has been provisionally seized" the source said.

Lesotho's foreign assets have now been garnished despite last week's assurances by Dr Majoro and Communications, Science and Technology Minister Keketso Sello that the country's assets were safe and would not be seized in enforcement of the judgment.

"The nation must be rest assured that Lesotho is not going to have its assets seized by anyone. We will not allow that to happen. After all, our assets are protected from seizure by international protocols and no one will lay claim to such assets because of disputed contractual obligations," Mr Sello said.

Dr Majoro had claimed that he was not aware that the previous government, which he was part of, had agreed a solar power deal with Frazer Solar.

He said that Frazer Solar had not contacted them on the issue and they only read about plans to seize the government's assets in the South African media.

Over the weekend, Dr Majoro's press attaché, Buta Moseme maintained that Dr Majoro had not been aware of the deal when it was signed by former Minister in the Prime Minister's Office, Temeki Tšolo, on behalf of the government in 2018.

"When the Prime Minister said he was taken aback by the latest move (to seize government assets), he meant that he was shocked by the (arbitration) judgment because he was not aware of the signing of the whole deal," Mr Moseme said in an interview with the *Sunday Express*.

"All government projects are discussed, approved or rejected by the cabinet. As with all others, this particular project needed government approval. It is true that the deal was brought to the premier's attention and Prime Minister Majoro, then in his capacity as finance minister, categorically indicated that this deal must be referred to the cabinet for approval. He indicated that he cannot, on his own, commit the country to this project.

"The government is now mobilising its resources to ensure that it challenges the move to garnish water royalties and also to ensure that its property is safe from seizure by anyone or any company," Mr Moseme added.

On his part, Mr Tšolo denied ever signing a deal with Frazer Solar.

"What are they saying I signed? What is a supply agreement? Do you think they are telling you hard facts here? When a man proposes love to a woman, does that mean they are already dating simply because there is a proposal on the table? A white man (Robert Frazer), came here with very old shoes and wasted his money staying in hotels. He is now interpreting his tabling of the proposal to the government as a signing of an agreement.

"I don't understand this thing. This white man stayed in hotels and I introduced him to Majoro, (then Foreign Affairs and International Relations Minister Habofanoe) Lehana and (then Development Planning Minister Tlohelang) Aumane and all of them didn't approve this project.

"How can I, then sign the agreement? It is terrible that my name is being soiled to score cheap political points. I didn't sign anything; this thing was not even discussed at cabinet level. Procedurally, Majoro ought to have signed that agreement after cabinet approval. I did not sign any agreement, I was only involved in the coordination process," Mr Tšolo said.

But Frazer Solar insists that Mr Tšolo signed on behalf of the Lesotho government and Dr Majoro was the stumbling block to the implementation of the project through his refusal to sign the financing agreement.

"On 16 October 2018, Mr Frazer contacted the Minister of Finance, Minister Majoro to establish why the execution of the financing agreements was delayed. Minister Majoro informed him that the project had to be led by the Minister of Energy and had to receive cabinet support," Frazer Solar states in its Gauteng court papers.

"As far as Minister Tšolo and the Office of the Prime Minister were concerned the project had received the necessary support of the government of Lesotho and they did not understand why Minister Majoro refused to execute the finance agreements.

"It emerged later on, from local media reports, that Minister Majoro supported a different renewable project that would be developed in Mafeteng in Lesotho. He had signed that project on behalf of the Lesotho government. That project was funded by a Chinese-owned state bank Exim Bank to the tune of M1, 4 billion."

Frazer Solar further states that sometime in November 2018, Mr Frazer who had been in Lesotho, received death threats and he was advised by his local partners to flee the country because it was no longer safe for him to remain in the country "in light of comments made on Facebook by supporters of Dr Majoro".

He is said to have eventually left the country on 7 December 2018.

In addition to petitioning the Mauritian and South African courts, Frazer Solar has also approached the federal court in Washington D.C to compel the Lesotho government to pay the damages for the alleged breach of the contract.

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News without fear or favour

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Comment

Botched solar deal: The nation needs answers

PRIME Minister Moeketsi Majoro and the previous Thomas Thabane administration both owe us answers regarding the previous government's botched M1, 7 billion solar energy deal with a German company. For those who might not be in the know, the Gauteng High Court recently granted an order to garnish Lesotho's water royalties from the sale of water to South Africa under the Lesotho Highlands Water Project (LHWP).

The garnished money will be used to pay the solar company, Frazer Solar, damages for the Lesotho government's alleged breach of the contract between the two parties aimed at providing Lesotho with 40 000 solar water heating systems, 20 megawatts of solar power capacity, 1 million LED lights and 350 000 solar lanterns over four years.

It has been said that Temeki Tšolo, who was Minister in then Prime Minister Thabane's office, had already signed the main supply agreement in 2018.

However, Dr Majoro, who was finance minister at the time of the deal, later refused to sign the financing agreement thus rendering the project still-born. Quizzed about it, both Mr Tšolo and Dr Majoro have adopted a rather cavalier attitude, treating this as some rather trivial and inconsequential matter.

