

DAY XXXIII OF THE "HIDDEN DEBTS" SCANDAL TRIAL

## From lawyer to declarant: Alexandre Chivale removed from the case, but he is to return to the B.O tent (court) without his gown but as a declarant

- On the 33rd day of the "hidden debts" financial scandal trial, there was a real "seismic tremor" in the B.O tent. Yesterday the court decided to remove lawyer Alexandre Chivale from Case file No. 18/2019-C, now on trial. Chivale thus ceases to be the lawyer of defendants António Carlos do Rosário (former Director of SISE Economic Intelligence), Maria Inês Moiane (former Armando Guebuza private secretary) and Elias Moiane.



In addition to being prevented from continuing to defend the interests of the three defendants in the case, Alexandre Chivale was made declarant, which means that one day he will return to the tent of the Maximum Security Prison Facilities without the gown to sit in the same chair where his clients sat. The court's decisions ultimately hit the family of former Statesman Armando Guebuza, whose lawyer is Alexandre Chivale

Chivale's removal was requested by the Public Prosecutor on the grounds that Alexandre Chivale is a SISE collaborator, a condition that places him in a situation of conflict of interest. In other words, as he is linked to the State, he cannot defend causes against the State. Both the Public Prosecutor and the court relied on the words by António Carlos do Rosário, who claimed during his hearing that his lawyer Alexandre Chivale was a SISE employee.

Now it remains to be seen whether the court will validate everything that António Carlos do Rosário said during his hearing, in the name of consistency that Judge Efigénio Baptista never tires of evoking. The Mozambican Bar Association questioned the court's decision to remove Chivale based on defendant's statements. Chivale has already appealed the decision and says it is politically motivated.

Yesterday's session was supposed to start with the assistant in the case - the Mozambique Bar Association (OAM) - questioning Antonio Carlos do Rosario, after he spent eight days answering questions from the Public Prosecutor. However, that was not the case. The Public Prosecutor, Ana Sheila Marrengula, asked for the floor to present two petitions concerning Alexandre Chivale, the lawyer of António Carlos do Rosário (former Director of SISE Economic Intelligence), Maria Inês Moiane (former Armando Guebuza private secretary) and Elias Moiane.

In order of importance, let us start with the second petition. The Public Prosecutor contextualized the statements made by António Carlos do Rosário in the hearing of the trial, according to which his lawyer Alexandre Chivale was a SISE collaborator. Because the person concerned did not refute the information, the Public Prosecutor believes that the defendant's revelation is true, so it argued that as a SISE collaborator, Alexandre Chivale has a link with the State and provides a public service that contributes to State security.

"Having a link with the State, Alexandre Chivale is barred from defending cases against the Mozambican State," Magistrate Ana Sheila Marrengula said, recalling that the Public Prosecutor has



made a civil claim for compensation for the State in the amount of more than two billion dollars, plus interest, against all defendants, including those who are defended by lawyer Alexandre Chivale.

In addition to this impediment, the Public Prosecutor realized that Alexandre Chivale is in a position that reveals a "manifest and serious incompatibility" between the performance of the forensic mandate conferred to him by the defendants in the case now under trial and the post of manager of Txopela Investments and Indico Property, the companies that were "used for the receipt and laundering of money from the Privinvest group".

Furthermore, Alexandre Chivale is the majority shareholder (with 75%) of Ndanula Empreendimentos, a company that manages the real estate assets seized in this case because they were acquired with money from the default, violating the duty of probity provided in the Statute of the OAM. It therefore requested that "Alexandre Chivale be barred from participating in this trial as a lawyer, in compliance with all legal formalities".

After hearing the arguments by the OAM, an assistant to the case, and the person concerned, judge Efigénio Baptista decided to disqualify lawyer Alexandre Chivale, claiming that the court had no alternative. "I declare him disqualified as a lawyer on the grounds invoked by the Public Prosecutor, and that he be heard as a declarant in the present case, as requested by the assistant, on a date to be announced."

Despite the insistence of the OAM (Mo-

zambican Bar Association) and Alexandre Chivale himself that the court should contact SISE to confirm whether or not the lawyer is a collaborator of the institution, the judge flatly refused, relying on the words by defendant António Carlos do Rosário who, according to the law, has the faculty to lie during his hearing in the trial. "Given its secret nature, SISE does not have contracts that are approved by the Administrative Court. Moreover, labour contracts can be written or oral. As a SISE employee, and the function of SISE is to ensure State security, he cannot conflict with the state itself. He cannot be a representative in a case in which there are different interests between the defendants and the State".

Thus, defendants António Carlos do Rosário, Maria Inês Moiane and Elias Moiane have to appoint new lawyers by Thursday, the day the trial shall resume. Should they fail to do so; the court will unofficially appoint a public defender for the three of them. Judge Efigénio Baptista has already said he will appoint lawyer Isálcio Mahanjane, because he is closest to Alexandre Chivale.

In relation to the second petition, the Public Prosecutor requested the exoneration of the company Txopela Investments as trustee of the apartments seized by the court under Case file No. 18/ 2019-C, now on trial. The Public Prosecutor believes that the apartments were bought in the interest of António Carlos do Rosário with money from the Privinvest group, and that Txopela was created to whitewash the true origin of the funds and

the real owner of the properties.

Therefore, in addition to the exoneration of Txopela - allegedly because its appointment as trustee of real estate was not by order of the judge who ordered the seizure, the Public Prosecutor requested the appointment of the National Directorate of State Assets (of the Ministry of Economy and Finance) as trustee of the seized apartments. It also requested that the court order Alexandre Chivale to leave, within 24 hours, the apartment he occupies in the Deco Assos Condominium, in his capacity as manager of Txopela Investments, and to hand over its keys to

the court.

