



Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

10251/H

ICTR-99-52-A
29th August 2008

[10251/H - 10248/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: 29 August 2007

RECEIVED
29 AUG 2007

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

ICTR Appeals Chamber
Date: 29 August 2007
Action: P.T.
Copied To: concerned Judges,
Parties, SCS, LOS, ALCS, LRS,
Archives
(Signature)

**DECISION ON "THE APPELLANT JEAN-BOSCO BARAYAGWIZA'S MOTION
RELATING TO THE REGISTRAR'S SUBMISSION CONCERNING THE TRANSCRIPT
OF THE FINAL ORAL HEARING OF 17TH AND 18TH JANUARY 2007"**

Counsel for Jean-Bosco Barayagwiza
Mr. D. Peter Herbert
Ms. Tanno Mylvaganam

Office of the Prosecutor
Mr. James Stewart
Mr. Neville Weston
Mr. George Mugwanya
Ms. Linda Bianchi
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

Counsel for Ferdinand Nahimana
Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Counsel for Hassan Ngeze
Mr. Bharat B. Chadha
Mr. Dev Nath Kapoor

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: *Pratima Tchidimbe*
SIGNATURE: *(Signature)* DATE: *29/08/07*

Case No. ICTR-99-52-A

29 August 2007

5/11

10250/H

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),

BEING SEIZED OF "The Appellant Jean-Bosco Barayagwiza's Motion Relating to the Registrar's Submission Concerning the Transcript of the Final Oral Hearing of 17th and 18th January 2007" filed on 23 July 2007 ("Motion") by Counsel for Jean-Bosco Barayagwiza ("Appellant");

NOTING that neither the Prosecution nor the Registrar has filed a response to the Motion;

RECALLING the Appeals Chamber's Decision of 16 May 2007, in which the Appeals Chamber ordered the Registry to (i) "review for accuracy and re-certify the English transcript of the entire intervention of the Appellant's Lead Counsel at the Appeals Hearing, as well as the transcript of the corresponding French interpretation" and (ii) "submit to the Appeals Chamber and the parties the re-certified copies of the relevant portions of the transcripts no later than 18 June 2007";¹

RECALLING that in its Decision of 16 May 2007, the Appeals Chamber further ordered that "in case of irreconcilable discrepancies between the correct transcription of the oral arguments submitted at the Appeals Hearing in English and the French interpretation thereof, the re-certified English transcription shall prevail";²

NOTING that on 22 June 2007, the Language Support Section submitted the "*Vérification certifiée des comptes rendus d'audience des 17 et 18 janvier 2007*" ("Submissions of 22 June 2007"),³

¹ Decision on "The Appellant Jean-Bosco Barayagwiza's Corrigendum Motion Relating to the Appeal Transcript of 17th and 18th January 2007", 16 May 2007 ("Decision of 16 May 2007"), p. 4.

The Appeals Chamber also recalls that this re-certification was ordered due to a considerable number of serious discrepancies between the English and French versions of the appeals hearing transcripts of 17 and 18 January 2007 ("Appeals Hearing"). In this connection, the Appeals Chamber recalls that: (i) at the beginning of his presentation at the Appeals Hearing, the Lead Counsel for the Appellant provided the interpreters with a written text containing his intended oral submissions; (ii) the Appellant's Lead Counsel was reading his submissions at considerable speed despite numerous requests from the interpreters, court reporters and Judges of the Appeals Chamber to slow down; and (iii) the Presiding Judge clarified that the written text provided by the Lead Counsel for the Appellant had "no standing in this case" and that only the oral submissions would be reflected in the transcript of the Appeals Hearing (Decision of 16 May 2007, p. 3).

² Decision of 16 May 2007, p. 4.

³ See also the Registrar's filing of 20 June 2007 "Re: Submission of Transcripts in compliance with a Decision of the Appeals Chamber of 16 May 2007 in *Barayagwiza et al.* Case" ("Letter of 20 June 2007"), in which the Registrar identified the portions of the transcripts to be re-certified and notified a 48-hour delay in the filing of the re-certified transcripts. The Appeals Chamber emphasises that the Submissions of 22 June 2007 do not represent the *verbatim* transcription by the French interpreters of what was said at the Appeals Hearing on 17 January 2007 and therefore cannot be read as a *corrigendum* of the record. However, the Appeals Chamber is mindful of these suggested interpretation corrections alerting it to certain specific discrepancies between the English and the French transcripts of

