



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 6 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.

The transcript of Part 6 begins on the following page.

Part 6

- 00:01** Donald J Horowitz: You, you were not a judge before you were a judge here but you had arbitrated a great many cases and that gave you, of course, a certain kind of judicial experience. Had you ever sat in a criminal case before?
- 00:16 Yes I had. You, you probably missed it out in my CV.
- 00:16** DJH: Ah.
- 00:16 For about ten years I was what we call a, a “Commissioner Oversize.”
- 00:30** DJH: Yes.
- 00:30 A Commissioner Oversize is, has the rank of a high court judge . . .
- 00:34** DJH: Ah, okay.
- 00:35 . . . but comes to do only largely criminal appeals because the criminal appeals require a two, two judge bench and sometimes the chief justice finds that he hasn’t got enough judges to carry out the load of criminal appeal, so he appoints Commissioners Oversize. Strictly speaking under the law they can do anything; they can try any case that any high court judge can be, can try.
- 01:04 And we did try some civil cases but mainly we were utilized in the criminal appeals. That is appeals coming from the magistrate courts to the high court, which are either certified to require three judges or to require two judges. And so I did a lot of that work.
- 01:25** DJH: That’s an appeals court, is it not?
- 01:28 No.
- 01:29** DJH: Okay.
- 01:29 When it is doing criminal appeals it is an appeals court . . .
- 01:33** DJH: Okay.
- 01:33 . . . from the magistrates. When it is exercising original decisions it is a trial court of the high court.
- 01:38** DJH: Okay, so you have experience then in sentencing people for crimes that have, for which they have been convicted.
- 01:45 Act-, actually I had the experience of reviewing sentences because we did not have original criminal jurisdiction.
- 01:57** DJH: Okay.

- 01:57 The high court's original criminal jurisdiction was only in murder, and it was not usual for the court to al-, assign murder to Commissioners Oversize because their period is indeterminate, so they are given the work that runs quickly which is appeals.
- 02:20 So in dealing with sentences, we were more dealing with, looking to see whether the sentences are lawful, they are illegal; they are too, too heavy or too light for the offenses.
- 02:29 **DJH: Okay, well the reason I, I am following this line of questioning is because obviously you have to make sentencing decisions in this court . . .**
- 02:38 Yes.
- 02:39 **DJH: . . . when somebody is convicted. And sentencing for crimes such as people are here generally charged with, would seem to me to be a, a little different, than, than . . .**
- 02:49 Yes, it's extremely heavy I can tell you that.
- 02:53 **DJH: Yes, and I, I want to ask you about that. I know that you haven't had a lot of experience sentencing be-, because you only completed one case, but in terms of your, what you think about and, and the sentencing decisions, how, how is it different or how is it the same? What, what considerations are there? You of course do not have the death penalty . . .**
- 03:17 That is, which is a blessing, a great blessing because you don't ever have to make that decision. And it's not the same as having to make it in decision; of course in the work that I did as Commissioner Oversize, occasionally I had to look at capital offenses because the magistrates also try capital robbery as offenses for which they can sentence someone to death.
- 03:55 But I will readily admit that I have only, I had only one instance reviewed a sentence of death from the magistrate's court. And I was reviewing whether it is illegal, not its, not the, its extent. And both the judge sitting with me, Mr. (_____) so Justice (_____) and myself agreed the sentence was illegal so we reversed it and sent the case back for trial.
- 04:27 But to answer your question, it's a very heavy responsibility coming to the appropriate sentence.
- 04:35 **DJH: In this – in the ICTR?**
- 04:36 In the ICTR.
- 04:38 **DJH: Tell us about that.**
- 04:39 It, it troubled us quite a bit when we were trying, sentencing Muhimana. I think, in fact, we were locked in differences for more than, more than a week. We were, we were

having sentence combinations that we were not able to get unanimity for some time and we had to do a lot of searching.

- 05:10 And the reason is this: You have the maximum sentence, which is life imprisonment. A person is charged with rape, with, with genocide, with crimes against humanity, with all those other crimes and you have to tell yourself, "Which of these offenses is the more, the more severe, more serious offense than the other one?"
- 05:47 And really it is, you have to look at the enormity, you have to look at the involvement, the quality of involvement because in trying genocide, you will have people who have been involved in it for various reasons.
- 06:03 One, they may be involved because they are really genocidaire in their decision. They are the ones who went hunting and looking for people to go and "work," as they called it. Then the others who were found to go and work, they, they would never () had the initiative to go and do anything.
- 06:23 They even thought it was a bad thing but it was a situation where either you go and do it or you get killed yourself so a lot of them went to get, to avoid getting killed. Or so they said when they are, they were eventually brought before you.
- 06:38 And the others who were doing it out of duty – "I am the local administrator here, it is government policy that these Tutsis be eliminated and there is a job, we go and do it," and so on and so forth.
- 06:56 And they are (). So all these kinds of things, these motivations come into your mind when you are thinking about what to do with the person you have found guilty. And I would think to myself, my mind is this – that unless I am satisfied that th-, the involvement was 100% voluntary, that it cannot be but, but 100% voluntary, then I wouldn't go for the maximum sentence.
- 07:35 But what sentences I would give after that depends really on the extent of that involvement, the callousness of the activity. Sometimes the, the way in which the, the accused acted tells you volumes about what his thinking was and, and so forth.
- 07:58 The other consideration in sentencing of course is the crime. The sentence should fit the crime, the victims should feel they have been, there is some atonement, there is, something has been done for them.
- 08:18 The community should see that the activity, the person, the guilty have been punished or adequately punished, and so on and so forth. Those are all the things that come in the mind of a, of a judge as he determines the sentence.
- 08:34 But it is the most difficult part of the whole process. The trial itself, the determination as to guilt or innocence is a much, much easier process than the determination once you have found a person guilty as to what sentence you should award.