

PRIVINVEST PRESS RELEASE DATED 29 SEPTEMBER 2023

PRIVINVEST GRANTED PERMISSION TO APPEAL JUDGMENT ON IMMUNITY OF MOZAMBICAN PRESIDENT NYUSI

Prinvest today obtained permission from the Court of Appeal of England and Wales to appeal the High Court's judgment of 4 September, which ruled that Mozambican President Filipe Nyusi has immunity from High Court claims brought by Prinvest in the context of what is sometimes known as the "tuna bonds" litigation. That trial is due to commence in London on Monday.

Despite ruling that certain of the arguments made by President Nyusi "*had no merit*", the High Court judgment says that the President had immunity from the jurisdiction of the English Courts and was not validly served with Prinvest's claims in October 2021. A copy of that ruling is available [online](#).

Tom Snelling, a partner at Signature Litigation, representing Prinvest, commented: "*The High Court judgment had sought to navigate between earlier inconsistent decisions, and for that and other reasons Prinvest sought permission to appeal, reflecting the importance to the fairness of the trial of the direct participation of President Nyusi... Prinvest welcomes today's decision of the Court of Appeal granting permission to appeal on each of Prinvest's grounds*".

Prinvest agrees with the views of the English High Court that President Nyusi is "*the ultimate source of authority in the Republic*" and considers that the President was at the very centre of the matters now complained of by Mozambique, who started the London litigation in early 2019.

Prinvest considers it ironic that Mozambique is not waiving its own President's immunity in a case brought by it in the London courts, and its own President is not choosing to waive his immunity to explain that he has done nothing wrong.

Prinvest notes the warning that President Nyusi was given by the High Court in early June 2023 that: "*everybody, including President Nyusi, and that's where my emphasis is, must proceed on the basis that they are fully at risk of that trial happening and them being involved in it, or the consequences of it*".

NOTES TO EDITORS:

1. The Rt. Hon. Lady Justice Elisabeth Laing ordered on 29 September 2023 permission to appeal be granted on all grounds sought by Prinvest. Lady Justice Laing stated:
 - (a) *Service on President Nyusi*: "I consider that the Defendants' grounds relating to service are arguable with a reasonable prospect of success... First, it is arguable that the Judge conflated service which is permitted by, and service which is not contrary to, the law of a foreign State... Second, the Judge's reasons for apparently holding that 2021 service was unlawful are arguably wrong... Third, if the Judge did decide that paragraph PD6B 'provides otherwise' (and I agree with the Defendants that it is not clear that he did), it is arguable, on the words of paragraph 5 of PD6B, that he was wrong to do so, in the absence of the 'list' referred to in that provision. It is arguably obvious, for reasons of legal certainty, that there should be such a list, and it seems that there is not."
 - (b) *Head of State Immunity*: "If the Defendants succeed on their service arguments, this point does not arise. I agree with the Judge that the reasoning of Briggs LJ on the immunity point is compelling. But he and Vos J disagreed about it. The immunity point is arguable, and it is obviously, an important point. Since I am giving permission to appeal on the service point, I consider that I should also give permission to appeal on this point."
 - (c) *Implications for the trial*: "In his reasons for refusing permission to appeal, the Judge said that the question of expedition would arise on any such application to this Court. He noted

that the 12-week trial is to begin, in front of him, on 2 October (that is, this coming Monday) and that it involves many parties from many parts of the world. He said that the Defendants and the President had both 'proceeded at their own risk in relation to [the President's] involvement in the trial'. He said, in effect, that neither had tried as hard as they might have to get this issue decided earlier than it was in fact decided. The trial could go ahead without the 'active participation' of the President '(assuming that remains his choice) and case management and preparation has largely been (and had to be) on the assumption that he would not actively participate'. Whether or not the trial should be adjourned must, therefore, depend on whether any party applies to the Judge for an adjournment, and, obviously, on the Judge's considered view about whether any such adjournment should be granted. That question is a question for him. He is immersed in the management of this case. Nor do I order expedition at this stage. The Judge's comments suggest that any urgency now may well result from earlier procedural decisions made by the Defendants and by the President. If the parties to this appeal wish the hearing of this appeal to be expedited they will have to ask specifically for expedition and explain why it is necessary. I have asked, and the relevant list is very busy."

