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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Ex-Mozambique Official Says Delay Should End \$2B Fraud Case

By **Stewart Bishop**

Law360 (August 18, 2023, 8:48 PM EDT) -- A former finance minister of Mozambique who has been jailed for nearly five years without trial on charges stemming from the alleged \$2 billion "tuna bonds" bribery and investor fraud scandal asked a New York federal court on Friday to dismiss his indictment, saying prosecutors had violated his constitutional right to a speedy trial.

Manuel Chang, 67, Mozambique's minister of economy and finance from 2005 to 2015, was arrested in South Africa in December 2018, at the request of the U.S., over allegations of his role in a conspiracy with Jean Boustani, an executive with shipbuilder Prinvest Group, Credit Suisse bankers and others to divert over \$200 million in bribes and kickbacks from \$2 billion worth of Mozambican government-guaranteed bonds, which were meant to fund maritime projects.

While it took less than a year from Boustani's arrest en route to the Dominican Republic to his 2019 acquittal at trial, Chang was jailed in South Africa for over 4½ years until his long-delayed extradition to the U.S. last month. He says most of that time was spent in solitary confinement, without access to proper medical care.

In motion papers calling for a pre-trial dismissal of his indictment, Chang argues that a delay of this kind runs afoul of his Sixth Amendment right to a speedy trial, since the U.S. government did nothing during that time to effectuate his removal from South Africa to the U.S., amid litigation involving an ultimately failed bid by Mozambique to extradite Chang to his home country.

"The government sought Mr. Chang's arrest in 2018 in South Africa while he was on a layover, and then decided to do nothing further," the motion says. "The government's choices have consequences, and by making these choices, the government violated Mr. Chang's constitutional rights."

Counsel for Chang say he easily passes the multipart test courts have developed to determine whether a delay in trial has violated his constitutional rights. As a threshold matter, they say his delay has been so long that it's presumptively prejudicial, given that a delay of one year qualifies as such, and Chang has spent nearly five years in jail pretrial.

With that hurdle cleared, the defense argues that Chang clearly satisfies the so-called Barker factors that follow, as laid out in the U.S. Supreme Court's 1972 decision in *Barker v. Wingo*, which courts must consider when assessing whether dismissing the charges is necessary: the length of the delay, the reason for the delay, the accused invoking the speedy trial right and what prejudice the defendant has suffered as a result of the delay.

The defense contends a delay of more than 4½ years is obviously prejudicial to Chang, pointing to the Second Circuit's finding in *U.S. v. New Buffalo Amusement Corp.*, which says a 4½-year delay is "unquestionably substantial," and weighs heavily in favor of a defendant's claim of a Sixth Amendment violation.

Chang argues that the delay is the fault of the U.S. government, which, by failing to take any part in the South African proceedings, "all but assured Mr. Chang's right to a speedy trial would be violated."

Chang says he also asserted his right to a speedy trial repeatedly over the years, citing South African court filings in which Chang at one point consented to being extradited either to the U.S. or Mozambique, "as long as progress is made in the matter," and his counsel gave notice a month before

he finally was extradited that he would seek dismissal on speedy trial grounds.

"Mr. Chang's circumstance is the epitome of 'unnecessary delay' and warrants dismissal," the defense says.

A spokesman for the U.S. Attorney's Office for the Eastern District of New York declined to comment.

Prosecutors say Chang was in on the scheme to defraud investors in \$2 billion worth of Mozambican government-guaranteed loans made by Credit Suisse and Russian bank VTB that financed three state-backed special-purpose vehicles — Proindicus, EMATUM and MAM. The entities contracted with Privinvest to build tuna fishing, coastal surveillance and shipyard projects.

Chang faces charges for signing the guarantees on the loans on behalf of Mozambique, and is alleged to have received \$5 million in bribes. He is charged with conspiracy to commit securities fraud, wire fraud conspiracy and conspiracy to commit money laundering.

EMATUM, MAM and Proindicus ended up defaulting on their debt and missed more than \$700 million in loan payments, which triggered a massive financial crisis in Mozambique.

Privinvest's chief financial officer, Najib Allam, who is also charged in the case but has remained free in his native Lebanon, is also planning a motion to dismiss the case against him on speedy trial grounds.

Boustani, a Lebanese national, took the witness stand in his own defense at the roughly seven-week trial, and admitted making payments to officials of the East African nation but denied that he defrauded any investors.

Three former bankers in Credit Suisse's Global Financing Group, Andrew Pearse, Detelina Subeva and Surjan Singh, pled guilty in the case and cooperated with the government. Pearse and Singh both testified at Boustani's trial, saying they accepted millions of dollars in kickbacks for pushing for the Mozambican loans to go through.

Prosecutors say the bankers hid "red flags" from Credit Suisse's compliance department pointing to the possibility of corruption related to the loans.

Subeva was sentenced last year to no prison time. Pearse and Singh are awaiting sentencing.

Three jurors who spoke to reporters after trial said they acquitted Boustani based on venue grounds, since they could not see how the case was related to the Eastern District of New York.

The government is represented by Hiral Mehta and Jonathan Siegel of the U.S. Attorney's Office for the Eastern District of New York, Margaret Moeser of the U.S. Department of Justice's Money Laundering and Asset Recovery Section and Peter Cooch of the Fraud Section.

Chang is represented by Adam Ford and Arthur Kutoroff of Ford O'Brien Landy LLP.

The case is U.S. v. Boustani et al., case number 1:18-cr-00681, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Rachel Scharf. Editing by Peter Rozovsky.