



UNITED NATIONS  
MILITARY TRIBUNALS

ICTR-97-36A-I  
13-2-2008  
(479-476)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER DESIGNATED UNDER RULE 11 BIS**

**Before:** Jtés M. Weinberg de Ruca, Presiding  
Lee Gacuiga Muthoga  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 13 February 2008

JUDICIAL RECORDS/ARCHIVES  
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**THE PROSECUTOR**

v.

**Yussuf MUNYAKAZI**

*Case No. ICTR-1997-36-I*

**DECISION ON THE REQUEST BY IBUKA & AVEGA  
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

*Rules 11 bis and 74 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Hassan Bubacar Jallow  
Bongani Majola  
Silvana Arbia  
Alex Obote-Odora  
Richard Karegyesa  
George Mugwanya  
Inneke Onsea  
François Nsanzuwera  
Florida Kabasinga

**Defence Counsel:**

Jwani Timothy Mwaikusa  
Eliane Nyampinga

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## INTRODUCTION

1. On 29 November 2002, the Prosecutor of the International Criminal Tribunal for Rwanda filed an Amended Indictment against Yussuf Munyakazi ("the Accused"). The Amended Indictment charges the Accused with genocide, or alternatively, with complicity in genocide, and extermination as a crime against humanity.<sup>1</sup> On 17 January 2003, Judge Winston C. Matanzima Maqutu authorised the Amended Indictment.<sup>2</sup>

2. On 7 September 2007, the Prosecutor filed a request for the referral of the case of the Accused to the Republic of Rwanda ("the Referral Request").<sup>3</sup> The President of the Tribunal designated this Chamber to determine the matter in accordance with Rule 11 *bis* of the Rules of Procedure and Evidence ("the Rules") on 2 October 2007.<sup>4</sup>

### *Amicus Application*

3. On 4 February 2008, Ibuka & Avega filed an application for leave to appear as *amicus curiae* ("the *Amicus Application*")<sup>5</sup>. In support of its application, Ibuka & Avega referred to Rule 74 of the Rules and submitted that its role as *amicus curiae* would assist the Chamber in its determination of the Referral Request.<sup>6</sup> Specifically, Ibuka & Avega offered to make submissions on the following points:

- a. Rwanda's preparedness, competence, and readiness to offer a transparent and a fair trial to the Accused;
- b. The institutional, budgetary, legal aid, witness and victims protection and other relevant mechanisms and projects in place for Rwanda to receive and effectively handle the Tribunal's Rule 11 *bis* cases, including the case of the Accused;
- c. Post-acquittal and post-conviction guarantees, including but not limited to social and economic re-integration available to the Accused persons tried by courts in Rwanda; and

<sup>1</sup> Amended Indictment, 29 November 2002.

<sup>2</sup> *Décision Relative à la Requête Unilatérale du Procureur aux Fins D'Autorisation de Modifier L'Acte D'Accusation*, 17 January 2003.

<sup>3</sup> The Prosecutor's Request for the Referral of the Case of *Yussuf Munyakazi* to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007.

<sup>4</sup> Designation of a Trial Chamber for the Referral of the Case of *Yussuf Munyakazi* to Rwanda, 2 October 2007.

<sup>5</sup> Request by Ibuka & Avega for Leave to Appear and Make Submissions as *Amicus Curiae* (pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in Support of the Prosecutor's Rule 11 *bis* Request for the Referral of the Case of *Gatete Jean-Baptiste* (sic) to Rwanda, 4 February 2008 ("Amicus Application").

<sup>6</sup> *Amicus Application*, paras. 2, 5, 5, 6 and 7.

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- d. Security guarantees against any infringement on the life of any witness before and after trial.<sup>7</sup>

4. Ibuka & Avega respectfully requested that the Chamber grant it leave to file an *amicus* brief in support of the Referral Request.<sup>8</sup>

#### **Prosecutor's Response**

5. The Prosecutor filed its Response on 8 February 2008, stating that it had no objection to the *Amicus* Application of Ibuka & Avega.<sup>9</sup> Were the Chamber to grant the *Amicus* Application, the Prosecutor asked that it be given the opportunity to respond to the *amicus* brief of Ibuka & Avega.<sup>10</sup>

### **DISCUSSION**

6. The Chamber recalls that pursuant to Rule 74 of the Rules, it may grant leave to a State, organisation, or person to make submissions on any issue if it considers it desirable for the proper determination of the case. Pursuant to Rule 74, the decision to grant leave to an *amicus curiae* is at the sole discretion of the Chamber.

