

61ST DAY OF THE "HIDDEN DEBTS" SCANDAL TRIAL

Judge again protects Filipe Nyusi and says his hearing as a declarant is unnecessary

- This is the second time that Judge Efigénio Baptista has failed a request for a hearing, as declarant, of Filipe Nyusi, the Minister of National Defence at the time of the facts. This time, the request for the hearing of the current President of the Republic came from the assistant in the case, the Mozambique Bar Association (OAM).



- Judge Efigénio Baptista yesterday issued a warrant for the arrest of lawyer Alexandre Chivale for not presenting himself to the court to be heard as a declarant. In addition to the arrest warrant, Chivale will be charged with the crime of disobedience to judicial authority.

On a day when the two declarants (Alexandre Chivale and Hafiz Tarik Waha) listed for the hearing did not appear in court, the OAM took the opportunity to submit several requests, including the request for the hearing of Filipe Nyusi. The applicant highlights the fact that the former Minister of National Defence attended the meeting of the Operational Command on 21 December 2012 that decided the creation of ProIndicus. In addition to Filipe Nyusi, the meeting was attended by the former Minister of the Interior, the former Deputy Commander-General of PRM (Mozambique Police), the former Chairman of the Board of Directors of Monte Binga (under the Minister of National Defence), and the defendants Gregório Leão, António Carlos do Rosário and Teófilo Nhangumele.

Besides the creation of ProIndicus, OAM also said that it was at that meeting that the decision was taken to obtain funding for the implementation of the project to protect and monitor Mozambique's Exclusive Economic Zone. The applicant also referred to the letter on the matter that the former Minister of National Defence addressed to his counterpart in charge of Finance, Manuel Chang.

OAM noted that of the members of the Joint Command, the former Minister of National Defence is the only declarant who, having been heard during the preparatory inquiry, is not scheduled to be heard at this stage of the trial. The assistant considers Filipe Nyusi's hearing indispensable and essential for the discovery of the material truth.

In the same application, the OAM also requests that the former Deputy Commander General of the PRM, Jaime Basílio Monteiro, be notified to be heard as a declarant. "At various times during the trial, the defendant António Carlos do Rosário made reference to the intervention of Jaime Basílio Monteiro, both in his capacity as former Vice-Commander General of the PRM and as former Minister of the Interior (from 2015), including in the trips made for the identification of the solutions to existing threats to coastal protection."

And as was could be expected, Judge Efigénio Baptista rejected the request for Filipe Nyusi to be heard as a declarant, arguing that "the diligence requested is unnecessary and aims to delay the progress of the process". Completely ignoring the grounds put forward by the applicant, the judge based

his decision on the document produced at the meeting of the Operative Command on 21 December 2012. "It cannot be considered absolutely indispensable to notify the signatories of a document to come to court to confirm the facts narrated in the same document."

The OAM reacted to the rejection of his request criticizing the actions of Judge Efigénio Baptista for not having heard the request of the representative of the Public Prosecutor, who is the one should prosecute (initiate criminal actions), in violation of the adversarial principle. The applicant made a point of recalling that during the contradictory instruction, the Public Prosecutor's Office the former Minister of National Defence, Filipe Nyusi was heard as declarant.

"It is not in question the proof of the creation of ProIndicus, but the context and the degree of involvement of each of the intervening parties, since there are differences in the records between the answers of the defendants António Carlos do Rosário and Teófilo Nhangumele. Given the role of these two figures within the Joint Command and the Operational Command the assistant thinks that the judge's order does not exhaust in a justified way the dispensation of this diligence".

And because the judge has always maintained that it is not mandatory for the Public Prosecutor's Office to be notified of the requests of the assistant, because it is its assistant, the representative of OAM, Vicente Manjate, argued as follows: "Although this step has not been requested by the Public Prosecutor's Office, in no way would its implementation be contrary to the purposes of justice, which is why it seems justifiable to hear the request of the Public Prosecutor, which is the prosecuting authority".