2. President Nyusi was, from 2008 until 14 March 2014, the Minister of Defence of Mozambique. On 1 March 2014, the Central Committee of FRELIMO selected President Nyusi as its candidate for the 2014 presidential election. A presidential election in the Republic took place on 15 October 2014, and President Nyusi won. Under Mozambique's Constitution, he has a two-term limit that ends in January 2025.
3. In the judgment, the High Court decided that President Nyusi has such immunity only for as long as he is President (his final term in office ends in just over 16 months after an election in October next year). It also decided that: "*the arguments raised on behalf of the President that there was a failure by the Privinvest Defendants to meet their duty of full and frank disclosure on the application before Cockerill J, were arguments that had, in my judgment, no merit*".
4. In January 2015, President Nyusi replaced former President Guebuza as President of Mozambique on the expiry of the latter's second term. A power struggle ensued between them, in particular over control of FRELIMO. As a result, and apparently in order to discredit former-President Guebuza and serve President Nyusi's own political and business objectives, the Republic jettisoned the three projects with Privinvest. The Republic refused to enable Privinvest to complete its work, continued to breach the Supply Contracts, and failed to take the necessary steps to monetise the projects as intended.
5. In 2016, the Republic (under the Nyusi administration) stopped servicing its debts relating to the projects. In order to justify its failure to monetise the projects and its defaults, it alleged publicly that the loan facilities with Credit Suisse and VTB, and the sovereign guarantees supporting the loans, were secret, and subsequently also alleged that Privinvest had paid bribes to secure the projects. Privinvest says that none of that is true – it is a cynical attempt by the Republic to clawback the money it spent on the projects, avoid its liability under its own guarantees and to ignore its own failure to properly make use of the assets and services provided by Privinvest.
6. Privinvest's case is that:
 - (d) President Nyusi (the former Minister of Defence and current head of both FRELIMO and the Republic's executive government) was at the heart of the matters now complained of by the Republic. President Nyusi requested political campaign contributions from Privinvest, met directly with Privinvest representatives and was directly involved (when Minister of Defence) in the conception of the very projects that are the focus of the upcoming trial.

- (e) It was represented to Privinvest by President Nyusi, that it was lawful and proper both for Privinvest to engage in business ventures with Mozambican government officials, and to make campaign contributions to President Nyusi and FRELIMO. Privinvest relied, as it was entitled to, on those representations.
 - (f) President Nyusi benefitted from the USD10 million in funds paid by Privinvest to FRELIMO in 2014, which were paid for the purpose of funding his campaign for the presidency.
 - (g) Privinvest made a payment on 10 April 2014 to an account in the name of Sunflower International. Privinvest understands that this payment was, in whole or in part, for the benefit of President Nyusi as he wished to receive electoral contributions for his campaign, separate from the funds contributed directly to FRELIMO.
 - (h) President Nyusi was validly served in Mozambique with Privinvest's Part 20 claim against him on 19 October 2021 and, as President Nyusi did not purport to acknowledge service until 5 May 2023, he was out of time to do so.
7. Privinvest's Part 20 claim against President Nyusi is a contingent one. If Privinvest is found liable to Mozambique, then President Nyusi is liable in respect of "the same damage". The basis of President Nyusi's liability to Mozambique is that, if it is found that Privinvest made payments to Mozambican officials that were unlawful, it will follow that the payments made for the benefit of the President were also unlawful and that the President is liable for the same loss.
8. At a case management conference ("CMC") that took place in the High Court in London on 9 June 2023, Mr Justice Robin Knowles said: "*there is a trial listed from October through December this year, and everybody, including President Nyusi, and that's where my emphasis is, must proceed on the basis that they are fully at risk of that trial happening and them being involved in it, or the consequences of it*". He added, "*so this is not my saying: everybody relax, concentrate on the immunity and jurisdiction hearing and try and look at other matters after that. The President has got an experienced legal team and it is for him and his legal team to consider whether he should be doing other things on a "in case" basis; alongside his work on the immunity and jurisdiction hearing*".

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