10249/H

containing corrections to the French interpretation of the intervention of the Appellant's Counsel on 17 January 2007;

NOTING the "Registrar's Submissions under Rule 33 (B) of the Rules on 'Decision on the Appellant Jean-Bosco Barayagwiza's Corrigendum Motion Relating to the Appeal Transcript of 17 and 18 January 2007'" filed on 12 July 2007 ("Registrar's Submissions of 12 July 2007"), in which the Registrar submitted that "the French transcript contains a number of interpretation errors caused by Counsel's inordinate delivery speed at the said hearing making two transcripts irreconcilable" and therefore suggested "that the Appeals Chamber regard the English original transcript as the authentic one";⁴

NOTING that full transcripts of the Appeals Hearing containing the concerned revised and re-certified passages in both English and French were attached to the Registrar's Submissions of 12 July 2007 ("Re-Certified Transcripts");⁵

NOTING that, in his current Motion, the Appellant submits that the Registrar's Submissions of 12 July 2007 "are fundamentally flawed for two main reasons": (i) because prior to arriving to his conclusions, "the Registrar should have shown where the two transcripts were [*sic*] 'irreconcilable'" and (ii) because "the English text can only be considered as the authentic text if it has been reviewed according to the audio or video recording of the original submissions made by the Counsel" and the Appellant's personal address made in French should not therefore be concerned with the Registrar's suggestion;⁶

CONSIDERING that, while it would have been indeed helpful if the Registrar had identified in his Submissions of 12 July 2007 (i) what specific corrections were made in the revised and re-certified version of the transcripts and (ii) what passages still remained irreconcilable, the Registrar's Submissions of 12 July 2007 should be understood to state that the relevant portions of the English and French transcripts of the intervention of Appellant's Counsel on 17 and 18 January 2007 have in fact been reviewed against the audio recording of the actual relevant utterances made at the Appeals Hearing in English and in French and are true and correct transcriptions thereof;⁷

CONSIDERING that it is clear from the Decision of 16 May 2007, the Letter of 20 June 2007 and the Registrar's Submissions of 12 July 2007 that the English version should be regarded as

the Appeals Hearing. In accordance with the Decision of 16 May 2007, where such discrepancies are irreconcilable, the English version should prevail.

⁴ Registrar's Submissions of 12 July 2007, paras 6-7.

⁵ See Registrar's Submissions of 12 July 2007, para. 5.

⁶ Motion, para. 2.

⁷ See Registrar's Submissions of 12 July 2007, para. 5 and pp. i of each Re-Certified Transcript.

10248/H

"authentic" only in relation to the intervention of Appellant's Counsel and not with respect to the Appellant's personal address;⁸

FINDING therefore that the Appellant's submissions to this extent are moot;

FURTHER NOTING that the Appellant identified five particular passages in the Re-Certified Transcripts which allegedly do not correspond to what was said at the Appeals Hearing on 17 January 2007;⁹

CONSIDERING that with respect to the first two allegations, the Appellant simply argues that the current text of the Re-Certified Transcripts is confusing and that the arguments are mixed up without specifying what the correct text should be;

CONSIDERING that the correction made to the Re-Certified Transcript in relation to the third allegation clearly shows that the date actually entered by the Appellant's Counsel was "10 December 1993";¹⁰

CONSIDERING that the fourth and fifth allegations, even if they were correct, have no bearing on the merits of the Appellant's appeal;

FINDING therefore, that no further revision of the Re-Certified Transcripts in connection with the intervention of Appellant's Counsel is warranted at this stage;

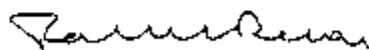
FOR THE FOREGOING REASONS,

DISMISSES the Motion in its entirety; and

REITERATES that, in case of irreconcilable discrepancies between the Re-Certified Transcripts of the oral arguments submitted at the Appeals Hearing in English and the French interpretation thereof, the re-certified English transcription shall prevail.

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

Done this 29th day of August 2007,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]



⁸ Decision of 16 May 2007, pp. 3-4 ; Letter of 20 June 2007, para. 1; Registrar's Submissions of 12 July 2007, para. 6.

⁹ Motion, para. 4 referring to the English Re-Certified Transcript, p. 63, lines 20-21, p. 69, lines 25-27; p. 70, line 8; p. 78, line 10; and p. 78, line 29.

¹⁰ At the present stage, the Appeals Chamber declines to decide which date (10 December 1993 or 10 October 1993) should be considered in relation to the Appellant's submissions on the merits of his appeal.