



UNITED NATIONS
NATIONS UNIES

ICTR-99-50-T
(21-04-2008
(26272-26267))
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

26272
MAB

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, Presiding
Lee Gacuiya Muthoga
Emile Francis Short

Registrar: Adama Dieng

Date: 21 April 2008

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

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DECISION ON MOTIONS FOR SITE VISITS TO RWANDA

Rule 4 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyam Lal Rajapaksa
Mr. Olivier De Schutter

Counsel for the Defence:

Ms. Michelyne C. St. Laurent for Casimir Bizimungu
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi
Mr. Michel Croteau and Mr. Philippe Laroche for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Cynthia Cline for Prosper Mugiraneza

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INTRODUCTION

1. By Decision delivered on 24 June 2005, the Chamber directed the Defence for Mugenzi and the Defence for Bizimungu to renew their applications for site visits after the commencement of the Defence case.¹ On 28 January 2008, the Chamber, noting that it was nearing the close of evidence, ordered the Defence for Mugenzi and the Defence for Bizimungu to renew their site visit motions no later than 8 February 2008, and ordered the remaining Defence teams and the Prosecution to file any requests for site visits by the same date.² All of the Parties filed submissions in response to this order.³ On 12 March 2008, the Chamber ordered the Parties to submit a joint proposed itinerary, as directed in the 28 January 2008 Scheduling Order.⁴ In compliance with the 12 March 2008 Interim Order, the Parties filed a joint proposed itinerary on 26 March 2008.⁵

DISCUSSION

2. Although site visits are not expressly provided for in the Statute or Rules of Procedure and Evidence,⁶ Rule 4 empowers “[a] Chamber or Judge [to] exercise their functions away from the seat of the Tribunal, if so authorized by the President in the interests of justice.”

3. As noted by the Chamber in its First Site Visit Decision:

[T]he need for a site visit must be assessed in view of the particular circumstances of each trial. Further, in view of the logistics and the costs involved, a decision to carry out a site visit should be made preferably when the visit will be instrumental in the discovery of the truth and the determination of the matters before the Chamber.⁷

4. At least one Trial Chamber has expressed the view that site visits should take place at the close of evidence in the case.⁸ In the 28 January 2008 Scheduling Order, the Chamber noted that this case was nearing the close of evidence, and, thus, any site visits in the Republic of Rwanda should take place as soon as practicable.

¹ Decision on the Defence Motion for the Chamber to Visit Sites in Rwanda (TC), 24 June 2005 (“First Site Visit Decision”).

² Scheduling Order Regarding Submissions and Itinerary to Visit Sites in Rwanda (TC), 28 January 2008 (“28 January 2008 Scheduling Order”).

³ Application for Site Visits (Jérôme-Clément Bicamumpaka), filed 7 February 2008 (“Bicamumpaka’s Motion”); Justin Mugenzi’s Proposal’s in Respect of the Judicial Visit to Rwanda in Response to the Scheduling Order of 28 January 2008, filed 8 February 2008 (“Mugenzi’s Motion”); Seconde Requête de la Défense du Dr Casimir Bizimungu pour Visiter des Sites au Rwanda, filed 8 February 2008 (“Bizimungu’s Motion”); Prosecutor’s Response to Chamber’s Order to Parties to File Applications for Site Visits it Wishes to be Considered by the Chamber, filed 8 February 2008 (“Prosecutor’s Motion”); Prosper Mugiraneza’s Response to Request for Site Visits, filed 11 February 2008 (“Mugiraneza’s Motion”).

⁴ Interim Order Regarding Submissions and Itinerary to Visit Sites in Rwanda (TC), 12 March 2008 (“12 March 2008 Interim Order”).

⁵ Joint Proposed Itinerary for Site Visits in Rwanda, filed 26 March 2008 (“Joint Proposed Itinerary”).

⁶ Unless specified otherwise, all further references to Rules in this Decision are to the Rules of Procedure and Evidence.

⁷ First Site Visit Decision, para. 5 (citing *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the 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 Site Visits in Rwanda, 31 January 2005, paras. 2-3).

⁸ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda Under Rules 4 and 73 of the Rules of Procedure and Evidence (TC), 23 September 2004, para. 15.

5. In determining whether a site visit will be "instrumental in the discovery of the truth and the determination of the matters before the Chamber", Trial Chambers have looked to whether, as one Trial Chamber stated, "disputed issues at trial relate to physical attributes of various sites" relevant to the case.⁹

6. The Chamber considers that some of the disputed issues at trial concern physical attributes of various sites in Kigali-Ville, Kigali-Rural, Kibungo, Gitarama and Gisenyi *préfectures*, including the distances between various locations, issues involving line-of-sight, and the suitability of certain locations for activities alleged to have occurred there. The Chamber therefore finds that a site visit is appropriate under the particular circumstances of this case.

7. The Chamber has reviewed the Joint Proposed Itinerary and notes that the Parties have submitted an extensive list of sites to be visited. The Chamber does not consider that visits to all of the proposed sites are warranted under the particular circumstances of this case. Regarding Gisenyi *prefecture*, the Chamber will not be assisted in determining whether members of parliament were sworn in at the Hotel Méridien, as alleged by the Prosecution, or at the Secondary School of Kibihekane, as asserted by the Defence for Mr. Bizimungu, by visiting these sites. Furthermore, the Chamber notes that the Parties did not suggest any disputed issues that may be resolved by visits to the border crossings in Gisenyi town.

