



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

8494/H

ICTR-99-52-A
30 October 2006
[8494/H - 8491/H]

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Andrésia Vaz, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 30 October 2006

ICTR Appeals Chamber

Date: 30 October 2006

Action: RT-

Copied To: Concerned Judges
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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 LIMIT TO FILE A MOTION SEEKING THE ADMISSION OF
ADDITIONAL EVIDENCE**

Counsel for Jean-Bosco Barayagwiza

Mr. D. Peter Herbert
Mr. Tanoo Mylvaganam

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Behram N. Shroff

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Office of the Prosecutor

Mr. James K. Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: Tchidiemba, Patricia
SIGNATURE: [Signature] DATE: 30-10-06

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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;¹

BEING SEIZED OF "The Appellant Jean-Bosco Barayagwiza's Motion for Leave to Permit an Extension of Page Limits to the Pending Motion for Additional Evidence pursuant to the ICTR Rules of Procedure and Evidence and the Practice Directions of 16th September 2002, and Paragraph 1 C 5 of 15 May 2006 [*sic*]" filed by Jean-Bosco Barayagwiza on 27 September 2006 ("Appellant" and "Motion", respectively), seeking "[a]n extension of pages for the Appellant's Motion for Additional Evidence relating to the evidence of witness AGK to 30 pages";²

NOTING that the Prosecutor has not filed a response to the Motion;

NOTING that the Appellant specifies that the Motion "is made in light of the pending Motion for Additional [Evidence] which involves the newly discovered material from the Alchemy file relating to notes and memorandums concerning Ambassador Rawson", *i.e.* the material which allegedly calls into question the testimony and credibility of Witness AGK "concerning a demonstration where he attributes a significant role to the Appellant";³

NOTING that the Appellant states that he "will in due course request the admission of these newly discovered pieces of evidence" in order to impugn the findings of the Trial Chamber;⁴

NOTING that in his Motion of 8 September 2006, currently pending before the Appeals Chamber, the Appellant applied for leave to submit two notes of Ambassador Rawson as additional evidence on appeal;⁵

NOTING that the Appellant appears to submit in the present Motion that the extension of page limit for his contemplated motion would be warranted on the grounds that it will have to show that Ambassador Rawson's messages undermine Witness AGK's credibility and could have been a

¹ *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.

² Motion, para. 8, p. 6 (i).

³ Motion, paras 3-6

⁴ Motion, para. 3.

⁵ The Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence (Rule 115), 8 September 2006 ("Motion of 8 September 2006"), paras 8-11 and 15.

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decisive factor at trial, and also examine the evidence of other witnesses having testified as to personal activities of the Appellant;⁶

NOTING that the Appellant adds that he cannot analyze each of those testimonies in order to show that they are not credible, based on facts beyond the Tribunal's jurisdiction or not mentioned in the indictments, within the prescribed page limit;⁷

NOTING finally that the Appellant asserts that his request should be granted in the interest of judicial economy because otherwise he would be forced to file several motions which would duplicate the work of the Appeals Chamber and be a wasteful use of resources of the Tribunal;⁸

CONSIDERING that, in accordance with paragraph 3 of the Practice Direction on the Length of Briefs and Motions on Appeal,⁹ motions filed before the Appeals Chamber shall not exceed ten 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 limit "must provide an explanation of the exceptional circumstances that necessitate the oversized filing";

FINDING that the present Motion does not clearly specify the nature and amount of material that the Appellant plans to submit as additional evidence, especially in light of the pending Motion of 8 September 2006, and that it could be dismissed on this basis alone;¹⁰

CONSIDERING that the Appellant's contemplated motion for leave to submit additional evidence pertaining to Witness AGK would be a second motion submitting documents from the same sources, allegedly discovered by the Appellant in July and August 2006 upon receipt of the electronic file "Alchemy" and/or through the Electronic Disclosure Suite;

CONSIDERING therefore that the Appellant has already opted for the piece-meal approach that he purportedly tried to avoid by requesting the extension of the page limit;

CONSIDERING that the Appellant has not shown that the prescribed page limit is insufficient to argue issues pertaining to the credibility of one witness, even if analyzed in the context of other witnesses' testimonies;

⁶ Motion, paras 5, 7, 9.

⁷ Motion, para. 8.

⁸ Motion, para. 2.

⁹ Practice Direction on the Length of Briefs and Motions on Appeal, 16 September 2002, as amended ("Practice Direction").

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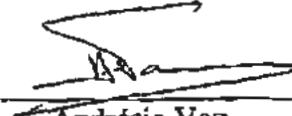
FINDING consequently that the Appellant has not demonstrated the existence of exceptional circumstances that would justify an oversized filing;

EMPHASIZING that the effectiveness of a submission does not depend on its length but on the clarity and persuasiveness of the arguments;¹¹

FOR THE FOREGOING REASONS,

DISMISSES the Motion in its entirety.

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


Andréia Vaz
Pre-Appeal Judge

Dated this 30th day of October 2006,
At The Hague, The Netherlands.



[Seal of the Tribunal]

¹⁰ See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 16 September 2002, as amended, para. 19.

¹¹ Decision on Jean-Bosco Barayagwiza's Motion for Extension of the Page Limits to File a Motion for Additional Evidence, 26 May 2006, p. 4; 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.