OAM defends that being an assistant to the Public Prosecutor's Office does not mean, nor should it be confused with being towed along by it, nor should it depend on prior consultation, taking into account the functional autonomy of the two procedural subjects. This is why under the terms of the law, the assistant has the legitimacy and the faculty to request diligent evidence independently from the Public Prosecutor's Office, as he has been doing in these proceedings since the opening of the contradictory instruction, aiming at the discovery of the material truth."

OAM requests seizure of assets of TUNAMAR and Maputo Shipyard and regrets the exclusion of Waldemar de Sousa from the list of declarants

Another request submitted by OAM has to do with the seizure of equipment and assets of the companies TUNAMAR and Maputo Shipyard in order to recover the loss that the State has suffered as a result of the acts committed.

TUNAMAR was established in 2017 for the purpose of developing fishing activities and is the result of a partnership between EMATUM and Frontier Services Group.

Maputo Shipyard was formed in 2016 and is 99% owned by MAM and GIPS (a company linked to the intelligence services) holds 1%. "The two companies benefited from part of the equipment purchased with loans provided by Credit Suisse and VTB banks. It is believed that these two companies were set up as part of the money laundering scheme. And the equipment could be diverted or lose its value in the market."

Just yesterday, OAM filed a complaint with the court regarding the order revoking the hearing of Waldemar de Sousa, former Director of the Central Bank of Mozambique. The hearing of Waldemar de Sousa was requested by the assistant in the process and admitted by the court. But faced with another excuse request presented by Waldemar de Sousa's lawyer, the judge decided to grant it, and revoked the hearing without hearing the assistant in the process, violating the adversarial principle. Meanwhile, the judge said that the court will not back down from its decision to revoke Waldemar de Sousa's hearing.

Arrest warrant against Alexandre Chivale

Judge Efigénio Baptista yesterday issued a warrant for the search and arrest of lawyer Alexandre Chivale for failing to appear in court to be heard as a declarant. In addition to the arrest warrant, Chivale will be charged with the crime of disobedience to judicial authority. The judge explained that the bailiffs did everything possible to locate and notify Chivale, but the lawyer did not cooperate.

“No one knows where Doctor Alexandre Chivale’s residence is. The bailiff went to his office, but he was not there. He spoke to Doctor Chivale’s collaborators, but no one seemed interested in collaborating. Doctor Chivale himself spoke twice with the officer, but did not say where he was. He knew he was being sought to be served, but he didn’t want to cooperate. He knew he was flouting a court order and did so aware of the consequences.”

The Public Prosecutor had already called for the forcible taking of Alexandre Chivale to be heard by the court as a declarant. But the assistant in the case, OAM, was more cautious: it said capture was an extreme measure and argued that the court should first exhaust all means at its disposal to notify Alexandre Chivale. Lawyer Vicente Manjate argued for a fine as an appropriate measure.

Hafiz Tarik Waha, manager of Africâmbios, the exchange house that was allegedly used to launder the “hidden debts” money, was not so lucky. Hafiz Tarik’s name was mentioned several times in the trial, especially by the three defendants who worked at Africâmbios, whose bank accounts were used to



Alexandre Chivale

move hundreds of millions of meticais. Therefore, his hearing is considered fundamental to the discovery of the material truth. At this moment, Africâmbios is closed and no one knows the location of the owners.

The judge explained that the bailiff was

unable to locate and notify Hafiz Tarik. “The officer was unable to speak to Hafiz Tarik, so the court will not issue a warrant for his arrest. We will officiate with the migration authorities to find out if indeed he has travelled out of the country.”



EDITORIAL INFORMATION

<p>Property: CDD – Centro para Democracia e Desenvolvimento</p> <p>Director: Prof. Adriano Nuvunga</p> <p>Editor: Emídio Beula</p> <p>Author: Emídio Beula</p> <p>Team: Emídio Beula, Julião Matsinhe, Dimas Sinoa, Américo Maluana</p> <p>Layout: CDD</p>	<p>Address: Rua de Dar-Es-Salaam Nº 279, Bairro da Sommerschild, Cidade de Maputo. Telefone: +258 21 085 797</p>	<p>Twitter: CDD_moz</p> <p>E-mail: info@cddmoz.org</p> <p>Website: http://www.cddmoz.org</p>
--	---	---

PROGRAMMATIC PARTNER



FINANCING PARTNERS

