

10053/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-99-52-A

3rd April 2007

[10053/H - 10050/H]

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: 3 April 2007

2007 APR -4 P 12-19
JUDICIAL RECORDS ARCHIVES
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Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

ICTR Appeals Chamber

Date: 3 April 2007

Action: P.T.

Copied To: concerned J. &
Parties, SCS, LOS, ALOS, LRS
Archives

DECISION ON HASSAN NGEZE'S MOTION OF 29 MARCH 2007Counsel 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: Patrice Tchidimbo

SIGNATURE: [Signature] DATE: 03/04/07

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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);

NOTING the "Appellant Hassan Ngeze's Urgent Motion to Order the Prosecutor and the Registry to Provide the Original Documents as Directed by Appeals Chamber Vide [sic] its Order of 21st February 2007" filed confidentially on 29 March 2007 ("Motion"), in which Hassan Ngeze ("the Appellant") asks the Appeals Chamber to order:

- the Registry to provide the Appeals Chamber with 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 ("DSA Form"), in accordance with the "Order Extending the Scope of the Examination by the Handwriting Expert Appointed by Order of 7 February 2007" issued by the Appeals Chamber on 21 February 2007 ("Order of 21 February 2007");¹
- the Prosecution to provide, in accordance with the Order of 21 February 2007, the Appeals Chamber with the original of two statements, dated respectively 29 March 2001 and 23 May 2005, whose copies are included as Documents D and F in *Confidential Annex I* to the Order of 7 February 2007;²

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 appointed Mr. Stephen Maxwell as handwriting expert and ordered a forensic examination based on a comparison between, 1) the photocopy of a handwritten purported recantation statement of Witness EB³ ("First Recantation Statement") and an original additional statement purportedly made by Witness EB on 15 December 2005 that affirms the First Recantation Statement⁴ ("Original Additional Statement"); and 2) the First Recantation Statement and Original Additional Statement,

¹ Order of 21 February 2007, p. 3.

² 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 ("Documents D and F").

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

⁴ Exhibit CA-3D4 (under seal) contained in *Confidential Annex II* to the Order of 7 February 2007.

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on the one hand, and original samples of Witness EB's handwriting and signature taken at the appeal hearing of 16 January 2007¹ and after the appeal hearing of 18 January 2007, on the other;²

RECALLING that the Order of 21 February 2007 extended the scope of the handwriting examination so as to include the originals of Documents D and F and of the DSA Form;³

RECALLING that in its "Second Order Extending the Scope of the Examination by the Handwriting Expert Appointed by Order of 7 February 2007" of 27 March 2007 ("Order of 27 March 2007"), the Appeals Chamber further extended the handwriting examination so as to include the original of Document E in *Confidential Annex I* to the Order of 7 February 2007 ("Document E"),⁴ which consists of a sample of Witness EB's handwriting reproducing a passage of the First Recantation Statement;⁵

CONSIDERING that, pursuant to the Order of 21 February 2007, the Witnesses and Victims Support Section of the Registry sent to the Appeals Chamber the original of the DSA Form;

CONSIDERING, further, that following the Order of 21 February 2007, the Prosecution sent to the Appeals Chamber, through the Registry, all of the original documents related to its meetings of 29 March 2001 and 22-23 May 2005 with Witness EB, including the originals of Documents D and F, as requested in the Order of 21 February 2007, and the original of Document E;⁶

CONSIDERING that the Handwriting Expert has now received the originals of Documents D and F, of the DSA Form and of Document E;

CONSIDERING that, as the Prosecution and Registry have both already provided all the requested original documents as directed by the Appeal Chamber in its Order of 21 February 2007, the Motion is now moot;

CONSIDERING, therefore, that the Appeals Chamber can dispose of this Motion without waiting for a response from the Prosecution;

ON THE BASIS OF THE FOREGOING,

¹ 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.

² 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.

³ Order of 21 February 2007, p. 3.

⁴ Order of 27 March 2007, p. 3; see also Order of 7 February 2007, *Confidential Annex I*, Index No. 9871/H.

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HEREBY DISMISSES the Motion.

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

Dated this 3rd day of April 2007.
At The Hague, The Netherlands



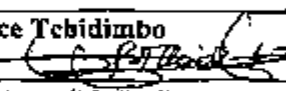
A handwritten signature in black ink, which appears to read "Fausto Pocar", is written over a horizontal line.

Fausto Pocar
Presiding Judge
[Seal of the Tribunal]

⁹ 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, included as Document B in *Confidential Annex 1* to the Order of 7 February 2007 (Index No. 9874/H).

¹⁰ Order of 27 March 2007, p. 3.

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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

4 April 2007		Case Name / Affaire: NAHIMANA ET AL.	Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE v. THE PROSECUTOR
		Case No / No. de l'affaire: ICTR-99-52-A	
To: A:	ARUSHA ✕ Judicial Archives Fax Number: 1795251 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 / accusé: Ferdinand NAHIMANA, Jean-Bosco BARAYAGWIZA, Hassan NGEZE (complete CMS 2) ✕ Lead Counsel / Conseil Principal: 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 6199/6197 00 255-27-250 8854 <input type="checkbox"/> Co-Counsel / Conseil Adjoint: Ms. Diana Ellis, Ms. Gabriele Della Morte, Mr. Dev Nath Kapoor (name / nom) <input type="checkbox"/> In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number:		
From: De:	✕ Kofi Afanda ✕ Patrice Tchidimbo 		
Subject Objet:	Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants:		
Documents name / Titre du document		Date Filed / Date d'enregistrement	Pages
Decision on Hassan Ngeze's Motion of 29 March 2007		03 April 2007	10053/H -10050/H