

THE CONTEMPT JUDGE

Case No.: STL-14-05/PT/CJ
Before: Judge Nicola Lettieri, Contempt Judge
Registrar: Mr Daryl Mundis, Registrar
Date: 4 March 2015
Original language: English
Classification: Public

IN THE CASE AGAINST

AL JADEED [CO.] S.A.L./ NEW T.V. S.A.L. (N.T.V.)
KARMA MOHAMED TAHSIN AL KHAYAT

**DECISION ON *AMICUS CURIAE* PROSECUTOR'S MOTION FOR ADMISSION OF
RECORD OF KARMA KHAYAT'S SUSPECT INTERVIEW AND RELATED
DOCUMENTS**

***Amicus Curiae* Prosecutor:**
Mr Kenneth Scott

Counsel for *Al Jadeed [CO.] S.A.L./*
NEW T.V. S.A.L. (N.T.V.) and
Ms Karma Khayat:
Mr Karim A.A. Khan
Mr Rodney Dixon
Ms Shyamala Alagendra



INTRODUCTION

1. On 2 October 2013, the *Amicus Curiae* Investigator, and members of his team (collectively, “*Amicus Curiae* Investigator”), conducted a suspect interview with Ms Karma Mohamed Tahsin Al Khayat related to an investigation into alleged contempt before the Tribunal.¹
2. On 31 January 2014, Ms Khayat and *Al Jadeed* [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) (“*Al Jadeed* S.A.L.”) were charged with two counts of contempt and obstruction of justice pursuant to Rule 60 *bis* (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).²
3. On 18 December 2014, I ordered that the Parties shall make their opening statements in this case and the *Amicus Curiae* Prosecutor (“*Amicus*”) shall present his case-in-chief from 16-17 April 2015 and 20-22 April 2015, as needed. I further ordered that the Defence present its case, if any, from 12-15 May 2015.³
4. On 16 February 2015, the *Amicus* requested, in a confidential filing, that I admit into evidence the audiovisual recording and written transcript of Ms Khayat’s suspect interview, as well as related documents.⁴ The Defence informed me that it would not file a response to the Motion.⁵
5. Having considered the *Amicus*’s submissions and reviewed the relevant material, I find the recording and written transcript of Ms Khayat’s suspect interview, as well as the related documents, admissible.

APPLICABLE LAW

6. The following provisions of the Rules, relevant to my decision, apply *mutatis mutandis*.⁶

¹ STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0097, Motion for Admission of Record of Karma Khayat’s Suspect Interview and Related Documents, Confidential, 16 February 2015 (“Motion”). All further references to filings and decisions refer to this case number unless otherwise stated.

² STL, *In the case against New TV S.A.L. and Khayat*, STL-14-05/PT/CJ, F0001, Redacted Version of Decision in Proceedings for Contempt with Orders in Lieu of an Indictment, 31 January 2014 (“Order in Lieu of an Indictment”).

³ F0093, Order Scheduling Trial Dates, 18 December 2014.

⁴ Motion.

⁵ E-Mail from Defence Legal Assistant to Legal Officer for the Contempt Judge, 26 February 2015.

⁶ Rule 60 *bis* (H) STL RPE.

7. Under Rule 154, evidence may be admitted in the form of a document or other record, consistently with Rule 149 (C) and (D). Pursuant to Rule 149 (C) and (D), a Chamber may admit any relevant evidence which it deems to have probative value; but it may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. In particular, the Chamber may exclude evidence gathered in violation of the rights of the suspect or the accused as set out in the Statute and the Rules. Furthermore, no evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability.⁷

8. Rule 65, which reflects Article 15 of the Tribunal's Statute, articulates the rights of suspects during an investigation. It provides, in relevant part:

(A) [A] suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning in a manner and language the suspect understands:

(i) The right to be informed that there are grounds to believe that he has committed a crime within the jurisdiction of the Tribunal;

(ii) the right to be assisted by counsel of the suspect's choosing or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for such assistance;

(iii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and

(iv) the right to remain silent and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel, unless the suspect has voluntarily and expressly waived the right to counsel.

