

9891/H



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

07 February 2007  
[9891/H - 9841/H]  
ICTR-99-52-A

**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: 7 February 2007

ICTR Appeals Chamber

Date: 7 February 2007  
Action: P.T.

Copied To: concerned Judges  
Parties, SLOS, LOS, ALOS, etc.

Archives

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

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JUDICIAL RECORDS/ARCHIVES  
RECEIVED

**PUBLIC ORDER APPOINTING A HANDWRITING EXPERT**

**WITH CONFIDENTIAL ANNEXES**

**Counsel for Jean-Bosco Barayagwiza**

Mr. D. Peter Herbert  
Mr. 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. James Stewart  
Mr. Neville Weston  
Mr. Abdoulaye Seye

<p>International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda</p> <p>CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI</p> <p>NAME / NOM: <u>SEELI KUMELLO A. REANDE</u></p> <p>SIGNATURE: <u>[Signature]</u> DATE: <u>08/02/07</u></p>
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**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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively);

**RECALLING** the confidential Decision of 23 February 2006,<sup>1</sup> by which the Appeals Chamber admitted, in accordance with Rule 115 of the Rules of Procedure and Evidence ("Rules"), copies of typewritten and handwritten versions<sup>2</sup> of a purported recantation statement of Witness EB ("First Recantation Statement") as well as the Forensic Report of Mr. Antipas Nyanjwa, a handwriting expert, who assessed the authenticity of the First Recantation Statement by comparing its copies with various photocopies of correspondence and other documents containing samples of Witness EB's, Appellant Hassan Ngeze's and his Lead Counsel's handwritings;<sup>3</sup>

**NOTING**, however, that the originals of the typewritten and handwritten versions of the First Recantation Statement were never served on the Appeals Chamber, as both parties denied ever being in their possession;<sup>4</sup>

**RECALLING** that the Decision of 23 February 2006 also ordered "that Witness EB should be heard by the Appeals Chamber to allow to assess the impact, if any, the additional evidence may have had on the verdict";<sup>5</sup>

**RECALLING** the Decision of 27 November 2006, in which the Appeals Chamber admitted an additional statement purportedly made by Witness EB on 15 December 2005 that affirms the First Recantation Statement ("Additional Statement");<sup>6</sup>

<sup>1</sup> Confidential Decision on Appellant Hassan Ngeze's Six Motions for Admission of Additional Evidence on Appeal and/or Further Investigation at the Appeal Stage, 23 February 2006 ("Decision of 23 February 2006").

<sup>2</sup> Decision of 23 February 2006, para. 29. The photocopy of the alleged typewritten recantation statement was appended to the "Appellant Hassan Ngeze's Urgent Motion for Leave to Present Additional Evidence (Rule 115) of Witness EB" filed confidentially on 25 April 2005, while the photocopy of the alleged handwritten recantation statement was appended as Annex 4 of the "Prosecutor's Additional Submissions in Response to Hassan Ngeze's Motion for Leave to Present Additional Evidence of Witness EB" filed confidentially on 7 July 2005 ("Prosecutor's Additional Submissions").

<sup>3</sup> Report of the Forensic Document Examiner, Inspector Antipas Nyanjwa, dated 20 June 2005, Annex 4 to the Additional Submissions ("First Forensic Report"); Decision of 23 February 2006, para. 41. The First Forensic Report was admitted as Exhibit CA-3D2, under seal.

<sup>4</sup> Cf. Confidential Decision on the Prosecutor's Motion for an Order and Directives in Relation to Evidentiary Hearing on Appeal Pursuant to Rule 115, 14 June 2006, pp. 3-4.

<sup>5</sup> Decision of 23 February 2006, para. 29; see also Confidential Decision on the Prosecutor's Motion for an Order and Directives in Relation to Evidentiary Hearing on Appeal Pursuant to Rule 115, 14 June 2006, p. 5, in which the Appeals Chamber ordered Witness EB to be heard as a witness of the Appeals Chamber.

<sup>6</sup> Confidential Decision on Motions Relating to Appellant Hassan Ngeze's and the Prosecution's Requests for Leave to Present Additional Evidence of Witnesses ABC1 and EB, 27 November 2006 and Public Redacted Version filed on 1 December 2006 ("Decision of 27 November 2006"), paras 38-39.