8. With respect to Kigali-Ville *prefecture*, the Chamber finds that the Parties failed to show how visits to the following sites would assist it in resolving disputed issues at trial:

- the Ministry of Commerce, Sorwaci, Camp Kigali, Mugenzi's house in Kicukiro, Kinyinya (Kami Military Police Barracks), the Presidential Guard Barracks, the Gendarmerie Barracks, the Ministry of Defence, L'Ecole Supérieur Militaire, and Nyamirambo Stadium.

The proffered reasons for visiting these sites were merely that each site was discussed at trial. The Chamber considers that visits to sites for the sole purpose of providing context are not warranted.

9. Annexed to this Decision is a proposed itinerary, which includes all of the remaining sites suggested by the Parties in the Joint Proposed Itinerary. In order to facilitate scheduling for the Parties, the Chamber orders that the site visits should take place during the week of 9 to 13 June 2008.

⁹ *Prosecutor v. Mpambara*, Case No. ICTR-2001-65-T, Decision on the Prosecution Motion for a Site Visit, 10 February 2006 (TC), para. 5; *Cf. Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View *Locus in Quo* (TC), 16 December 2005, para. 8 (noting that, "in the particular circumstances of the case, a first hand knowledge of the area will be in the interests of justice"); *Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Site Visit to Rwanda (TC), 1 September 2006, para. 3; *Bagosora et al.*, Decision on Bagosora Motion for Site Visit, 11 December 2006, para. 3.



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FOR THESE REASONS, the Chamber

REQUESTS the President to authorize the Chamber's exercise of its function away from the Seat of the Tribunal, pursuant to Rule 4, and if such authorization is granted;

GRANTS Bicomumpaka's Motion;

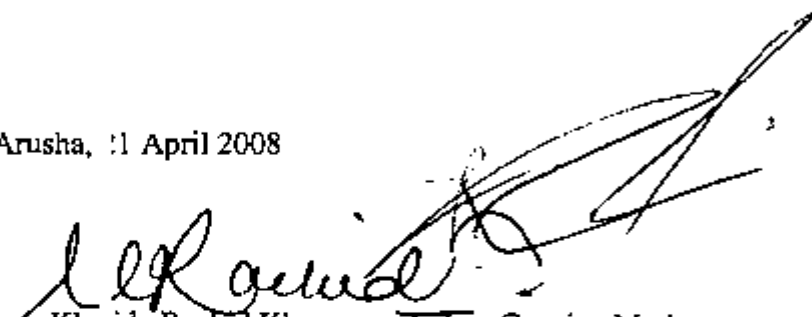
GRANTS Mugenzi's Motion in part;

GRANTS Bizimungu's Motion in part;

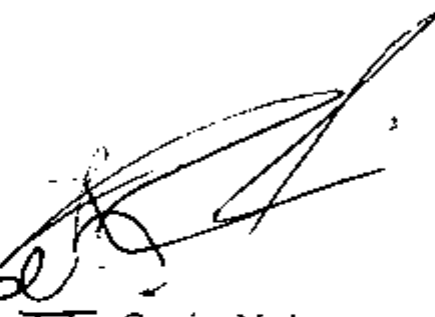
GRANTS the Prosecutor's Motion;

REQUESTS the Registry to make all the necessary arrangements, in liaison with the Chamber and the Parties, to facilitate the implementation of this Decision.

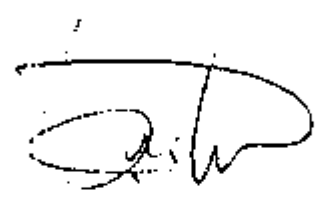
Arusha, 21 April 2008



Khadija Rachid Khan
Presiding Judge



Lee Gacuiya Muthoga
Judge



Emile Francis Short
Judge



ANNEX

Itinerary for Site Visits in Rwanda

DAY	PRÉFECTURE	SITE VISITS	
Sunday 8 June 2008	Kigali-Ville	Arrive in Kigali	
		Check in to Hotels	
Monday 9 June 2008 Morning	Kigali-Ville	Arrive at ICTR Offices Kigali—Security Briefing	
		BREAK	
Afternoon	Kigali-Ville	Rond-Point in Kigali Centre	
		Ministry of Health Buildings : <ul style="list-style-type: none"> • Central Offices of Ministry of Health • The "Direction of Health Services" building, near Hotel des Mille Collines 	
		Kigali Central Hospital (CHK)	
		Hotel des Diplomates (now Serena)	
		French Embassy	
		CND	
SPEND NIGHT IN KIGALI			
Tuesday 10 June 2008	Kigali-Rural & Kibungo	Kabuga <ul style="list-style-type: none"> • Sebisogo's House • Mosque • Location of roadblock at entrance to central Kabuga testified to by Witness DCH 	
		Kigarama Commune Office	
		Remera Shopping Centre	
		Rwatoro's House	
		Rond-point Kibungo	
		Bar/Restaurant of Witness GTF	
		SPEND NIGHT IN KIGALI	
		Wednesday 11 June 2008	Gitarama
Gitarama <i>préfecture</i> office near Uwizeye's House			
Hotel Tourisme			
Misizi			
École secondaire Muramba			
SPEND NIGHT IN GISENYI			
Thursday 12 June 2008 Morning	Gisenyi	Palm Beach Hotel Bishop's House testified to by Isaie Murashi Sagahutu	

DAY	PRÉFECTURE	SITE VISITS
		Palais du MRND
		Umuganda Stadium
BREAK		
Afternoon		Return to Kigali
SPEND NIGHT IN KIGALI		
Friday 13 June 2008		End Site Visit-Depart Rwanda