

ICTR-95-1B-T
6-5-2004
(1228-1226)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 6 May 2004

JUDICIAL RECORDS
1071
2004 MAY -6 P 4: 08
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The PROSECUTOR
v.
Mika MUHIMANA

Case No. ICTR-95-1B-T

**DECISION ON THE DEFENCE MOTION TO APPOINT AN *AMICUS CURIAE*
IN PROCEEDINGS AGAINST INVESTIGATOR TONY LUCASSEN FOR
FALSE TESTIMONY**

Office of the Prosecutor:

Mr. Charles Adeogun-Phillips
Mr. Wallace Kapaya
Mr. Peter Tafah
Ms. Renifa Madenga
Ms. Florida Kabasinga
Ms. Maymuchka Lauriston

Counsel for the Defence:

Professor Nyabirungu Mwene Songa
Mr. Kazadi Kabimba

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber III, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga and Judge Emile Francis Short (the “Chamber”);

BEING SEIZED of the “Defence Motion to Appoint an *Amicus Curiae* in Proceedings Against Investigator Tony Lucassen for False Testimony” filed on 31 March 2004¹, (the “Motion”);

NOTING the Prosecution “Response to Motion of the Defence for the Designation of an *Amicus Curiae* for False Testimony of Investigator Tony Lucassen” filed on 6 April 2004 2004, (the “Response”);

CONSIDERING the Statute of the Tribunal and the Rules of Procedure and Evidence (the “Rules”) particularly Rule 91 of the Rules;

SUBMISSIONS OF THE PARTIES

1. The Defence alleges that Prosecution Witness Tony Lucassen, an Investigator employed by the Office of the Prosecutor, knowingly gave false testimony before this Chamber regarding his qualifications, experience and publications.
2. The Defence requests the Chamber to initiate the procedure outlined in Rule 91 (B) (ii) of the Rules, which would involve appointing an *amicus curiae* to investigate this allegation.
3. The Prosecution responds that Witness Lucassen did not give false testimony before the Chamber, and answered all questions to the best of his knowledge.
4. The Prosecution further submits that the competency of staff members of the Office of the Prosecutor is conferred upon them by virtue of their appointment, following Article 15(3) of the Statute and Rule 37(B) of the Rules.

HAVING DELIBERATED

5. The Chamber notes that the litmus test laid down in Rule 91(B) of the Rules for initiating further proceedings is where the Chamber has *strong grounds* to believe that a witness has *knowingly and wilfully given false testimony* before the Chamber.
6. The Chamber is not persuaded by the Defence argument that Witness Tony Lucassen deliberately misled the Chamber. The Chamber must have strong grounds for believing that a witness knowingly and wilfully gave false testimony, before initiating the procedure which may lead to the issuance of an indictment against a witness for false testimony. It is clear that this is not such a case, and the Chamber cautions the Defence that allegations of this nature must be founded upon solid ground.

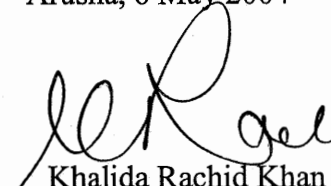
¹ Certified translation of the French original filed on 13 April 2004.

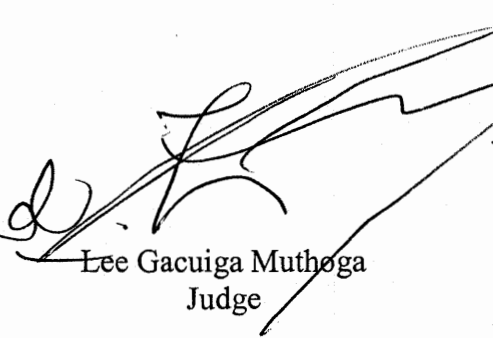



FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DENIES the Motion in its entirety.

Arusha, 6 May 2004


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Emile Francis Short
Judge

(Seal of the Tribunal)

