

ICTR-99-54-T
23-03-10
(5730-5727)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 23 March 2010

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVES
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DECISION ON THE PROSECUTION MOTION FOR A SITE VISIT

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. William Egbe
Mr. Patrick Gabaake
Mr. Iskandar Ismail
Mr. Faria Rekkas

Defence Counsel

Mr. Peter Herbert
Ms. Mylène Dimitri

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa and Mparany Rajohnson (the “Chamber”);

BEING SEIZED of the “Prosecution Motion for a View of the Locus In Quo”, filed confidentially on 5 March 2010 (the “Motion”);

CONSIDERING the “Defence Response to Prosecution Motion for a View of the *Locus In Quo*”, filed confidentially on 12 March 2010 (the “Response”);

CONSIDERING also the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Motion pursuant to Rules 4 and 73 (B) of the Rules.

INTRODUCTION

1. On 23 September 2009, the Prosecution opened its case against the Accused. It continues to present evidence in support of its case, which is expected to close in June 2010. The Defence has yet to commence its case.

SUBMISSIONS OF THE PARTIES

Prosecution Motion

2. The Prosecution requests that the Chamber visit 31 locations in the former Gisenyi prefecture of the Republic of Rwanda. It prays that such a visit take place between the end of the Defence case and the filing of closing briefs.¹

3. According to the Prosecution, the purpose would not be to gather additional evidence, but instead to aid the Chamber in assessing the testimony before it. In particular, the Chamber could properly evaluate issues pertaining to distance, proximity, visibility, building layouts and geographical features. The Prosecution notes that some of this evidence has been provided by witnesses with little formal education, who were thereby unable to offer accurate estimations.²

4. The Prosecution submits that other Trial Chambers have conducted site visits for the same purpose, and requests this Chamber to exercise its discretion similarly to visit the suggested locations in the former Gisenyi prefecture at an appropriate time.³

¹ Motion, paras. 1, 10, 12-13 and Annex A.

² *Id.* paras. 1, 3-4, 6, 8-9, 11.

³ *Id.* para. 7, 10, 12-13 and Annex A.

5. Finally, the Prosecution mentions that Investigator André Delvaux—who testified as a Prosecution Witness in this case—or another individual might aid the Chamber by participating in the proposed site visit.⁴

Defence Response

6. The Defence deems a visit to be necessary, as it would provide the Chamber with first-hand knowledge of the physical characteristics of various places at issue in this case. It agrees that a site visit should occur following the closure of all evidence, and it proposes a list of 22 locations in the former Gisenyi and Kigali-ville prefectures that should be included in any such visit.⁵

7. The Defence opposes the Prosecution suggestion that Investigator André Delvaux might join the proposed site visit. As a member of the Prosecution team, his neutrality can not be assured. Instead, the Registry should be responsible for providing logistical support to the Chamber.⁶

DELIBERATIONS

8. Rule 4 states that “[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.”

9. The Chamber recalls the Tribunal’s jurisprudence that, when considering the necessity of a site visit, the optimal time for assessment comes after the presentation of all evidence.⁷ As the Parties have not yet finished adducing evidence in support of their respective cases, the Chamber does not consider this to be an optimal time to determine whether a site visit is necessary and desirable.

10. The Chamber does not exclude that it may be feasible, at a later stage, to visit some locations in the Republic of Rwanda that are relevant to the present trial. The Parties are at liberty to renew their requests, if they wish, at the end of the presentation of cases of both Parties.⁸

⁴ *Id.* para. 10.

⁵ Response, paras. 4-5, 7-8, 12-13 and Annex I.

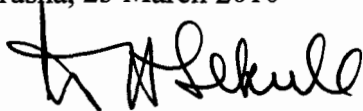
⁶ *Id.* paras. 10-11.

⁷ *The Prosecutor v. Pauline Nyiramasuhuko*, Joint Case No. ICTR-98-42-T, Decision on the Prosecutor’s Motion for Site Visits in the Republic of Rwanda (TC), para. 17, citing *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Site visits in Rwanda (TC), filed 31 January 2005, para. 3. See also *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on the Defence Motion for the Chamber to Visit Sites in Rwanda (TC), filed 24 June 2005, para. 6; *The Prosecutor v. Théoneste Bagosora*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for Site Visits in the Republic of Rwanda (TC), filed 29 September 2004 (“*Bagosora et al.* Decision”), paras. 4-5; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Joint 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), filed 23 September 2004 (“*Nyiramasuhuko et al.* Decision of 23 September 2004”), paras. 14-15.


⁸ *Bagosora et al.* Decision, para. 5; *Nyiramasuhuko et al.* Decision of 23 September 2004, para. 15.

**FOR THE ABOVE REASONS, THE TRIBUNAL
DENIES the Motion.**

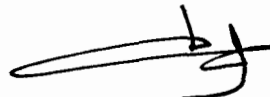
Arusha, 23 March 2010



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