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**NOTING** that at the appeal hearing held on 16 January 2007, Witness EB denied having ever recanted the testimony given at trial as well as having written the First Recantation Statement or the Additional Statement;<sup>7</sup>

**NOTING** that during the same hearing, the Appeals Chamber admitted, *inter alia*, the following documents:

- the original Additional Statement, dated 15 December 2005, consisting of three handwritten pages, confidentially filed by Appellant Hassan Ngeze on 8 January 2007 - Exhibit CA-3D4, under seal;<sup>8</sup>
- two identical lists of names handwritten by Witness EB - Exhibits CA-3D6 and CA-3D7, under seal;<sup>9</sup>
- a short specimen of Witness EB's handwriting, consisting of a two-line sentence and signature - Exhibit CA-1, under seal;<sup>10</sup>

**NOTING** furthermore, that at the end of the appeals hearing of 18 January 2007, the Appeals Chamber ordered that a longer sample of Witness EB's handwriting and signature be taken in the presence of representatives of the parties,<sup>11</sup> and that this sample was subsequently admitted as Exhibit CA-2, under seal;<sup>12</sup>

**BEING SEIZED OF** Appellant Hassan Ngeze's oral motion seeking forensic examination on the basis of Exhibits CA-3D6 and CA-3D7 to establish whether the Additional Statement was indeed written and signed by Witness EB ("Oral Motion");<sup>13</sup>

**CONSIDERING** that a forensic expertise based on a comparison between 1) copies of the First Recantation Statement and the original Additional Statement; and 2) copies of the First Recantation Statement and original Additional Statement, on the one hand, and original samples of Witness EB's handwriting taken as described above, on the other, will assist the Appeals Chamber in assessing Witness EB's credibility;

**PURSUANT TO** Rules 54, 89(D) and 107 of the Rules;

<sup>7</sup> T. 16 January 2007, p. 7; T. 16 January, Closed Session, pp. 9-11.

<sup>8</sup> T. 16 January 2007, p. 3.

<sup>9</sup> T. 16 January 2007, Closed Session, pp. 30-32.

<sup>10</sup> T. 16 January 2007, Closed Session, p. 18. Note that the English version of the transcripts does not expressly indicate that the specimen was admitted, but the French version at pp. 23-24 does.

<sup>11</sup> T. 18 January 2007, pp. 78-79.

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- a forensic examination of Annexes I and II containing, respectively, a photocopy of the First Recantation Statement (Defence Exhibit CA-3D2),<sup>14</sup> and the original Additional Statement of 15 December 2005 (Defence Exhibit CA-3D4) to determine whether the two statements were written by the same person;
- a comparison between the documents contained in Annexes I and II and the samples of Witness EB's handwriting taken during the hearing of 16 January 2007 and on 18 January 2007<sup>15</sup> (respectively, Exhibits CA-3D6, CA-3D7, CA-1 and CA-2) contained within Annexes III, IV, V and VI, to determine whether it can be concluded that Witness EB is the author of the First Recantation Statement and/or of the Additional Statement;

**DESIGNATES**, in accordance with the oral decision of 16 January 2007,<sup>16</sup> Mr. Stephen Maxwell, as handwriting expert ("Handwriting Expert") to (1) conduct the above mentioned handwriting examination; (2) compile his forensic opinions in a written report and disclose the said written report to the Appeals Chamber as soon as practicable and no later than 16 February 2007; (3) return Annexes I, II, III, IV, V and VI to the custody and control of the Appeals Chamber upon completion of the handwriting examination;

**ALLOWS** the parties, should they wish to do so, to present written submissions<sup>17</sup> of no more than 20 pages, with no right of response, in connection with the conclusions of the Handwriting Expert's Report and their impact on the verdict, no later than fifteen days after the communication of the said Report.

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

Dated this 7<sup>th</sup> day of February 2007.  
At The Hague, The Netherlands



Fausto Pocar  
Presiding Judge  
[Seal of the Tribunal]

<sup>12</sup> See "Rapport à la Chambre d'appel : Recueil d'un exemplaire d'écriture et de signature du Témoin EB" by Ms. Catherine Marchi-Uhel, Senior Legal Officer, 29 January 2007 ("Report of Ms. Marchi-Uhel").

<sup>13</sup> T. 16 January 2007, Closed Session, p. 34.

<sup>14</sup> The photocopy of the handwritten version of the First Recantation Statement is contained in the First Forensic Report appended as Annex 4 of the Prosecutor's Additional Submissions, see *supra* notes 2 and 3.

<sup>15</sup> Report of Ms. Marchi-Uhel.

<sup>16</sup> T. 16 January 2007, p. 66.

<sup>17</sup> T. 16 January 2007, pp. 66-68.