

ICTR-00-55B-T
09-10-2009
(1666-1664)

1666
A



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

Before Judges: Arlette Ramaroson, presiding
Taghrid Hikmet
Joseph Masanhe

Registrar: Adama Dieng

Date: 09 October 2009

THE PROSECUTOR
v.
ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-T

JUDICIAL RECORDS ARCHIVE
RECEIVED

2009 OCT -9 11 A 9: 30

Johnston

**DECISION ON PROSECUTION'S MOTION FOR JUDICIAL VIEW OF
THE *LOCUS IN QUO* IN THE PRESENT CASE**

Office of the Prosecutor:

William Egbe
Peter Tafah
Adama Niane
Guilaine Disengi Mugeyo
Amina Ibrahim

Defence Counsel:

A.R. Dovi
Ata-Quam-Dovi-Avouyi

R

INTRODUCTION

1665

1. On 5 October 2009, the Prosecution filed a motion, pursuant to Rule 4 of the Rules of Procedure and Evidence (the “Rules”), requesting the Chamber to conduct a site visit in the Republic of Rwanda.¹
2. After the Defence closed its case on 6 October 2009, the proposed site visit was further discussed with the Chamber and both Parties. The Defence in its oral submissions on 6 October 2009 agreed with the Motion.
3. The Prosecution agreed to submit a proposed itinerary for the site visit, and on 8 October 2009 the Prosecution filed its proposed itinerary.

DELIBERATIONS

4. Pursuant to Rule 4 of the Rules, “[a] Chamber or a Judge may exercise their functions away from the Seat of the Tribunal, if so authorized by the President in the interests of justice”.
5. In accordance with the jurisprudence of this Tribunal, the Chamber considers that the need for a site visit must be assessed in view of the particular circumstances of each case.² A site visit may be authorized when instrumental to the discovery of the truth and to the determination of the matter before the Chamber.³ In making its decision, the Chamber should take into account the sites to be visited as well as their importance to the alleged facts of the case.⁴
6. The Chamber is persuaded of the need to travel to Rwanda to visit relevant sites. The Chamber is satisfied that the proposed site visit is in the interests of justice as contemplated under Rule 4 of the Rules, and finds that, in the particular circumstances of this case, a first-hand knowledge of the areas listed in the proposed itinerary would be instrumental to the discovery of the truth and the determination of the case in issue. Specifically, part of the evidence adduced during the trial concerns the lay-out of many

¹ Prosecution Motion for Judicial View of the *Locus in Quo*, filed on 5 October 2009 (the “Motion”).

² *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda (TC), 29 September 2004, para. 4; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for a Site Visit in Rwanda (TC), 4 May 2005, para. 2; *Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Site Visit to Rwanda (TC), 1 September 2006, para. 3; *Prosecutor v. Nindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Sagahutu’s Motion for a Site Visit (TC), 6 October 2006, para. 7; *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View *Locus in Quo*, 16 December 2006, para. 6; *Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Motion for a View of the *Locus in Quo* (TC), 19 June 2007, para. 3.

³ *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for a Site Visit in Rwanda (TC), 4 May 2005, para. 2; *Prosecutor v. Bagosora*, Decision on Bagosora Motion for Site Visit (TC), 11 December 2006, para. 2; *Prosecutor v. Rwamakuba*, Decision on Defence Motion for a View *Locus in Quo*, 16 December 2006, para. 6; *Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Prosecution Motion for a View of the *Locus in Quo* (TC), 19 June 2007, para. 3.

⁴ *Prosecutor v. Rwamakuba*, Decision on Defence Motion for a View *Locus in Quo*, 16 December 2006, para. 6.

R

1664

sites to which both Prosecution and Defence witnesses have referred and to distances between Ngoma Military Camp and the sites of several alleged events, including the Ngoma Parish, *the Groupe Scolaire*, the Matyazo Health Centre, the Benebikira Convent and the central town.

7. However, the Chamber acknowledges that the Defence has not at this stage made submissions concerning proposed relevant sites to visit.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **REQUESTS** the President to authorize the Chamber's exercise of its function away from the Seat of the Tribunal, pursuant to Rule 4 of the Rules; and, if such authorization is granted;
- II. **REQUESTS** the Registry to make all necessary arrangements for the visit of all relevant sites during the week of 02 to 06 November 2009, and to liaise with the Parties and the Chamber to facilitate the implementation of this Decision;
- III. **FURTHER REQUESTS** the Defence to file by Monday, 12 October 2009, a list of sites which the Defence considers relevant and necessary to its case. The Chamber shall communicate to the Registry the final composite list of relevant sites for the visit by 15 October 2009.

Arusha, 09 October 2009

Arlette Ramaroson

Presiding Judge

Taghrid Hikmet

Judge



[read and approved by]

Joseph Masanche

Judge

[absent at the time of signature]