



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

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 27 March 2007

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

v.

**THE PROSECUTOR
(Respondent)**

Case No. ICTR-99-52-A

**SECOND 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

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 Appeals Chamber, in an 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* to 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 Marchi-Uhel, 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*.

RECALLING that on 21 February 2007, the Appeals Chamber extended the scope of the examination by the Handwriting Expert,⁹ so as to include the originals of two statements, dated respectively 29 March 2001 and 23 May 2005, whose copies are included in *Confidential* Annex I to the Order of 7 February 2007,¹⁰ and 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;¹¹

NOTING that the Handwriting Expert has enquired whether Document E (Index No.9871/H) in *Confidential* Annex I to the Order of 7 February 2007 (“Document E”) constitutes an authentic sample of Witness EB’s handwriting, and whether he could be provided with the original of this document for the purposes of his examination;

NOTING that the Prosecution has confirmed that Document E is the photocopy of a sample of Witness EB’s handwriting, which was collected by its investigators on 23 May 2005 and which reproduces a passage of the First Recantation Statement;¹²

NOTING that, following the Order of 21 February 2007, the Prosecution had already sent to the Appeals Chamber all the original documents related to the meeting of 22 and 23 May 2005 in Gisenyi, Rwanda between its investigators and Witness EB, including the original of Document E;

CONSIDERING that it would be in the interest of justice to ensure that the Handwriting Expert has at his disposal the original of Document E 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 Handwriting Expert:

- 1) to extend the scope of his handwriting examination so as to include the original of Document E;

⁹ Order Extending the Scope of the Examination by the Handwriting Expert Appointed by Order of 7 February 2007, 21 February 2007 (“Order of 21 February 2007”).

¹⁰ Exhibit CA-3D2 (under seal), appended to the Order of 7 February 2007 as *Confidential* Annex I, Documents D and F, Index No.9872/H and 9870/H.

¹¹ Order of 21 February 2007, p. 3.

¹² See *Confidential* Memorandum from the Prosecution to the Senior Legal Officer of the Appeals Chamber, 22 March 2007. The handwriting sample reproduces lines 7 to 18 of the second page of the First Recantation Statement, Document B of *Confidential* Annex I to the Order of 7 February 2007 (Index No.9874/H).

2) to complete his report and disclose the said written report to the Appeals Chamber as soon as practicable and no later than three days after the receipt of the original of Document E;

3) to return all the original documents received in accordance with the Order of 7 February 2007, the Order of 21 February 2007 and the present Order upon completion of the handwriting examination;

REMINDS the parties that they are entitled to present written submissions¹³ 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 27th day of March 2007.
At The Hague, The Netherlands

Fausto Pocar
Presiding Judge
[Seal of the Tribunal]

¹³ T. 16 January 2007, pp. 66-68.