

# Lesotho to appeal against Frazer Solar judgment

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THE government says Lesotho's latest defeat in the long-drawn and bruising legal battle against Frazer Solar is not the end of the road.

Deputy Prime Minister Nthomeng Majara says the government is looking for ways to appeal the judgment that paves the way for Frazer Solar to confiscate Lesotho's assets over a M1.2 billion debt triggered after the government allegedly violated a supply agreement with the German company.

Delivered by the High Court of South Africa, the judgment

dismissed the government's attempt to rescind the arbitrator's M1.2 billion award to the company.

The court also dismissed the government's claim that the arbitration and the court that granted the enforcement order did not have jurisdiction over the dispute between Lesotho and Frazer Solar.

It also rejected the arguments that former Minister Temeki Tšolo lacked the authority to sign the supply agreement and that the government was not properly served when the case went for arbitration.

Instead, it says former Prime Minister Thomas Thabane backed the deal and that former Prime Minister Moeketsi Majoro knew of the impending case but didn't do anything.

Frazer Solar has seized on the judgment, releasing a statement crowing that this could be the end of the road for Lesotho and it has been exonerated of the allegations of corruption that have surrounded the supply agreement.

But Justice Majara says the battle is not yet over because the government is plotting an appeal.

She said the judgment was delivered last August but the government sought some clarifications before it was made final and official last week.

She said the judgment had "some irregularities" and the government wanted "a clean and clear one".

She said their lawyers are yet to meet to decide the way

forward about the judgment.

"We have until the third of next month (February) to take an appeal against the judgment," Justice Majara said.

"It is not yet the end, our lawyers are yet to take the matter further."

Justice Majara said the lawyers will brief the government by the end of this week.

She said the government strongly believes its agreement with Fraser Solar was ambiguous.

Tšolo signed the controversial M1.7 billion deal with Frazer Solar in 2018 but later claimed his signature was forged. Lesotho's foreign assets were being confiscated after the South African arbitrator awarded M1.2 billion to the company.

Lesotho was not represented in the arbitration and not defended when Frazer Solar was granted an order to enforce the award. Tšolo has been charged with corruption and abuse of his office in connection with the deal with Frazer Solar.

Majoro, who was finance minister when Tšolo signed the deal, said while he was advising Frazer to tread carefully and follow the right procedure to get the deal done, Tšolo was plodding ahead with his parallel and illegal process to sign the contract and engage the potential financiers.

When Lesotho did not honour the supply agreement Frazer Solar lodged a complaint in South Africa where the agreement provided that arbitration would be held in case of a dispute.

The Lesotho government did not attend the arbitration hearing in September 2019, leading to the arbitration award. Frazer Solar later approached the courts to enforce the arbitration awards in South Africa, Mauritius, Belgium, the United Kingdom and the United States.

It was only then that Lesotho sprang to action and approached the High Court in South Africa seeking to reverse the arbitration award on grounds that there was no agreement that disputes should be solved outside Lesotho's jurisdiction.

Lesotho argued that would be tantamount to waiving its sovereignty.

The court found that Tšolo actively showed support for the agreement by the writing of several letters to Robert Frazer, Frazer Solar's managing director.

The court also said the agreement provided that an application to rescind the arbitration award in the High Court should be within three months but Lesotho did not act until the time lapsed.

It also said there is ample evidence that Lesotho was served with papers to appear before the arbitrator but

chose not to, relying on its sovereignty status.

The court dismissed Lesotho's application with costs.

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