

7301/H



Tribunal Pénal International pour le Rwanda ICTR-99-52-A  
International Criminal Tribunal for Rwanda 26 May 2006  
(7301/H - 7297/H)

*P.T.*

**BEFORE THE PRE-APPEAL JUDGE**

**Before:** Judge Andréia Vaz, Pre-Appeal Judge

**Registrar:** Mr. Adama Dieng

**Decision of:** 26 May 2006

ICTR Appeals Chamber  
Date: 26 May 2006  
Action: P.T.  
Copied To: See Proof of Service

*J. Vaz*

2006 MAY 29 A 9 51  
*Andréia Vaz*  
ICTR ARCHIVES

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

**DECISION ON JEAN-BOSCO BARAYAGWIZA'S MOTION FOR EXTENSION OF THE PAGE LIMITS TO FILE A MOTION FOR ADDITIONAL EVIDENCE**

Counsel for Jean-Bosco Barayagwiza  
Mr. D. Peter Herbert  
Mr. Tanoo Mylvaganam

Office of the Prosecutor  
Mr. James K. Stewart  
Mr. Neville Weston

Counsel for Hassan Ngeze  
Mr. Bharat B. Chadha

Counsel for Ferdinand Nahimana  
Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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NAME / NOM: KAFELI... KUMELIO... A... AFANDE  
SIGNATURE: *[Signature]* DATE: 26 May 2006

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I, ANDRÉSIA VAZ, Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) and Pre-Appeal Judge in this case;<sup>1</sup>

BEING SEIZED OF "The Appellant Jean-Bosco Barayagwiza's Motion Seeking an Extension of Page Limits to File a Motion for Additional Evidence pursuant to Paragraph I.C.5 of the Practice Direction" confidentially filed by Jean-Bosco Barayagwiza on 8 May 2006 ("Appellant" and "Motion", respectively), seeking "an extension of page limits for the filing of additional evidence relating to Alison des Forges to 20 pages";<sup>2</sup>

NOTING the "Prosecutor's Response to 'The Appellant Jean-Bosco Barayagwiza's Motion Seeking an Extension of Page Limits to File a Motion for Addition [sic] Evidence pursuant to Paragraph I.c.5 of the Practice Direction'" filed by the Prosecutor on 10 May 2006 ("Prosecution" and "Response", respectively), in which the Prosecution submits that the Motion should be dismissed or, in alternative, that the Prosecution be granted a reciprocal extension of the page limits for its response to an oversized motion;<sup>3</sup>

NOTING the "Appellant Jean Bosco-Barayagwiza's [sic] Reply to Prosecutor's Response to 'The Appellant's Motion Seeking an Extension of Page Limits to File a Motion for Additional Evidence pursuant to Paragraph I.c.5 of the Practice Direction'" filed on 15 May 2006 ("Reply");

CONSIDERING that in accordance with paragraph 3 of the Practice Direction on the Length of Briefs and Motions on Appeal,<sup>4</sup> motions filed before the Appeals Chamber shall not exceed 10 pages or 3,000 words, whichever is greater;

CONSIDERING that, in conformity with paragraph 5 of the Practice Direction, a party seeking authorization to exceed the page limits "must provide an explanation of the exceptional circumstances that necessitate the oversized filing";

<sup>1</sup> *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Order of the Presiding Judge Designating the Pre-Appeal Judge, 19 August 2005; *Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Corrigendum to the Order of the Presiding Judge Designating the Pre-Appeal Judge, 25 August 2005.

<sup>2</sup> Motion, paras 5, 7.

<sup>3</sup> Response, para. 11.

<sup>4</sup> Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002, as amended ("Practice Direction").

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NOTING that the Appellant submits that the exceptional circumstances justifying the oversized filing include the fact that (a) "there are several annexes of documentary evidence, transcript testimony and points of law and fact which concern the evidence of Dr Alison des Forges which are themselves complex in nature and require a full and detailed explanation to satisfy the criteria for the admissibility of additional evidence under Rule 115" of the Rules of Procedure and Evidence of the Tribunal ("Rules"); (b) non-authorization for an oversized filing would most likely result in exclusion of the proffered additional evidence and, thus, in a miscarriage of justice; (c) the burden of asserting the lack of due diligence requires these assertions to be established with respect to each and every piece of additional evidence to be submitted; and (d) "there is a category of additional evidence that was not available at the time of trial";<sup>5</sup>

NOTING that the Appellant also submits that he "would be forced to file several Motions for additional evidence replicating [or] at least taking up valuable time and resources" of the Tribunal;<sup>6</sup>