7. First, the Chamber considers that Ibuka & Avega have not demonstrated how, as an organisation representing genocide survivors,<sup>11</sup> they are well placed to assist the Chamber in determining the issues specified above.

8. Secondly, the Chamber is of the view that the substance of the *amicus* submissions offered by Ibuka & Avega would be very similar to extensive information already received from another *amicus* in favour of referral in the instant case, the Kigali Bar Association ("KBA")<sup>12</sup>, as well the State concerned, the Republic of Rwanda.<sup>13</sup> Given the information that Ibuka & Avega have proposed to provide in an *amicus* brief, the Chamber is of the

<sup>7</sup> *Ibid.*, para. 9.

<sup>8</sup> *Ibid.*, para. 10.

<sup>9</sup> Prosecutor's Response to "Request by Ibuka & Avega for leave to appear and make submissions as Amicus (pursuant to Rule 74 of the Tribunal's Rules of Procedure and Evidence) in Support of the Prosecutor's Rule 11 Bis Request for the Referral of the Case of Gatete Jean-Baptiste (sic) to Rwanda". 8 February 2008 ("Prosecutor's Response"), para. 4.

<sup>10</sup> Prosecutor's Response, para. 4.

<sup>11</sup> *Amicus* Application, para. 1.

<sup>12</sup> *Amicus Curiae* Brief of the Kigali Bar Association in the Matter of an Application for the Referral of the above case to Rwanda pursuant to Rule 11bis, 10 January 2008.

<sup>13</sup> *Amicus Curiae* Brief of the Republic of Rwanda in the Matter of an Application for the Referral of the above case to Rwanda pursuant to Rule 11bis, 21 December 2007.

view that this would merely be duplicating the information already offered by the KBA and the Republic of Rwanda.

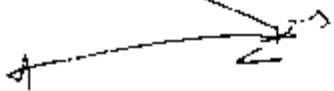
9. Thirdly, having heard from the Republic of Rwanda, the KBA, and the International Criminal Defence Attorney's Association,<sup>14</sup> the Chamber does not consider that Ibuka & Avega can assist further on the issues specified above.

10. For the reasons stated above, the Chamber is not satisfied that receiving an *amicus curiae* brief by Ibuka & Avega would further assist the Chamber in a proper determination of the case.

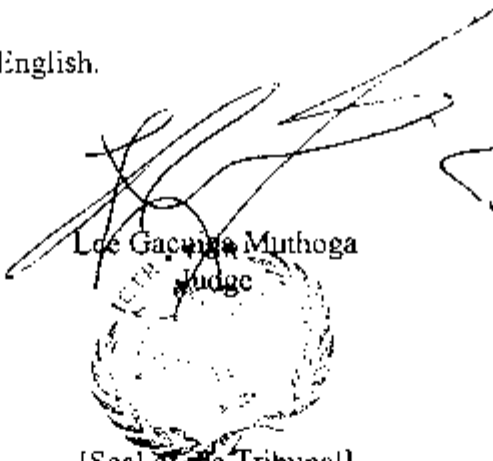
**FOR THE FOREGOING REASONS, THE CHAMBER:**

- I. **DISMISSES** the *Amicus* Application in its entirety.
- II. **REQUESTS** the Registrar to notify, without delay, the present Decision to Ibuka & Avega.

Arusha, 13 February 2008, in English.

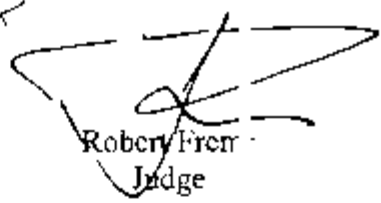


Inés M. Weinberg de Roca  
Presiding Judge



Lele Gacanga Muthoga  
Judge

[Seal of the Tribunal]



Robert Ferrer  
Judge

<sup>14</sup> Brief of *Amicus Curiae*, International Criminal Defence Attorney's Association (ICDAA), Concerning the Request for Referral of the Accused Yussuf Muryakazi to Rwanda pursuant to Rule 11bis of the Rules of Procedure and Evidence, 4 January 2008.