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UNITED NATIONS
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International Criminal Tribunal for RwandaIN THE APPEALS CHAMBER

ICTR-99-52-A

5 October 2007

(10421/H – 10418/H)

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: 4 October 2007

Ferdinand NAHIMANA
Jean-Bosco BARAYAGWIZA
Hassan NGEZE
(Appellants)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-99-52-A

ICTR Appeals Chamber

Date: 5 October 2007

Action: P.T.

Copied To: concerned judges
Parties, STOS, Legal Affairs, etc.
Archives

ORDER CONCERNING APPELLANT HASSAN NGEZE'S FILINGS OF
27 SEPTEMBER 2007

Counsel for Hassan Ngeze

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Mr. Dev Nath Kapoor

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

Counsel for Jean-Bosco Barayagwiza

Mr. D. Peter Herbert
Ms. Tanco Mylvaganam

Office of the Prosecutor

Mr. James Stewart
Mr. Neville Weston
Mr. George Mugwanya
Ms. Linda Bianchi
Mr. Abdoulaye Seye
Mr. Alfred Orono Orono

Case No. ICTR-99-52-A

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 NOUS	
NAME / NOM: <u>Patrice Tchicaya</u>	DATE: <u>05/10/07</u>
SIGNATURE: <u>[Signature]</u>	

4 October 2007

24

10420/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),

RECALLING that Appellant Hassan Ngeze ("Appellant") filed both his Notice of Appeal¹ and his Appellant's Brief² confidentially;

RECALLING the Appeals Chamber's Order to Appellant Hassan Ngeze to File Public Versions of his Notice of Appeal and Appellant's Brief rendered on 30 August 2007 ("Order of 30 August 2007");

NOTING that on 27 September 2007, the Appellant publicly filed the following documents:

- "Amended Notice of Appeal (Pursuant to the Order of the Appeals Chamber of [sic] dated 30 August 2007 to Appellant Hassan Ngeze To File Public Version of his Notice of Appeal and Appellant's Brief)" ("Public Notice of Appeal");
- "Appeal Brief (Pursuant to the Order of the Appeals Chamber of [sic] dated 30 August 2007 to Appellant Hassan Ngeze To File Public Version of his Notice of Appeal and Appellant's Brief)" ("Public Appellant's Brief");

RECALLING that, pursuant to the Order of 30 August 2007, "any changes to the confidential versions [must] be limited to necessary redactions of confidential information, including the identities of protected witnesses, and not consist of any additions, deletions or other amendments";³

FURTHER RECALLING that the Appellant was instructed "to clearly mark the redactions in the text of the public versions of his Notice of Appeal and Appellant's Brief or to file a confidential annex thereto identifying all redactions paragraph by paragraph";⁴

NOTING that the Public Notice of Appeal is entirely identical to the Confidential Notice of Appeal and contains no sign of redactions;

CONSIDERING that the Public Notice of Appeal contains no information that would require confidential status;

¹ Confidential Amended Notice of Appeal, 9 May 2005 ("Confidential Notice of Appeal").

² Confidential Appellant's Brief (Pursuant to Rule 111 of the Rules of Procedure and Evidence), 2 May 2005 ("Confidential Appellant's Brief").

³ Order of 30 August 2007, p. 2.

⁴ *Id.*

SM

10419/H

NOTING that the Public Appellant's Brief contains a large number of discrepancies, both editorial and substantive, in comparison to the Confidential Appellant's Brief;⁵

CONSIDERING that, despite the above-mentioned instructions of the Appeals Chamber, the Appellant has not marked these amendments in any way and that, in any case, these changes do not appear to be justified by the purposes of redacting confidential information;

FINDING, therefore, that the Appellant has not complied with the Order of 30 August 2007, as far as the filing of the public version of the Confidential Appellant's Brief is concerned;

CONSIDERING that filing of the Public Appellant's Brief in violation of clear and specific instructions of the Appeals Chamber constitutes an abuse of process and of the resources of the Tribunal;

FINDING, therefore, that, pursuant to Rule 73(F) of the Rules of Procedure and Evidence of the Tribunal, the payment of fees in relation to the said filing should be withheld;

NOTING that the only redactions made by the Appellant to his Confidential Appellant's Brief concern Annexes 4 and 5 thereto;

CONSIDERING that these redactions are justified;

⁵ Among the changes made to the Public Appellant's Brief, the Appeals Chamber notes the following:

- para. 1: the last sentence has been deleted from the Confidential Appellant's Brief;
- page 4 is exactly the same as page 3 (this results in a change in page numbering);
- fn 3: the words "Trial Judgement" have been deleted;
- para. 79: in the Confidential Appellant's Brief, the reference to the decision was given in a footnote (this also results in a change in footnotes numbering);
- para. 123: the footnote at the end of this paragraph has been deleted;
- fn 37: the reference to the page number is missing (compare to fn 39 of the Confidential Appellant's Brief);
- para. 145: the footnote at the end of the paragraph has been deleted;
- para. 150: the footnote at the end of the paragraph has been deleted;
- para. 171: the last two sentences of this paragraph differ from those in the Confidential Appellant's Brief;
- fn 91: differs from fn 95 in the Confidential Appellant's Brief;
- para. 231: the footnote at the end of the paragraph has been deleted;
- para. 273: the quote is different;
- para. 277: the paragraph is different and the two following paragraphs have been deleted (this also affects paragraph numbering);
- para. 295: the last word is different (compare to para. 297 of the Confidential Appellant's Brief);
- para. 306: in the first sentence, the word "when" is used instead of "by" and the last sentence is different (compare to para. 308 of the Confidential Appellant's Brief);
- fn 105: this is a new footnote;
- paras 333-342: these paragraphs differ from paras 335-345 of the Confidential Appellant's Brief;
- para. 349: the last two lines have been deleted (compare to para. 352 of the Confidential Appellant's Brief);
- fn 124: the first line is slightly different (compare to fn 129 of the Confidential Appellant's Brief);
- Ground 8 (p. 97): the title is different;
- para. 484: the footnote has been moved from the third sentence and its content has been deleted (compare to para. 487 of the Confidential Appellant's Brief).

In addition, there are certain differences, throughout the text, as to what is highlighted in bold.

SM

10418/H

CONSIDERING that, in the absence of any claim to the contrary from the Appellant, the remainder of the Confidential Appellant's Brief does not contain any sensitive or protected information that would justify its confidential status;

FOR THE FOREGOING REASONS,

DECLARES the Public Appellant's Brief inadmissible, save for the redacted Annexes 4 and 5 thereto;

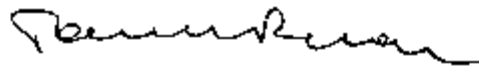
LIFTS the confidentiality of the Confidential Appellant's Brief, save for Annexes 4 and 5 thereto;

DECLARES that the redacted Annexes 4 and 5 constitute the public version of Annexes 4 and 5 of the Appellant's Brief;

DECLARES the Public Notice of Appeal validly filed;

DIRECTS the Registrar to withhold the payment of fees, if claimed, in relation to the Public Appellant's Brief.

Done this 4th day of October 2007,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