With racist overtones, Mr Tšolo says he did not sign any agreement but only "coordinated" and facilitated for the "white man who came here with very old shoes" to meet with various then senior ministers including Dr Majoro.

That "white man" is Frazer Solar owner Robert Frazer.

But Frazer Solar insists that Mr Tšolo signed on behalf of the Lesotho government and Dr Majoro was the stumbling block to the implementation of the project through his refusal to sign the financing agreement. The company says it even contacted Dr Majoro on 16 October 2018 to establish why he was refusing to sign the financing agreement. He is said to have told Frazer Solar that the project had to be spearheaded by the Ministry of Energy and not the prime minister's office. It is also said that Dr Majoro claimed that the project had to receive cabinet support before it could go ahead- suggesting that it did not have cabinet approval despite Mr Tšolo appending his signature to a binding agreement for its implementation.

Dr Majoro had last Wednesday said he was not even aware that the previous government, which he was part of, had agreed a solar power deal with Frazer Solar. He told journalists that Frazer Solar had not contacted them on the issue and they only read about plans to seize the government's assets in the South African media. He and Communications, Science and Technology Minister Keketso Sello even said that no one could seize Lesotho's assets over any damages' claim.

But the reality on the ground is a different story altogether.

Acting on the instructions of the Gauteng High Court, the Deputy Sherriff Khensani Ngobeni has already garnished Lesotho's water royalties. The court directed Mr Ngobeni to collect the money due to the Lesotho government from the Trans-Caledon Tunnel Authority and make the necessary arrangements to pay Frazer Solar its damages claim as well as other payments including arbitration fees.

The Trans-Caledon Tunnel Authority is South Africa's implementing arm of the LHWP in terms of the treaty which was signed between the two countries in 1986. According to the court registrar's 11 May 2021 letter to Mr Ngobeni, the garnished monies should facilitate the payment of £50 million (M856 million) damages to Frazer Solar, a pre-award interest of £754 273 (M12 921 224) and a post-award interest of M1 134 109.

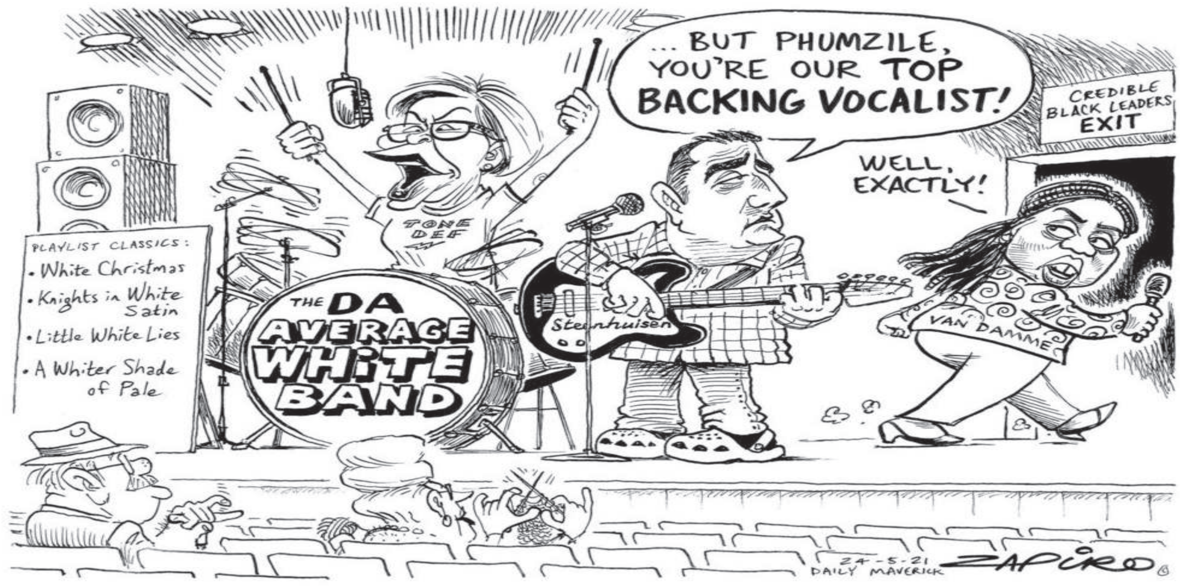
There is a further £650 800, 71 (M9 059 145) to be paid as costs of the arbitration and another M422 337, 50 in "fees of the arbitrator".

This is almost a billion maloti which is being paid out for a project which was never implemented. To put the matter into perspective, Lesotho's budget for the current financial year is only M20 billion. This is almost a twentieth of the budget which is being thrown away all because of gross negligence by the people entrusted with running the affairs of our country.

This money could have gone a long way towards constructing or refurbishing some of our delipidated or non-existent infrastructure such as roads, bridges, schools and hospitals. It could have even gone towards paying service providers who are owed vast sums by the government. Or it could have been used in the fight against Covid-19.

