



CENTRO DE INTEGRIDADE PÚBLICA

Anticorrupção - Transparência - Integridade

HIDDEN DEBTS



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Why is “hidden debts” trial in London at risk of being cancelled?

- CIP publishes in full the ruling of Judge Robin Knowles, translated into Portuguese

By: **Borges Nhamirre***

In her report to the Mozambican parliament, the Assembly of the Republic, the Attorney-General, Beatriz Buchili, stated that “we are continuing to prepare the trial scheduled for October 2023, in the London High Court, pursuing the interlocutory measures!”. But she did not mention the government’s refusal to share documents with the court, which may endanger the holding of the trial.

Because of the refusal of the Mozambican state to divulge essential documents about the hidden debts, the trial set for next October, in the High Court of England and Wales could be cancelled. The judge in the case, Robin Knowles, says that the refusal of Mozambique to share documents about the hidden debts could be in order to defend the personal interests of President Filipe Nyusi and damage the Mozambican people.

In the case begun in February 2019, in the English court, Mozambique is seeking a declaration that the guarantees issued by the former Finance Minister, Manuel Chang, to facilitate the loans to the companies ProÍndicus and MAM, are null and void and is also demanding compensation for the damage caused to the state because of the guarantees.

However, the alleged personal involvement of Filipe Nyusi in the hidden debts is leading the government to refuse to share essential documents, which could dictate the end of the case. It should be recalled that, as part of its defence strategy, Prinvest told the English court that it paid millions of dollars to Filipe Nyusi, to the

Frelimo Party, and to other high ranking state leaders².

Judge Robin Knowles, of the Commercial Section of the England and Wales High Court, issued a ruling on 3 March 2023, warning that “If I need to exercise my duties of strike out, to ensure compliance with the Republic’s duties and with the obligations on the Republic in this litigation, I will. And I will, because that is my duty, and because the fairness of the trial that I wish to deliver to the Republic and to all parties is at stake”.

What is at stake?

What is at stake is the disclosure of documents regarded as essential by the court, related with the hidden debts. These documents are in the possession of five institutions of the Mozambican state, namely the Office of the President of the Republic, the Office of the Prime Minister, the State Information and Security Service (SISE), the Council of State and the Ministry of the Interior. The English court believes that these documents should be shared with the parties in the civil case begun by the Mozambican state, in order for a “fair trial” to be held.

But the Mozambican State is refusing to divulge these documents because it regards them as classified. In terms of the Mozambican legislation on the National System of State Archives (SNAE), State documents can be classified as: State Secret; Secret; Confidential and; Restricted³.

1 República de Moçambique (2023). Informação Anual do Procurador-Geral Da República à Assembleia da República – 2022, p. 59

2 Nhamirre, B (2021). Corrupção das altas hierarquias do Estado: Prinvest informa ao tribunal inglês que pagou milhões de dólares a Filipe Nyusi, Manuel Chang e ao partido Frelimo. CIP. Available at <https://www.cipmoz.org/pt/2021/02/01/prinvest-informa-ao-tribunal-ingles-que-pagou-milhoes-de-dolares-a-filipe-nyusi-manuel-chang-e-ao-partido-frelimo/> (consulted on 15 May 2023).

3 Decree no. 84/2018, of 26 December, which approves the National System of State Archives (SNAE)

Classified documents cannot be publicly accessible. Hence, Mozambique refuses that they be divulged to the parties in Court. Effectively, there is a serious risk that, once delivered to the Court, they would leak to the public.

Chang's email inbox is empty

Apart from the documents in the possession of the five bodies mentioned above, the Mozambican State also refuses to divulge some documents that are in the possession of the Ministry of the Interior and of the Mozambican Navy. The court also wants access to the institutional e-mail of the former Finance Minister, Manuel Chang, but the Mozambican State alleges that Chang's e-mail "is empty because it has not been used". But, for its part, the Court claims that Chang's e-mail "was operational and that what has happened is that its contents appear to have been deleted.". It demands that the information that was in the e-mail account be recovered.

"This institutional account of Mr Chang is potentially really important; and I shall watch closely the efforts that the Republic makes here to get at underlying data notwithstanding the deletion", wrote the judge in his ruling.