Just like the first one, the second petition of the Public Prosecutor's Office was deferred by Judge Efigénio Baptista. In addition to exonerating Txopela as the trustee of the seized properties, the court ordered the company's manager, lawyer Alexandre Chivale, to leave the said real estate assets within five working days, and within the same period deliver the keys to the court. The National Directorate of State Assets was appointed trustee of the seized assets.

The session had to be interrupted mid-afternoon because the judge noticed

that the defendant António Carlos do Rosário was deeply shaken by the removal of his lawyer. Before the judge announced the decision, the lawyer Alice Mabota asked for the floor on behalf of the defense to ask the court to interrupt the session, claiming that all the lawyers were too weak to continue with the work-day due to the removal of her colleague Alexandre Chivale. However, the judge said that he would interrupt the session not because the "lawyers have low morale," but because the defendant António Carlos do Rosário was in no condition to answer the questioning.

## Chivale says he was already warned about the plan for his removal and argues that there is no evidence in the case file linking him to SISE

"This is one of those things that fortunately confirm itself. We expected the two petitions to be presented yesterday, that was the plan. We were already warned, because the ultimate goal is to remove the legal representative from this case file. This had already been communicated to us, and we also informed those entitled to it. Alexandre Chivale is not a party to this case file. He is only a lawyer and, as such, he has been acting in this case. I know that many people are uncomfortable about what we are going to add and deduct to this case. We are aware that we are messing with many sensitivities; there are many interests involved on it. We are firm and we will remain firm because we have a mission: to defend the law, justice, and to contribute to the discovery of the material truth. We know where these documents were prepared and the people who participated on it. We were informed.

On the facts alleged by the Public Prosecutor, Chivale said that he is a Txopela manager by indication of its majority shareholder, namely IRS, a company based in Lebanon. "Alexandre Chivale, the Mozambican citizen, has been Txopela manager since August 2020 and it was only in December 2020 that he intervened as a lawyer for António Carlos do Rosário." Chivale said that he was never notified of any court decision that prevented Txopela from developing activities and that he occupied one of the apartments in the Deco Assos Condominium (on the Marginal of Maputo) by decision of the IRS, before its seizure order. "The IRS was having difficulties transferring funds to pay salaries, so it decided that the Txopela managers should occupy the properties



as a way to compensate them."

When there was the seizure order, Chivale said they were not told that they had to leave them. "He said that Txopela had appointed him as one of its trustees. It needs to be said what provisions of the seizure order we violated. We consider that the property belongs to Txopela and this company is different from the person of António Carlos do Rosário." The lawyer further explained that when he was appointed as Txopela manager, he was presented with apartments of the company located in the Deco Residence building in Maputo City. "As Txopela already had its accounts blocked, we created the company Ndandula Empreendimentos to manage the properties. We reacted in the transfer documents, explaining why

we consider Txopela and Ndandula to be the owners of the seized properties, and we are awaiting the court's decision.

About the petition that dictated his removal, Chivale reacted by stating that who has the legitimacy to assess the issue of incompatibility is the National Council of the OAM. "I have not seen in the files any document that indicates that Alexandre Chivale is an official, an agent of the state. No proof has been attached that indicated that he is a state employee or its agent, or even a contractor for any public service." Even though Chivale is unhappy with his removal, he said he leaves with his head held high. "We leave with our heads held high and we will continue to do our work in a variety of ways. We are not shaken and we were already prepared."

# The OAM questions Alexandre Chivale's removal based on statements made by the defendant during the trial

After supporting the petition of the Public Prosecutor regarding the exoneration of Txopela as trustee of the seized assets and requesting that the Txopela managers, including Alexandre Chivale, be heard as declarants, the OAM pronounced itself regarding the petition on the removal of the lawyer. Speaking on behalf Bar Association, the Lawyer Vicente Manjate began by explaining that bearing in mind the regime for verification of incompatibilities provided in their Statu-

te, and because the exercise of the legal profession can only be limited under the terms of the law and in extreme cases, it was necessary to follow the rules provided in that legal provision.

In addition, one of these is to involve the entity that regulates the exercise of the practice, namely the OAM, so that, through its National Council, it may pronounce itself on the alleged incompatibility of Alexandre Chivale. "It is a procedure that aims to ensure the guardianship and pro-

tection of the freedom of lawyers from the exercise of its profession." Moreover, the OAM argued the need to confirm with SISE whether there is a link between this institution and lawyer Alexandre Chivale. "Even if it is on a precautionary basis, it is important for the decision to be taken with due serenity and security. The defendant does not represent SISE, besides that he has the faculty to lie in this hearing. That is why we thought it was important that SISE be officiated."



## EDITORIAL INFORMATION

**Property:** CDD – Centro para Democracia e Desenvolvimento  
**Director:** Prof. Adriano Nuvunga  
**Editor:** Emídio Beula  
**Author:** Emídio Beula  
**Team:** Emídio Beula, Julião Matsinhe, Dimas Sinoa, Américo Maluana e Betuel Chau  
**Layout:** CDD

**Address:**  
 Rua de Dar-Es-Salaam Nº 279, Bairro da Sommerschild, Cidade de Maputo.  
 Telefone: +258 21 085 797

**CDD\_moz**  
**E-mail:** [info@cddmoz.org](mailto:info@cddmoz.org)  
**Website:** <http://www.cddmoz.org>

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