



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal.

Kingdom of Lesotho v Frazer Solar GmbH and Others (438/2024) [2026] ZASCA 75 (22 May 2026)

Today, the Supreme Court of Appeal (SCA) delivered judgment, dismissing the application for leave to adduce further evidence, upholding the appeal against the dismissal of the rescission application, and dismissing the appeal against the refusal to set aside the international arbitral award. All orders were made with costs, including the costs of two counsel.

The dispute arose from a proposed renewable energy project in Lesotho. In July 2017, FSG, through its sole director, Mr Frazer, approached a Kingdom of Lesotho (KOL) official, Mr Letsie, in response to the KOL's 2015 renewable energy policy, proposing a solar energy project valued at between €50 million and €100 million.

In November 2017, after months of correspondence, Mr Frazer sent a draft memorandum of understanding (MOU) to the then Minister of Finance, Minister Majoro, for signature. Minister Majoro replied that officials still needed to consider the MOU. Despite this, Minister Tšolo, Minister in the Prime Minister's Office, signed the MOU on 20 November 2017. KfW-IPEX Bank later wrote to Minister Majoro expressing general interest in the project and, in principle, a willingness to finance up to €100 million of the eligible contract value. In May 2018, Minister Tšolo recommended Cabinet approval of the project and prepared a Cabinet memorandum to that effect in June 2018.

In August 2018, Minister Tšolo informed Mr Frazer that the KOL had agreed to proceed and that the Office of the Prime Minister would serve as the main point of contact. Mr Frazer then advised KfW-IPEX Bank that the project had been confirmed. A supply agreement was subsequently signed and further communications followed. However, the required approval process for the valid implementation of the project was never completed.

When implementation did not materialise, FSG sent a letter of demand on 11 March 2019 to Minister Tšolo and his secretary. The letter referred, among other things, to clause 24 of the supply agreement, which contained the arbitration clause, and demanded compliance. Two further letters to the Prime Minister's Office received no response. FSG terminated the supply agreement on 29 July 2019 and commenced arbitration proceedings in Johannesburg the following day. The arbitrator issued an award in FSG's favour, after which FSG applied to the High Court to have the award made an order of court.

The enforcement application was served through diplomatic channels on the KOL's Ministry of Foreign Affairs, via the Department of International Relations and Cooperation (DIRCO) and the Lesotho High Commission. A CaseLines invitation and notice of set down were also emailed to Minister Majoro, who had by then become Prime Minister. The matter was set down for a virtual hearing on 29 April 2021, and a link was sent to his official email address. The KOL did not respond and failed to attend the hearing. The High Court then made the arbitral award an order of court. Writs of execution and attachment were issued in South Africa and elsewhere against €50 million worth of KOL assets. The KOL then approached the Gauteng Division of the High Court, Johannesburg, seeking to stop execution, rescind the enforcement order, and set aside the arbitral award.

The Johannesburg High Court dismissed both the rescission application and the application to set aside the arbitral award. It held that Minister Tšolo had actual, or at least ostensible, authority to conclude the arbitration agreement and that the KOL was in wilful default for failing to oppose the enforcement application. The court also held that article 34(3) of the UNCITRAL Model Law on International Commercial Arbitration, as incorporated by the International Arbitration Act 15 of 2017, imposes a three-month time limit for setting aside an arbitral award and that this limitation on access to courts was reasonable and justifiable.

The SCA considered three principal issues: whether the KOL had made out a case for rescission of the enforcement order; whether the arbitral award should be set aside; and whether further evidence, based on a later Lesotho High Court judgment delivered on 11 November 2025, should be admitted after argument had been heard and judgment reserved.

The later evidence related to a permanent stay of criminal proceedings against Minister Tšolo arising from an investigation by the KOL's Directorate on Corruption and Economic Offences (DCEO) into alleged corruption, fraud, and the concealment of arbitration-related information. All three judgments agreed that the application to adduce further evidence should be dismissed.

In the first judgment, Mokgohloa and Smith JJA, with Koen JA and Steyn AJA concurring, held that the KOL had provided a reasonable explanation for its default. They found that Minister Tšolo lacked the necessary authority to bind the KOL and that both the arbitration agreement and the supply agreement were invalid. On that basis, the KOL had shown a bona fide defence to the enforcement application and prima facie prospects

of success. The first judgment therefore concluded that the requirements for rescission of the enforcement order had been met.

On the application to set aside the arbitral award, the first judgment considered: whether the KOL was time-barred under article 34(3) of the UNCITRAL Model Law; if so, whether non-compliance with the time limit could be condoned; if condonation was not permitted, whether article 34(3) was constitutionally invalid; whether the KOL had waived foreign state immunity; and what weight should be given to the Lesotho High Court judgment.

The first judgment held that, properly interpreted, article 34(3) of the Model Law does not permit courts to condone non-compliance with the three-month time limit, except where the award is challenged on grounds of fraud or corruption. Because the KOL did not attack the award on either of those grounds, the time bar applied. It was common cause that the application to set aside the award was brought outside the three-month period, and the KOL was therefore time-barred. The court also rejected the argument that article 34(3), insofar as it does not permit condonation, unjustifiably limits the constitutional right of access to courts.

A further issue concerned proceedings in the Lesotho High Court, where the KOL sought to review and set aside the supply agreement while the Johannesburg proceedings were still pending. On 9 November 2022, the Lesotho High Court held that Minister Tšolo had no authority to sign the supply agreement, that the applicable regulations had not been followed, and that the agreement was invalid, unconstitutional, and void *ab initio*. It accordingly set aside both the supply agreement and the arbitration clause. The first judgment, however, held that the Lesotho High Court judgment had no binding effect on the arbitration proceedings.

In the second judgment, Modiba AJA disagreed with the first judgment's conclusion on rescission, but agreed with its findings on the application to set aside the arbitral award. In the third judgment, Molemela P, with Makgoka JA concurring, agreed that rescission should be granted, but held that the supply agreement was vitiated by fraud and that the KOL was therefore not barred from challenging the award. The third judgment accordingly differed from the first judgment on the appeal against the refusal to set aside the arbitral award.

The SCA dismissed the application to adduce further evidence, upheld the appeal against the dismissal of the rescission application, and dismissed the appeal against the dismissal of the application to set aside the arbitral award. All orders were made with costs, including the costs of two counsel.