

ICTR-05-82-T
9-3-2010
(1890-1886)

1890
HM



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, Presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 9 March 2010

THE PROSECUTOR
v.
DOMINQUE NTAWUKULILYAYO

Case No. ICTR-05-82

JUDICIAL RECORDS ARCHIVES
RECEIVED

2010 MAR - 9 1 P 4: 51
[Handwritten signature]

**SCHEDULING ORDER FOR SITE VISIT TO RWANDA AND
HEARING OF CLOSING ARGUMENTS**

Rules 4, 54 and 86 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Charles Adeogun-Phillips
Thembile Segoete

Counsel for the Defence:
Maroufa Diabira
Dorothee Le Fraper du Hellen

[Handwritten signature]

INTRODUCTION

1. The Defence case concluded on 17 December 2009. On 27 January 2010, the Chamber informed the Parties that it was considering holding a *proprio motu* site visit.¹ On 2 February 2010, the Parties were notified that they should file any submissions relating to the site visit by 19 February 2010.² Both the Prosecution and Defence filed submissions in accordance with the deadline set by the Chamber.³

DISCUSSION

2. While site visits are not expressly provided for in the Statute or Rules, 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. The need for a site visit must be assessed in view of the particular circumstances of each trial. In view of the logistics and 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.⁴ In determining whether a site visit will be “instrumental”, Trial Chambers have looked to whether disputed issues at trial relate to physical attributes of various sites relevant to the case. A site visit may assist a Chamber in its assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places.⁵ Further, as held by the Appeals Chamber, a detailed record of a Chamber’s site visit should be maintained.⁶

4. Having considered the Parties’ submissions, and recalling the evidence in this case, the Chamber considers that some of the disputed issues at trial concern physical attributes of various sites, as well as distances between certain locations and issues involving line-of-sight,

¹ Email correspondence dated 27 January 2010 from the Chamber to Prosecution and Defence Counsel. Further to the Chamber’s request, the Defence notified the Chamber on 25 January 2010 that it did not intend to apply for a site visit and that its position was one of neutrality. The Prosecution did not indicate whether it intended to apply for a site visit.

² Email correspondence dated 2 February 2010 from the Chamber to Prosecution and Defence Counsel.

³ The Prosecution’s Submissions on the Site Visit, 19 February 2010 (“Prosecution Submissions”) and *Propositions de la Défense Relatives aux lieux que la Chambre pourrait estimer utile de visiter pour la compréhension de la preuve dans le Cadre d’un déplacement sur les lieux décide proprio motu*, 18 February 2010 (“Defence Submissions”).

⁴ *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Motions for Site Visit to Rwanda (TC), 21 April 2008, paras. 2-5; *The Prosecutor v. Théoneste 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; *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site Visits in Rwanda (TC), 31 January 2005, paras. 2-3.

⁵ *The Prosecutor v. Jean Mpambara*, Case No. ICTR-2001-65-T, Decision on the Prosecution Motion for a Site Visit (TC), 10 February 2006, para. 5; *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for a View *Locus in Quo* (TC), 16 December 2005, para. 8; *The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Decision on Site Visit to Rwanda (TC), 1 September 2006, para. 3; *The Prosecutor v. Théoneste Bagosora et al.*, Decision on Bagosora Motion for Site Visit (TC), 11 December 2006, para. 3.

⁶ *Protais Zigiranyirazo v. The Prosecutor*, ICTR-01-73-A, Decision on Zigiranyirazo’s Motion for Admission of Additional Evidence, 16 September 2009, para. 21 citing *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgment, 2 February 2009, para. 50.



in particular, the area in and around Gisagara market, Kabuye hill,⁷ and buildings in Muyaga commune.⁸ The Parties support a visit to the locations set out in the confidential itinerary annexed to this Decision and the Chamber is satisfied that these sites are relevant to the charges against the Accused and the evidence adduced at trial.⁹

5. Regarding the Parties' additional suggestions, the Chamber notes that there is agreement to visit the location of Prosecution Witness BAC's house. While the Chamber agrees that this may be useful in assessing the Witness' evidence, it finds that such a visit may compromise her identity.¹⁰ On balance, the potential security risk overrides the possible evidentiary value of a visit to her house.¹¹ The Chamber will however request the Registry to indicate to the Chamber and Parties, when in the close vicinity, where this site is located, if possible.