9. Rule 66 sets out the requirements for recording the questioning of suspects.⁸

DISCUSSION

I. The position of the *Amicus*

10. The *Amicus* requests that the audiovisual recording and transcript of Ms Khayat's suspect interview conducted on 2 October 2013 be admitted into evidence.⁹ The *Amicus* notes that

⁷ Rule 164 STL RPE.

⁸ Rule 66 STL RPE.

⁹ Motion, p. 1.

Ms Khayat immediately received a copy of the recording and that it was disclosed to the Defence in May 2014.¹⁰

11. The *Amicus* asserts that the recording and transcript are relevant and probative, as Ms Khayat “gave evidence on many aspects of the production and broadcast of *Al Jadeed* TV’s 6 to 10 August 2012 episodes, on her role and the role of others in the production and broadcast of those episodes, as well as on her role and position and those of others at *Al Jadeed*”.¹¹ He further contends in detail that all of the requirements of Article 15 of the Statute and Rules 65 and 66 were satisfied, and that the evidence is reliable.¹²

12. The *Amicus* also seeks admission of two judicial powers of attorney presented to the *Amicus Curiae* Investigator by Ms Maya Habli at the beginning of Ms Khayat’s suspect interview.¹³ These documents authorized Ms Habli to act on behalf of Ms Khayat and *Al Jadeed* S.A.L.¹⁴ The *Amicus* avers that they are relevant and probative, in that they show the relationship between Ms Habli and the Accused and demonstrate the voluntariness and reliability of the suspect interview recording and transcript.¹⁵

13. The *Amicus* finally requests admission of two documents shown by the *Amicus Curiae* Investigator to Ms Khayat during the interview and about which she was questioned—(1) the Arabic version of the report of service of the Pre-Trial Judge’s 10 August 2012 “Order for Immediate Removal of Disseminated Material and Cessation of Dissemination” and of a copy of Rule 60 *bis* and (2) an Arabic copy of the Pre-Trial Judge’s order.¹⁶ The *Amicus* asserts that these documents are relevant and probative, in that they show the Accused’s knowledge of the Pre-Trial Judge’s order, and that they are reliable.¹⁷

¹⁰ Motion, para. 9.

¹¹ *Id.* at para. 10.

¹² *Id.* at paras 13-18.

¹³ *Id.* at paras 19-20.

¹⁴ *Id.* at para. 19.

¹⁵ *Id.* at 20.

¹⁶ *Id.* at para. 21.

¹⁷ *Ibid.*

II. Discussion

A. Audiovisual Recording and Transcript of Suspect Interview

14. Having considered the *Amicus*'s submissions and reviewed the audiovisual recording and transcript of Ms Khayat's suspect interview, I conclude that the recording and transcript are plainly relevant and have probative value. The information provided by Ms Khayat in the interview relates to the alleged *actus reus* and *mens rea* of the Accused with respect to the crimes charged in the Order in Lieu of an Indictment. There is also no reason to exclude this material under Rule 149 (D). Further, the *Amicus Curiae* Investigator satisfied Rule 65 (A)'s requirements, given that Ms Khayat was informed prior to questioning in a manner and language she understood that she was suspected of committing contempt under the Rules; that she had the right to be assisted by counsel of her choosing; that she had the right to free assistance of an interpreter during the questioning; and that she had the right to remain silent and that any statement she made would be recorded and could be used in evidence.¹⁸ All questioning was done in the presence of Ms Khayat's chosen counsel, Ms Maya Habli, in compliance with Rule 65 (B). Additionally, the *Amicus Curiae* Investigator complied with the more technical requirements of Rule 66, such as offering Ms Khayat an opportunity to make clarifications and providing her a copy of the audiovisual record.¹⁹ Finally, this evidence was not obtained by methods which cast substantial doubt on its reliability. I therefore find admissible the audiovisual recording and transcript of Ms Khayat's suspect interview.²⁰

