



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 2 of 11)



Role:	Judge
Country of Origin:	Kenya
Interview Date:	4 November 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Lee Muthoga compares the cases of Casimir Bizimungu and Mikaeli Muhimana, reflecting on the difficulties of determining the guilt of implicit political action as opposed to explicit individual action. Muthoga discusses the unique challenges posed by a hybrid jurisprudential system, stressing the need for judges to have investigatory capacity as typical of civil law systems. He calls for mandatory induction courses for new Tribunal personnel and notes that many staff may require counseling as a result of their work.

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Part 2

00:00 Robert Utter: What generated your interest in the ICC-, TR?

00:06 I think I came here more accidentally than by design. I came here when the first set of, for replacing judges wa-, was set out, I saw the application. Then I was completely fed up with what was happening in Kenya at the time, the former regime and I (___), needed very badly to do something different and something out of Kenya if possible.

00:38 So I applied for, for the appointment, for the, the appli-, appointments that had been advertised but I was somewhat unpopular with the government of the time and I, they were completely unwilling. They were unwilling to say they don't support my candidacy, but they were unwilling to support it either.

01:07 So my application was left to lie from – I presented it in May and I think the applications were closing on September 15th or something like that. But it got to New York on 17th of September, two days after closing time. So it was not considered.

01:29 So, but fortunately the tribunal – the, the, the United Nations then decided to establish the positions of ad litem judges. And when it did, a-, at the same time the government changed in, in Kenya so this time I put in an application and it was able to get in to New York in time. And that's really how I came here – I, I, I must say I came here running away from Kenya rather than by deliberate determination to go.

02:09 When the tribunal was i-, initially set up in 1994, I, I was involved in advocating for its being set up. But the president of Kenya at the time made very disparaging remarks about the tribunal and threatened to arrest any investigators who may be found in Kenya.

02:42 RU: Oh my.

02:43 And Kenya was then one of the countries that were being talked about as the places to establish the tribunal. So because of that speech, the United Nations turned it round against Kenya. And my interest in the tribunal just came down largely because I then knew of course that there was no chance at all for a Kenyan to get into the tribunal.

03:11 So I forgot about it and forgot about it altogether now until, you know, five, six years later when I thought perhaps that the, the Kenya political establishment had changed its thinking on that. So that, that's really how I got here.

03:34 RU: Tell me about the work you are presently doing; how the panels are formed and where your work is with the panel? I might add before we have that, I am here with the University of Washington project; an information heritage saving with the ICTR.

03:56 RU: And that's my role; totally unofficial and completely unpaid so we simply volunteered to do this. But let me get back to your role here and for the record tell what you do, and . . .

- 04:10 Yes. As you probably have heard from the judges you have interviewed, the co-, the tribunal is comprised of three chambers; that is Chamber 1, Chamber 2, and Chamber 3. And each of those chambers has got permanent and ad litem judges. And courts are organized into trial chambers of three judges each. Every case is assigned to some three judges.
- 04:47 When I came here, I came initially on the assignment in the case of the Prosecutor versus Bizimungu and others, which is – we started in November of 2003 and it's still in progress.
- 05:07 The evidence phase has now been completed some three months ago and we are now waiting for the final submissions to be delivered on, from the 1st to the 5th of December after which we shall enter the judgment – deliberations and judgment writing phase.
- 05:33 After coming here, then I was assigned to another trial called the Prosecutor versus Mika Muhimana which I did between 19-, 2004 and 2005. It was a single accused trial, where I sat with Judge Khan and Judge Short. And Ma-, Mika Muhimana was as you probably know also convicted on all counts and sentenced to life imprisonment.
- 06:14 And he appealed against that judgment and the appeal court upheld the judgment. He is now either being moved on to some prison or is waiting – I'm not, I'm not aware of his present circumstances – to serve his, his term.
- 06:34 And subsequently I was assigned to another trial called the Prosecutor versus Zigiranyirazo, Protais Zigiranyirazo. And that trial is now, has completed the evidence phase and we are in the middle of judgment writing.
- 07:01 We were hoping to deliver judgment in the course of last month but for some various reasons it wasn't possible to do so. We are hoping now to deliver a judgment later in the year, hopefully in December. And I'm still working on the Bizimungu trial.
- 07:24 I have been assigned to another small short trial called the Prosecutor versus Nshogoza, which has not started yet. It was supposed to start on the 27th of September but again for certain reasons, it wasn't possible to start it and it is now scheduled to start on the 9th of February, 2009.
- 07:49 It's a short trial which is expected to take a couple of weeks, both sides – the prosecution and the, and the accused. It is not a genocide trial; it is a contempt of tribunal trial. So we don't expect to be a long trial. So those are the trials I have been involved in.
- 08:12 RU: And when you say contempt of the tribunal, what is he alleged to have done?**
- 08:18 He's alleged to have taken part in getting witnesses to lie to the tribunal and assisting witnesses to falsify their, their testimony and also bribing witnesses for that purpose. And he was previously a defense investigator in, in one of the tribunal, one of the

courts, trials being carried out by this tribunal and it's alleged that in the course of that work as a defense investigator, he organized witnesses to lie to the tribunal.

09:09 It's all on allegations. It has not been heard. He's probably as innocent as they come, but he, he could also be guilty. That's what a trial is about.