

9953/A



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

IN THE APPEALS CHAMBER

**ICTR-99-52-A
21 February 2007
(9953/A - 9950/A)**

P.T.

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

Registrar: Mr. Adama Dieng

Decision of: 21 February 2007

ICTR Appeals Chamber

Date: 21 February 2007

Action: P.T.

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

v.

**THE PROSECUTOR
(Respondent)**

Case No. ICTR-99-52-A

**ORDER EXTENDING THE SCOPE OF THE EXAMINATION BY THE
HANDWRITING EXPERT APPOINTED BY ORDER OF 7 FEBRUARY 2007**

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

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI	
NAME / NOM: <i>Patrice Tchidimbo</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>21/02/07</i>

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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 its *Public Order Appointing a Handwriting Expert With Confidential Annexes* issued on 7 February 2007 ("Order of 7 February 2007"), in which the Appeals Chamber considered that a forensic examination based on a comparison between, 1) the photocopy of a handwritten purported recantation statement of Witness EB¹ ("First Recantation Statement") and an original additional statement purportedly made by Witness EB on 15 December 2005 that affirms the First Recantation Statement² ("Original Additional Statement"); and 2) the First Recantation Statement and Original Additional Statement, on the one hand, and original samples of Witness EB's handwriting and signature taken at the appeal hearing of 16 January 2007³ and after the appeal hearing of 18 January 2007,⁴ on the other, would assist the Appeals Chamber in assessing Witness EB's credibility;

RECALLING that, on the basis of the above considerations and in accordance with Rules 54, 89(D) and 109 of the Rules of Procedure and Evidence ("Rules"), the Order of 7 February 2007 appointed Mr. Stephen Maxwell ("Handwriting Expert") to 1) conduct a forensic examination of *Confidential Annexes I and II* to the Order of 7 February 2007 containing, respectively, the First Recantation Statement⁵, and the Original Additional Statement,⁶ with a view to determining whether the two statements were written by the same person; and 2) compare the documents contained in *Confidential Annexes I and II* with the samples of Witness EB's handwriting taken during the hearing of 16 January 2007⁷ and on 18 January 2007⁸ contained within *Confidential Annexes III, IV, V and VI* to the Order of 7 February 2007, in order to determine whether it can be concluded that Witness EB is the author of the First Recantation Statement and/or the Original Additional Statement;

¹ Exhibit CA-3D2 (under seal), contained in *Confidential Annex I* to the Order of 7 February 2007.

² Exhibit CA-3D4 (under seal), contained in *Confidential Annex II* to the Order of 7 February 2007.

³ Exhibits CA-3D6, CA-3D7, and CA-1 (under seal), contained, respectively, in *Confidential Annexes III, IV and V* of the Order of 7 February 2007.

⁴ Exhibit CA-2 (under seal), contained in *Confidential Annex VI* to the Order of 7 February 2007; see "Rapport à la Chambre d'appel : Recueil d'un exemplaire d'écriture et de signature du Témoin EB" by Ms. Catherine Marché-Libet, Senior Legal Officer, 29 January 2007.

⁵ See note 1 *supra*.

⁶ See note 2 *supra*.

⁷ See note 3 *supra*.

⁸ See note 4 *supra*.

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NOTING that the Handwriting Expert has contacted the Appeals Chamber to enquire whether the Tribunal possesses other original documents containing samples of Witness EB's handwriting and signature;

CONSIDERING that the Prosecution and the Witnesses and Victims Support Section of the Registry have confirmed that they possess original documents that contain samples of Witness EB's handwriting and/or signature;

CONSIDERING that it would be in the interest of justice to ensure that the Handwriting Expert has at his disposal additional original documents containing samples of Witness EB's handwriting and signature so that he may be able to present conclusive opinions on whether Witness EB is the author of the First Recantation Statement and/or the Original Additional Statement;