6. The Chamber notes that the Defence also suggests visits to the Abizeramarya Convent, Kabuye in Kigali-rural commune, and Gikoro in Mudabori *cellule*, Nyaruhengeri.¹² However, based on the evidence heard, the Chamber is not convinced that a visit to these sites is warranted.

7. In the Chamber's view, the site visit will require a maximum of five days, including travel time, and does not involve difficult logistical planning or significant costs to the Tribunal. The site visit should take place from 25 to 29 April 2010 in accordance with the confidential itinerary annexed to this Decision.

8. In view of the above, the Chamber reschedules the hearing of the Parties' closing arguments for 3 June 2010.¹³

FOR THESE REASONS, the Chamber

REQUESTS the President to authorise the Chamber to exercise its functions away from the Seat of the Tribunal pursuant to Rule 4 of the Rules; and if such authorisation is granted;

DIRECTS the Registry to make all necessary arrangements to visit the relevant sites, and to liaise with the Parties and the Chamber to facilitate the implementation of this Decision;

⁷ Both the Prosecution and Defence agree that a visit to these sites would be useful. See Prosecution Submissions, para. 4 and Defence Submissions, pp. 3-5.

⁸ See Defence Submissions, p. 4.

⁹ Under Count I of the Indictment, the Accused is charged with having ordered soldiers and communal policemen to prevent refugees who had gathered at Gisagara market from leaving for Burundi (Indictment, para. 1). It is further alleged that the Accused ordered refugees at Gisagara market to move to Kabuye hill where he later arrived with gendarmes. Tutsi refugees on the hill were subsequently killed (Indictment, paras. 7-8). The Prosecution also alleges that the Accused took soldiers and gendarmes to Kabuye hill and collected ammunition which was used by attackers on the hill (Indictment, paras. 10-11).

¹⁰ In particular, whether Witness BAC would have been able to see events at Gisagara market, and Kabuye hill, from her house.

¹¹ See for example, *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-T, Supplemental Decision Regarding Site Visit in Rwanda and Composite Itinerary (TC), 19 October 2009, para. 6. See also Article 19 of the Tribunal's Statute which requires Trial Chambers to have due regard for the protection of victims and witnesses.

¹² Defence Submissions, pp. 3-5.

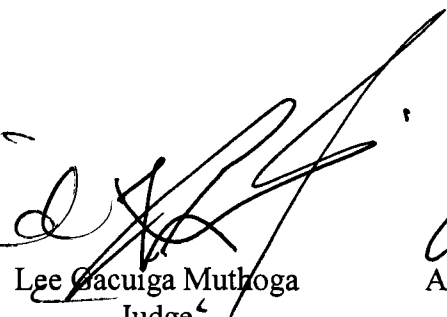
¹³ Scheduling Order, 18 December 2009 which scheduled closing arguments for 12 and 13 April 2010. On 3 February 2010, the Chamber informed the Parties that closing arguments would be rescheduled in view of the *proprio motu* site visit planned for the week commencing 26 April 2010.

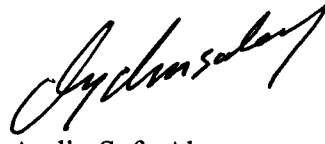
DIRECTS that the site visit shall be conducted in accordance with the itinerary annexed to this Decision; and

ORDERS that the Parties' closing arguments will be heard on 3 June 2010.

Arusha, 9 March 2010


Khalida Rachid Khan
Presiding Judge


Lee Gacuga Muthoga
Judge


Aydin Sefa Akay
Judge

[Seal of the Tribunal]