There are serious questions that need to be answered and the nation cannot be treated to shallow responses by the premier and ministers claiming ignorance of the botched deal. We need to know who did what, where, when and why the previous government agreed to the deal and later reneged on it. We also need to know why the government ignored various summons to appear before the South African arbitrator who was then left with the easiest of tasks of just awarding a default judgement against Lesotho.

Finally, we need to know whether any action will be taken against those involved in this botched deal. This country definitely needs laws to hold government officials personally liable when they mess up like this. The nation cannot paying for the costly and deliberate behaviour of individuals.



Cutting Edge

African Continental Free Trade Area: A pipe dream or silver bullet?

Dianna Games

TRADE within Africa is of better quality than its trade with the rest of the world. The African Continental Free Trade Area can potentially help African countries transform by expanding domestic productive capacity, enabling them to move up the value chain and diversify local and export production.

In May 2021, the Kazungula Bridge across the Zambezi River linking Botswana and Zambia was opened by the presidents of the two countries. The construction of the bridge, which replaces the longstanding, slow ferry service across the river, means trucks on regional routes can now cross the river in a few hours, or less, rather than the previous three days to a week. It also means they can avoid using the biggest crossing between the ports and factories of South Africa and the rest of southern Africa, Beit Bridge, which is also one of the most congested borders in Africa. A one-stop border post at the bridge will allow easier thoroughfare.

This project embodies the benefits that good infrastructure and joined-up bureaucracy offer regional trade, both of them generally in short supply. More than 250 trucks a day should be able to cross the Zambezi instead of the handful that were able to cross before, bringing down costs, increasing the security of cargo and providing an alternative route for trade to the sea for inland markets.

It is not without potential pitfalls. One is the congestion that is likely to develop at Martin's Drift border post, currently an alternative to the main border post at Gaborone into Botswana, as demand increases. And sections of the roads along this main trade route, an integral part of the North-South Corridor, are in urgent need of repair, for example, several hundred kilometres of a two-lane highway through Botswana to Kazungula, with eroded shoulders, deep potholes and livestock roaming the unfenced verges.

Travelling by road across Africa can be a sobering experience, characterised by delays, inefficiency and overzealous bureaucracy. There is a range of literal and figurative potholes that are major constraints to trade. Even as trucks battle with bad roads and congested border posts, they also need to navigate a host of other issues such as roadblocks designed mostly to extort money from drivers. Transport costs make Africa one of the least competitive regions for exports and trade.

The continent's import dependence and colonial trade patterns are reflected in traffic movements — trucks laden with minerals and other raw materials heading for the sea, returning either empty or loaded with imports.

This is the reality that faces Africa as it unrolls its flagship project, the African Continental Free Trade Area (AfCFTA), which started trading under the agreement in January 2021. The initiative brings together a potential market of more than a billion people and has a lofty ambition of increasing intra-African trade from under 20 percent currently to more than 30 percent in just a few years by attracting investment into manufacturing, agriculture and other sectors and building regional value chains.

Intra-African trade is well below that of other regions such as Europe (68 percent) and Asia (59 percent) despite years of trade facilitation, the existence of a raft of free trade areas and customs unions and high growth in many economies.

According to the United Nations Conference on Trade and Development, trade within Africa is of a better quality than its trade with the rest of the world. The former has higher manufacturing (46.3 percent), and medium- and high-technology content (27.1 percent) as well as more product diversity than the latter. By extension, therefore, the free trade area can help African countries transform by expanding domestic productive capacity, enabling them to move up the value chain and diversify local and export production.

The potential loss of $4.1-billion in tariff revenues for national governments is expected to be offset by increased employment and better use of domestic resources to increase production of new goods and services, among other benefits. In any case, tariff revenue losses are relatively contained for most African countries, given low levels of trade among themselves.

That is the theory. However, current realities are likely to counter the expectations that the AfCFTA is some kind of silver bullet that will transform Africa, sweeping away decades of embedded dysfunction and challenges. The spirit of free trade is well represented at public forums across Africa. But policies and actions at a national level tend to paint a picture that is characterised by a failure of leaders to implement the agreements they sign up to once the fanfare has died down.

Undoubtedly, the AfCFTA has enjoyed significant political commitment to date and there are rafts of trade bureaucrats hammering out the details behind the scenes. But it is not starting from scratch. The continent is amply covered by eight officially recognised Regional Economic Communities and many of the technical issues have already been dealt with in existing free trade areas. Covid-19 may have ushered in many new problems for countries to tackle, but it has also provided an inflexion point for policymakers to decide whether it will be business as usual once the pandemic abates, or whether more effort will be applied to making economies more self-sufficient and resilient.

The AfCFTA is not an event, but a long, slow and complex process that will take years to gain traction, given the scale of challenges on the ground that may undermine its progress and potential. — DM

Dianna Games is Chief Executive of Africa @ Work.