B. Powers of Attorney

15. Having reviewed the powers of attorney provided by Ms Habli to the *Amicus Curiae* Investigator, I agree with the *Amicus*'s submissions in regards to these documents. Each is relevant and has probative value with respect to demonstrating the *Amicus*'s compliance with Rule 65 (A) (ii) and (B) when conducting Ms Khayat's suspect interview, as well as Rule 162. There is also no reason to exclude these documents under Rule 149 (D). Moreover, the documents were not obtained by methods which cast substantial doubt on their reliability. Each

¹⁸ Motion, paras 13-16. ERNs AP1405_209_ENG_T_01959-01961, AP1405_209_ENG_T_01966, AP1405_209_ENG_T_01967, ERNs AP1405_209_ENG_T_01965.

¹⁹ Motion, paras 13-17. ERNs AP1405_209_ENG_T_01961, AP1405_209_ENG_T_01966, AP1405_209_ENG_T_02044, AP1405_209_ENG_T_01950-02044.

²⁰ ERNs AP1405_029_ARA-ENG, AP1405_030_ARA-ENG, AP1405_031_ARA-ENG, AP1405_032_ARA-ENG, AP1405_033_ARA-ENG, AP1405_209_ENG_T_01950-02044.

was duly signed by the appropriate persons and notarized. I therefore find these powers of attorney admissible.²¹

C. Documents Shown to Karma Khayat During Suspect Interview

16. Having reviewed the two documents shown by the *Amicus Curiae* Investigator to Ms Khayat during her suspect interview and about which she was questioned—the Arabic version of the report of service of the Pre-Trial Judge’s 10 August 2012 “Order for Immediate Removal of Disseminated Material and Cessation of Dissemination” and of a copy of Rule 60 *bis* and (2) an Arabic copy of the Pre-Trial Judge’s order—I conclude that each is relevant and has probative value. The documents, which were signed during the suspect interview by Ms Habli, are part and parcel of the interview and relate to the alleged *mens rea* of the Accused, especially in regards to Count 2 in the Order in Lieu of an Indictment. There is also no reason to exclude these documents under Rule 149 (D). Moreover, the documents were not obtained by methods which cast substantial doubt on their reliability. I therefore find these documents admissible.²²

D. Confidentiality

17. The *Amicus* filed the Motion confidentially. He did so “in light of the possibility that confidentiality or protective measures might be at play until such time as the evidence, or any part of it, is admitted and used in the course of public, open proceedings”.²³ I find no reason that would require maintaining the confidentiality of the Motion in its entirety or of this decision. However, I consider it appropriate that the actual language of Ms Khayat’s suspect interview quoted in the Motion remain confidential at this stage. I therefore order the *Amicus* to file a public redacted version of the Motion. In line with Tribunal practice, the material I found admissible will remain confidential until admitted. This decision will also be issued publicly.

DISPOSITION

FOR THESE REASONS;

PURSUANT to Article 15 of the Tribunal’s Statute and Rules 60 *bis* (H), 65, 66, 149 (C) and 154.

²¹ ERNs AP1405_219_ARA_02149-02150, AP1405_219_ENG_T_02151-02152.

²² ERNs AP1405_072_ARA_T_00700-00700, AP1405_072_ENG_00576-00581, AP1405_071_ARA_T_00699-00699, AP1405_071_ENG_00572-00575.

²³ Motion, para. 22.

I

GRANT the *Amicus*'s Motion;

DECIDE that the audiovisual recording and transcript of Ms Khayat's suspect interview, as well as the related documents, are admissible; and

ORDER the *Amicus* to file a public redacted version of the Motion.

Done in Arabic, English and French, the English version being authoritative.

Dated 4 March 2015

Leidschendam, the Netherlands



Judge Nicola Lettieri
Contempt Judge