NOTING the Prosecution response that the Motion is based on vague and unclear reasons and does not contain any genuine indication that could support the qualification of exceptional circumstances justifying an oversized filing;<sup>7</sup>

NOTING that the Prosecution points out that the page limit established by the Practice Direction already takes into account the complexity of the cases before the Appeals Chamber;<sup>8</sup>

NOTING that, in his Reply, the Appellant specifies that his motion under Rule 115 of the Rules would contain "four annexes with a total of approximately 13 documents" and submits that covering the arguments in respect of all these documents in one oversized motion would avoid the necessity for the Defence team to make several separate motions on this issue;<sup>9</sup>

CONSIDERING that the Appellant has not sufficiently specified, *inter alia*, the volume and nature of the documentary evidence, the number of issues of law and fact to be addressed, and that he has not demonstrated the existence of exceptional circumstances that would justify an oversized filing;

CONSIDERING, however, that it would be in the interests of judicial economy to avoid multiple filings of redundant motions related to similar issues;

<sup>5</sup> Motion, para. 4.

<sup>6</sup> *Ibid.*, para. 6.

<sup>7</sup> Reponse, paras 4, 6.

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**CONSIDERING** that, pursuant to Rule 108bis(B) of the Rules, the Pre-Appeal Judge shall ensure that the proceedings are not unduly delayed and ~~take any~~ measures with a view to preparing the case for a fair and expeditious hearing;

**FINDING** that an oversized filing of one motion for admission of additional evidence on appeal covering all documents available to the Appellant with respect to the issues at stake, rather than of several replicating submissions, would be justified in the sense of speeding up the pre-appeal proceedings in this case;

**CONSIDERING**, however, that the requested extension of double the page limit established by the Practice Directive is not justified in this instance;

**CONSIDERING**, in addition, that the effectiveness of a submission does not depend on its length but on the clarity and persuasiveness of the arguments;<sup>10</sup>

**FINDING** that an extension of the page limit for the filing of a motion under Rule 115 of the Rules to fifteen pages or 4,500 words, whichever is greater, is adequate;

**CONSIDERING** that the remainder of the arguments raised by the parties<sup>11</sup> refer to the merits of a motion that has not yet been filed before the Appeals Chamber, and that, as such, they are premature and cannot be addressed at this stage;

**CONSIDERING** that there is no provision that would authorize an automatic reciprocal extension of the page limit for the Prosecution's potential response to a motion that has not yet been filed;

**FINDING** that the Prosecution request for such reciprocal extension is unsubstantiated, unreasoned and premature;

**NOTING ALSO** that the Prosecution asserts that confidentiality is not required for the filing of the Motion, Response and Reply thereto,<sup>12</sup> and that the Appellant does not object to these submissions being public;<sup>13</sup>

<sup>8</sup> *Ibid.*, para. 5.

<sup>9</sup> Reply, para. 2.

<sup>10</sup> Decision on Jean-Bosco Barayagwiza's and Hassan Ngeze's Urgent Motions for Extension of Page and Time Limits for their Replies to the Consolidated Prosecution Response, 6 December 2005, p. 5; Decision on "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", 17 May 2005, p. 3; Decision on Ferdinand Nahimana's Second Motion for an Extension of Page Limits for Appellant's Brief, 31 August 2004, p. 3; Decision on Ferdinand Nahimana's Motion for an Extension of Page Limits for Appellant's Brief and on Prosecution's Motion Objecting to Nahimana's Appellant's Brief, 24 June 2004, p. 3.

<sup>11</sup> Motion, para. 4; Response, paras 4, 7-9; Reply, paras 4-5.

<sup>12</sup> Response, para. 3.

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**FINDING** that confidentiality of the Motion should be lifted;

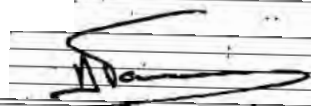
**FOR THE FOREGOING REASONS,**

**GRANTS** the Motion **IN PART** and authorizes the Appellant to file a motion for admission of additional evidence of Alison des Forges of fifteen pages or 4,500 words long, whichever is greater;

**DISMISSES** the Prosecution request for a reciprocal extension of page limit for its potential response to such motion;

**DIRECTS** the Registry to take necessary measures resulting from the lifting of the confidential status of the Motion.

Done in English and French, the English text being authoritative.



Andréia Vaz  
Pre-Appeal Judge

Dated this 26<sup>th</sup> day of May 2006,  
At The Hague, The Netherlands.



[Seal of the Tribunal]

<sup>13</sup> Reply, para. 1.