



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 5 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 5 begins on the following page.

Part 5

- 00:00** Donald J Horowitz: Judge Muthoga, I am Judge Donald Horowitz from King County Superior Court which is, was a trial court. And I was a judge there and I will be finishing, conducting the second part of the interview.
- 00:13** DJH: I'd like to talk a little bit about your experience prior to becoming, previous to becoming a judge here because you've had a long career as a lawyer and did, and I'm interested in the kind of work you did.
- 00:28** DJH: I, I, obviously you did work in human rights, which you've told Justice Utter about. But what's the nature of your practice, generally speaking?
- 00:36** My practice has a history; a history in the, in the sense that it began as a one-man practice in, on the 15th of February 1972, which is when I reti-, resigned from my former law firm.
- 00:58** I was formerly employed as a, as a lawyer in a white practice called Hamilton Harrison & Mathews; and there were some differences, perhaps not really professional, but differences about remuneration and things like that. And so I decided to give a, give in a resignation.
- 01:27** And on the same day I resigned I also set up a law office. It was called Muthoga Gaturu & Company Advocates. I was the sole practitioner. I had, initially I had no employee. Then I, I got one employee. And then I was joined by a clerk who was working for my former employer who also resigned and decided to work for me gratuitously, () without payment.
- 02:00** So, for about four months I had only two members of staff; one who was on the payroll, and the other one who was working gratuitously, and myself. So that's the way the firm started.
- 02:17** It is not a firm which was, existed before that time. And after about three years I was joined by another practitioner and we merged the two law, two firms and formed one law firm called Muthoga Gaturu & Company Advocates.
- 02:35** And we then were practicing – we were a general practitioner. We were practicing contracts, civil law, criminal law, anything that we could find. And, and we had to do that because neither of us had what you'd call a prosperous family heritage or, or something that could enable us to choose our, our, our field of law. So we were doing whatever came.
- 03:07** Eventually we ended up by abandoning criminal practice; almost virtually abandoning cri-, criminal practice or restricting it only to people who were otherwise our clients, or employees of companies that were our clients when, when they got in trouble.

- 03:28 But very little off the street criminal work, and became civil practitioners and I think eventually, now we just doing transactio-, trans-, transaction work and corporate work but we've done all this other work before.
- 03:49 **DJH: And this firm that of course has grown, and some of the very first parts of your description of the firm remind me very much of my own history, when you are happy to have a client and you say, "Now I am glad they chose me," and so forth.**
- 04:09 **DJH: But, but you also apparently, I mean, from what we see of your résumé and so forth, the firm whether gratuitously or not did other, other kinds of work; consulted in human rights areas, and so forth and so on. And we call it, a lot of it we call, in the United States pro bono, yes.**
- 04:28 Pro bono, yes. As a rule, our practice rule was that one-third of our work shall always be pro bono, unlike other law firms. And the reason was that our firm grew as a response against foreign law firms, because at that time our law firms in Kenya were either European-owned or Asian-owned. There were only two other black . . .
- 04:59 **DJH: African.**
- 04:59 . . . black African lawyers and very naturally the greatest need of pro bono work is African. And the European law firms and the Asian law firms did no pro bono work or very little. Sometimes only the proper briefs which they were doing it, doing, using their younger lawyers for, more for learning experience than for satisfying that client.
- 05:32 There was no legal aid in, in the country, either civil or criminal. So when I started off, both my partner and I were committed to some pro bono work.
- 05:48 So we kind of decided that there is a client, there is a segment of clients who cannot pay for their work. We will do it to the extent that it is possible, so that our firm does not just appear like the firm for the rich, and, and, (___). So we carried out pro bono work.
- 06:14 Then I personally got myself involved in a lot of child rights work. A lot of it which was really for pro bono. And, and, and I had to do it because I liked doing it and because I have the Christian commitment to doing work for God a-, a-, and, and so forth.
- 06:41 So yes we, we spent about one-third of our work on pro bono all the time. That has changed over time. My present partners are less generous in that way than, than I am. Well, they, they start it differently now; they don't have to do it now and they have, they have the capacity to choose a lot of their work which I didn't have at the time.
- 07:12 But they still also do some fair amount of pro bono work but not, not as much we did at the time. Or put it this way, the work of the firm has grown bigger now that pro bono work has become much less than it used to be.
- 07:32 **DJH: It sounds to me like, there's a biblical saying which I'm sure you know, "Cast thy bread upon the waters and it shall be returned sevenfold." The work that you did pro**

bono has contributed to your success and the success of your firm. And hopefully perhaps the newer members of your firm will be reminded of that at some point.

07:57 DJH: I understand that personally very well and I applaud, I applaud your work. Both in terms of pro bono and in establishing so importantly an African presence in the bar which, without which it would mean very little, the bar would mean very little in, in these countries. And I'm telling you what you already know and I apologize for saying the truth that you already know.