

ICTR-02-78-T
19-10-2009
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Taghrid Hikmet, Presiding
Seon Ki Park
Joseph Masanche

Registrar: Adama Dieng

Date: 19 October 2009

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-T

JUDICIAL CHAMBER II
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DECISION ON THE PROSECUTION MOTION FOR SITE VISITS

Office of the Prosecutor:
Holo Makwaia
Althea Alexis Windsor
Cheikh Tidiane Mara
Lansana Dumbuya

Defence Counsel:
David Jacobs
Claver Sindayigaya
Marc Nerenberg

INTRODUCTION

1. The trial in this case commenced on 31 August 2009. After calling eleven witnesses over fourteen trial days, the Prosecution closed its case on 17 September 2009. The Defence case is scheduled to take place between 18 January and 12 February 2010.¹
2. On 30 September 2009, the Prosecution filed a motion requesting the Chamber to order a visit to the sites of the events at Nyange parish, Kivumu *commune*, which are subject to the present trial, and any other place that the Chamber may deem appropriate.² The Prosecution submits that such a site visit is necessary and will be instrumental in the Chamber discovering the truth of the matter before it.³
3. On 6 October 2009, the Defence filed a response opposing the request.⁴
4. On 8 October, the Prosecution filed a reply.⁵

DELIBERATIONS

5. Rule 4 of the Rules of Procedure and Evidence (the "Rules") provides that "[a] Chamber or Judge may exercise their functions away from the Seat of the Tribunal, if so authorised by the President in the interests of justice."
6. The Chamber recalls that the need for a site visit must be considered in light of the particular circumstances of each case.⁶ Furthermore, a site visit should be conducted at a time when it will be instrumental to the discovery of the truth and the determination of the matter before the Chamber.⁷
7. In the instant case, the Prosecution submits that a site visit would be "instrumental in the Chamber discovering the truth of the matter before it"⁸ and "will permit the Trial Chamber to fully comprehend all the physical parameters of the offences for which Gaspard Kanyarukiga has been charged."⁹ The Chamber notes, however, that the Prosecution does not point to any particular piece of evidence that could require a site visit or provide any specific explanations as to how a site visit would assist the Chamber in understanding that evidence.
8. Furthermore, the Chamber notes that a number of photographs and maps have been tendered into evidence during the Prosecution case. As the Defence is still to present its case, evidence from Defence witnesses may also shed light on the relevant locations

¹ Scheduling Order following the Status Conference held on 17 September 2009, Order I.

² Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence, filed on 30 September 2009 ("Motion").

³ Motion, para. 2.

⁴ Response to the Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence, filed on 6 October 2009.

⁵ Prosecutor's Reply to the Response to the Prosecutor's Motion for Site Visits in the Republic of Rwanda under Rules 4 and 73 of the Rules of Procedure and Evidence, filed on 8 October 2009 ("Reply").

⁶ *The Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on the Prosecutor's Motion for Site Visits in the Republic of Rwanda (TC), 29 September 2004, para. 4.

⁷ See for example, *Prosecutor v. Nindiliyimana et al.* (TC), ICTR-00-56-T, Decision on Nzuwonemeye's Motion for On-Site visits, 27 May 2008, para. 4.

⁸ Motion, para. 2.

⁹ Reply, para. 6.

and additional photographs and maps may be submitted for consideration. In addition, the Defence has filed a "Provisional Formal Notice of Alibi," submitting that the Accused was in Gitarama and Ndera, Rubungu *commune*, at the time of the alleged crimes at Nyange Parish.¹⁰ These locations, and other places to which Defence witnesses might refer, may require a site visit.

9. The Chamber therefore considers that only at the conclusion of the Defence case will it be in a position to determine the usefulness of a site visit and, in the event of such a visit, the sites to be visited.

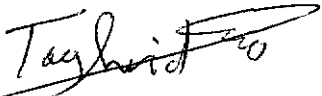
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Prosecution Motion.

Arusha, 19 October 2009

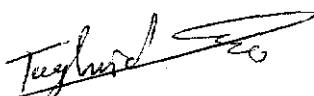
[read and approved]

[read and approved]


Taghrid Hikmet
Presiding Judge



Scott Ki Park
Judge
[absent at the time of
signature]


Joseph Masanche
Judge
[absent at the time of
signature]

[Seal of the Tribunal]

¹⁰ Provisional Formal Notice of Alibi (Rule 67(A)ii.a. of the Rules of Procedure and Evidence), filed on 30 September 2009.