ON THE BASIS OF THE FOREGOING,

ORDERS, pursuant to Rules 54, 89(D) and 107 of the Rules

- the Prosecution to provide the Registry with the originals of two statements, dated respectively 29 March 2001 and 23 May 2005 ("Original Documents from the Prosecution"), whose copies are included in *Confidential Annex I* to the Order of 7 February 2007 and which contain samples of Witness EB's handwriting and signature;⁹

- the Registry to provide the Appeals Chamber with:

- 1) the Original Documents from the Prosecution, and
- 2) subject to Witness EB's agreement, the original of the document entitled "JUSTIFICATION OF DSA PAYMENT, Witness Pseudonym EB" dated 17 May 2001, which includes an attachment form titled "SIGNATURE SAMPLE" also dated 17 May 2001 ("Original DSA Form");

- the Handwriting Expert:

- 1) to extend the scope of the handwriting examination described in the Order of 7 February 2007, so as to include the Original Document from the Prosecution and, provided Witness EB has agreed to it, the Original DSA Form;

⁹ Exhibit CA-3D2 (under seal), appended to the Order of 7 February 2007 as *Confidential Annex I*, Documents D and E, Index No.9872/H and 9870/H.

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2) to 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 five days after the receipt of the Original Documents from the Prosecution and, provided Witness EB has agreed to it, the Original DSA Form; and

3) to return the Original Documents from the Prosecution and, if applicable, the Original DSA Form, to the custody and control of the Appeals Chamber upon completion of the handwriting examination;

REMINDS the parties that they are entitled to present written submissions¹⁰ 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 21st day of February 2007.
At The Hague, The Netherlands

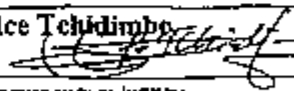


A handwritten signature in black ink, which appears to read "Fausto Pocar", is written over a horizontal line.

Fausto Pocar
Presiding Judge
[Seal of the Tribunal]

¹⁰ T. 16 January 2007, pp. 66-68.

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Tel: + 31 (0) 70 512-8225 / 8237 Fax: + 31 (0) 70 512-8932APPEALS CHAMBER – PROOF OF SERVICE
CHAMBRE D'APPEL - PREUVE DE NOTIFICATION

21 February 2007		Case Name / <i>Affaire</i> : NAHIMANA ET AL.	Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE v. THE PROSECUTOR
Case No / <i>No. de l'affaire</i> : ICTR-99-52-A			
To: A:	ARUSHA * Judicial Archives Fax Number: 1795151 APPEALS UNIT * Ms Félicité Talon APPEALS CHAMBER * Judge / Juge Fausto Pocar, Presiding * Judge / Juge Mohamed Shahabuddeen * Judge / Juge Mehmet Güney * Judge / Juge Andresia Vaz * Judge / Juge Theodor Meron * Ms Catherine Marchi-Uhel * Mr Roman Boed * Concerned Associate Legal Officers * Ms. Fatou Fall DEFENSE * Accused / <i>accusé</i> : Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE (complete CMS Form) * Lead Counsel / <i>Conseil Principal</i> : Mr. Biju-Duval, Mr. Donald Herbert, Mr. Bharat Chadha <input type="checkbox"/> In Arusha (complete CMS 2) * Fax Number: 00-33-1 53 80 47 48 00 44 207 841 0199/6197 00 155-27-250 8854 <input type="checkbox"/> Co-Counsel / <i>Conseil Adjoint</i> : Ms. Diana Ellis, Ms. Gabriella Della Morte, Mr. Dev Nath Kapoor (name / nom) <input type="checkbox"/> In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number:		
From: De:	* Koffi Afande * Patrice Tchidimbe 		
Subject Objet:	Kindly find attached the following documents / <i>Veuillez trouver en annexe les documents suivants</i> :		
Documents name / <i>Titre du document</i>	Date Filed / <i>Date d'enregistrement</i>	Pages	
Order extending the scope of the examination by the handwriting expert appointed by Order of 7 February 2007	21 February 2007	9953/A- 9950/A	