



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

9756/A
du-

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 15 January 2007

ICTR-99-52-A
15th Jan. 2007
(9756/A - 9753/A)

**Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)**

v.

**THE PROSECUTOR
(Respondent)**

Case No. ICTR-99-52-A

JUDICIAL RECORDS/ARCHIVES
RECEIVED

2007 JAN 15 P 3:41

**DECISION ON THE APPELLANT JEAN-BOSCO BARAYAGWIZA'S MOTION
FOR LEAVE TO CALL AN EXPERT WITNESS IN THE KINYARWANDA
LANGUAGE AND IN POLITICAL SPEECH**

Counsel for Jean-Bosco Barayagwiza

Mr. D. Peter Herbert
Ms. Tanoo Mylvaganam

Counsel for Ferdinand Nahimana

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

Counsel for Hassan Ngeze

Mr. Bharat B. Chadha
Mr. Dev Nath Kapoor

Office of the Prosecutor

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Mr. Neville Weston
Mr. Abdoulaye Seye
Ms. Linda Bianchi
Mr. Alfred Orono Orono

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 Serious Violations Committed in the Territory of Neighboring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively),

NOTING that Trial Chamber I rendered its Judgement in this case on 3 December 2003;¹

NOTING the Amended Notice of Appeal and Appellant's Appeal Brief filed by Counsel for Jean-Bosco Barayagwiza ("Appellant") on 12 October 2005 ("Notice of Appeal" and "Appeal Brief", respectively);

RECALLING the "Order for Re-Certification of the Record" rendered on 6 December 2006 ("Order"), by which the Pre-Appeal Judge ordered the Registry to, *inter alia*, review for accuracy the audio-tapes of the testimonies given before the Trial Chamber by Witnesses AAM, AFB, AGK and X, and to confirm the English and French translations of purported Kinyarwanda terms mentioned in the Appeal Brief² and the Appellant's Reply Brief,³ as well as in the Trial Judgement⁴ ("*Tubatsembatsembe*", "*Tulabatembutemba*", "*Tuzabatsembatsemba*", "*Gutsembatsemba*", "*Tuzazitsembatsemba*", "*Tuzitsembatsembe*", "*Tuzatsembatsembe*", "*Tabatsemhatsembe*", "*Tuzitsembambe*");⁵

BEING SEIZED OF "The Appellant Jean-Bosco Barayagwiza's Motion for Leave to Call an Expert Witness in the Kinyarwanda Language and in Political Speech", filed on 20 December 2006 ("Motion"), requesting "the appointment of an expert in Kinyarwanda and in political speech as originally requested by the Appellant in his Motion for Additional Evidence filed on 28 December 2005";⁶

NOTING that the Prosecution did not file a response to the Motion;

NOTING that in the Motion, the Appellant is mainly repeating arguments contained in his Appeal Brief;⁷

¹ *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003 ("Trial Judgement").

² Appeal Brief, paras 112-115, 121, 123.

³ The Appellant Jean-Bosco Barayagwiza's Reply to the Consolidated Respondent's Brief, 12 December 2005 ("Reply Brief"), para. 80.

⁴ Trial Judgement, paras 308, 310, 319, 336, 340, 697, 702, 708, 718, 719, 797, 964, 967, 975, 1035.

⁵ Order, pp. 2, 3.

⁶ Motion, para. 2.

⁷ Motion, paras 6, 7. The Appellant refers to his previous motion ("The Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence (Rule 115)" filed on 28 December 2005) reproducing arguments contained in

RECALLING that the Order was aimed to clarify, in light of the imminent Appeals Hearing, certain questions regarding the accuracy of the French and English transcripts of witnesses' testimonies raised in the Appeal Brief and alleged discrepancies between transcripts and the Trial Judgment;⁸

NOTING that the Appellant seeks the appointment of an expert (i) to "determine unequivocally the terms imputed to the Appellant by the Prosecution witnesses AAM, AFB, AGK and X"; (ii) to state clearly if, according to available evidence as it appears in the official transcripts of the Prosecution witnesses, the Appellant used the term '*tubatsembatsembe*' as found in the [T]rial Judgment";⁹

NOTING the "*Supports audio pour confirmation des témoignages*" filed by the Language Services Section of the Registry of the Tribunal on 4 January 2007 ("Registry Submissions") reviewing the audio-tapes of the testimonies given before the Trial Chamber by Witnesses AAM, AFB, AGK and X and providing the English and French translations of the requested Kinyarwanda terms, including the term '*tubatsembatsembe*':

CONSIDERING that the Appellant is now seeking the appointment of an expert to perform the same tasks that were already ordered by the Pre-Appeal Judge and executed by the Registrar, as shown by the Registry Submissions;

FINDING that, in light of the Registry Submissions, the relief requested in the Motion is moot;

NOTING that in the Motion, the Appellant contests the capacity of the Registry "to interpret the meaning of any term used in the testimony for judicial purposes within an appeal", specifying that the matter does not limit itself "to the mere translation of the numerous terms used in the testimonies [b]ut (...) to the meaning of the term imputed to him by the Prosecution witnesses";¹⁰

NOTING further that the Appellant requests (a) the expert to be provided "with full access to use the existing transcripts in both languages; the 'floor' audio-video recording of the testimonies for the relevant dates; the Kinyarwanda version of the testimonies; and the Registrar's findings in the

his Appeal Brief (see Motion paras 8, 9). That motion was dismissed by the Appeals Chamber by its Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115 issued on 5 May 2006, in which the Appeals Chamber (i) declined to consider the "Affidavit from Dr. Shimanungu Eugène, Expert in Kinyarwanda Language and in Political Speech on the Use of Certain Terms Imputed to the Appellant" as tendered into evidence since it was not specifically referred to in the motion, but simply annexed thereto; and (ii) dismissed the remainder of the relief sought since no good cause had been shown by the Appellant to justify the late filing of his motion under Rule 115 of the Rules of Procedure and Evidence of the Tribunal ("Rules"). The Appeals Chamber notes that the present Motion, reiterating identical arguments, is not made under Rule 115.

⁸ Order, p. 2.

⁹ Motion, para. 16.

¹⁰ Motion, paras 12, 13.

execution of the Pre-Appeal Judge's Order for Re-Certification", as well as (b) "leave to file an expert's report and, if necessary, to call such expert to give oral evidence at the oral hearing";¹¹

NOTING that pursuant to the Order, the Registry Submissions fully reflect the relevant portions of the transcripts:

CONSIDERING therefore that the Appeals Chamber has, at this stage, been provided with sufficient material on this matter, and that testimony of an expert witness on the same issue would not be helpful for it in its analysis on the merits of this ground of appeal;

FINDING that the Appellant has failed to demonstrate in the Motion that it would be in the interests of justice to appoint an expert in Kinyarwanda and political speech in order to have his or her testimony on the use of the above-mentioned terms;

NOTING that, on 10 January 2007, the Appellant filed "The Appellant Jean-Bosco Barayagwiza's Response to the Registrar's Re-Certification pursuant to the Pre-Appeal Judge's 'Order for Re-Certification of the Record' dated 6 December 2006" ("Response to the Registrar");

CONSIDERING that no provision exists in the Tribunal's Statute, Rules or Practice Directions as to the right or possibility for an appellant to respond to the Registry Submissions at issue here;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion;

DECLARES the Response to the Registrar inadmissible.

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



Judge Fausto Pocar
Presiding

Dated this 15th day of January 2007,
At Arusha, Tanzania.

[Seal of the Tribunal]



¹¹ Motion, para. 16.