Judge speaks of the individual position of Filipe Nyusi which puts the position of the State at risk

"I have mentioned that the President (Filipe Nyusi) is a party to this litigation. He also is the person with, as it appears, ultimate authority for access to the most important State documents, at the most important State entities. It may be that it is his individual stance that puts the Republic's position at risk", the judge wrote in his ruling. But the judge puts the responsibility on the State to take the right decision, even when this calls into question the President's personal interests.

"The responsibility is, nonetheless, that of the Republic, even where its President refuses to assist for what may be self-interested reasons. This is not necessarily the end of the matter. The opportunity is always there for the Republic, in the interests of its people, to explain the problem to the Court, though I fully appreciate how difficult that can be", said the judge.

The judge even threatened to annul the trial, if the documents are not delivered to the court. "It follows that the potential for striking out to be the final remedy for non-compliance where the fairness of trial is threatened is very real in a case of this nature", warns the court in its ruling.

Doubting the will of President Nyusi, Judge Robin Knowles appealed to the PGR to defend the interests of the Mozambican people.

"I cannot say at present whether the President is set on helping these proceedings in the interests of the Republic and its people, or hindering them in self-interest. What can be said is that to date he has not done what he could to respond in relation to his personal involvement as a party and in relation to allegations made against him personally. He has also, on the face of things, not assisted in his position at the helm of relevant State entities when it comes to access to documentation for the purpose of the Republic's duties of disclosure", added the 63 year old judge in his ruling. .

Continuing, he stated that "the Republic on behalf of the people of Mozambique is always free, as I have mentioned, to make it clear to me if part of the difficulty is the President, so that I can take that into account where and to the extent appropriate, alongside all other considerations".

"I take the opportunity to say to him the Deputy Attorney General (Alberto Paulo), in his capacity on behalf of the Republic, that the declaration that I have had to make as the first of the nine items is a really serious matter. I have set out across the nine items the basic, essential steps that are now required. I shall assess not just the fact but the quality of compliance hereafter; and that will extend in some of the cases to what more is to be done in the light of the overturn of the step in question", he stated.

Access to classified information may be granted on a “need to know” basis

The fact that State information is classified does not mean that access to it is impossible. The Law which regulates the National System of State Archives allows access to classified information by particular persons or bodies on a “need to know” basis. It is this that the London Court requires of the Mozambican State, that it allow access to classified documents to the Attorney-General’s Office and to the lawyers of Peters & Peters, hired by the PGR to represent the State in the London case. However, the State is not allowing either the PGR or its own lawyers to have access to the documents.

If the case begun by Mozambique in London is cancelled, then it will be much more difficult for Mozambique not to pay the hidden debts. It is true that there will be room for appeals, but the

situation would be much more complicated. Mozambique would then have to pay more than four billion dollars in capital and interest on arrears⁴. In addition, by June 2022, Mozambique had spent around five million pounds on the lawyers who are assisting the PGR in London⁵. Cancellation of the case would mean that such expenditure was in vain.

For access to the full ruling of Judge Robin Knowles, translated into Portuguese by CIP, click on this link :

<https://www.cipmoz.org/wp-content/uploads/2023/05/Documento.pdf>

For access to the original version in English, published by the court, click on the link

<https://www.bailii.org/ew/cases/EWHC/Comm/2023/514.html>

4 Cortez, E. et al, (2019). COSTS AND CONSEQUENCES OF THE HIDDEN DEBT SCANDAL OF MOZAMBIQUE. CIP. Available on <https://www.cipmoz.org/wp-content/uploads/2021/05/Costs-and-consequences-of-the-Hidden-Debt.pdf> (consulted on 15 May 2023)

5 Carta de Moçambique (2022). Despesas de milhões e milhões de libras com assessoria jurídica em Londres: Uma nova “dívida oculta” está sendo contratada pela PGR?. Available on <https://www.cartamz.com/index.php/politica/item/11069-despesas-de-milhoes-e-milhoes-de-libras-com-assessoria-juridica-em-londres-uma-nova-divida-oculta-esta-sendo-contratada-pela-pgr-por-marcelo-mosse> (consulted on 15 May 2023)



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