

ICTR-97-36A-T
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(1241-1238)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before Judges: Florence Rita Arrey, Presiding
Mparany Mamy Richard Rajohnson
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 07 May 2010

JUDICIAL RECORDS/ARCHIVES
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ICTR

THE PROSECUTOR

v.

Yussuf MUNYAKAZI

Case No. ICTR-97-36A-T

RECONSIDERATION OF "DECISION ON YUSSUF MUNYAKAZI'S MOTION
FOR JUDICIAL VIEW OF THE *LOCUS IN QUO*"

Office of the Prosecutor:

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INTRODUCTION

1. On 15 October 2009, the Defence made an oral application to the Chamber requesting a site visit to Rwanda. The Trial Chamber ordered that the Defence file its motion in writing.¹ On 20 October 2009, the Defence filed a motion pursuant to Rule 4 of the Rules of Procedure and Evidence (the "Rules"), asking for judicial view of the *Locus in quo*.² The Prosecution in its response stated that it would leave the issue at the discretion of the Trial Chamber.³
2. On 26 October 2009, the Chamber ordered the Defence to file an itinerary indicating the specific locations to be visited,⁴ which the Defence filed on 30 October 2009.⁵ During Oral arguments on 28 January 2010, the Defence further expressed the desire to have a site visit. The Prosecution reiterated its position regarding the discretion of the Chamber.⁶
3. On 17 March 2010, the Chamber issued its decision granting the Defence motion for judicial view of the *Locus in quo*. ("The Decision")⁷
4. On 21 April 2010, the Chamber issued the Procedure to be followed during the site visit. ("Procedure During Site Visit")⁸

¹ Transcript of 15 October 2009, p.53

² *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo*, (Rule 4 of the RPE), 20 October 2009 ("Motion")

³ *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Prosecution's Response to Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo*, (Rule 4 of the RPE), 22 October 2009 ("Response")

⁴ *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Order to the Defence to file an itinerary indicating the specific locations to be visited, 26 October 2009. ("Order")

⁵ *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Yussuf Munyakazi's detailed itinerary and specific locations to be visited, 30 October 2009. ("Defence Itinerary")

⁶ Transcript of 28 January 2010 pp. 2-3

⁷ *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Decision on Yussuf Munyakazi's Motion for Judicial View of the *Locus in Quo*, 17 March 2010

⁸ *Prosecutor v. Munyakazi*, ICTR-97-36A-T, Procedure During Site Visit, 21 April 2010

DELIBERATIONS

Applicable Law

Reconsideration

1. As was acknowledged in the *Karemera case*, it is the established jurisprudence of the Tribunal that Trial Chambers have the "inherent power" to reconsider their own decisions, under the following "exceptional" circumstances:
 - i. when a new fact has been discovered that was not known by the Trial Chamber;
 - ii. where new circumstances arise after the original decision;
 - iii. where there was an error of law or an abuse of discretion by the Trial Chamber resulting in an injustice.⁹

Material change of circumstances

5. In reaching a decision to grant the site visit, the Trial Chamber took into account whether some of the "disputed issues at trial are relative to physical attributes of various sites" relevant to the case, and if the site visit will assist the Chamber in its assessment of issues of visibility, layout of buildings, distances between locations and correlative proximity of places.¹⁰
6. Since issuing the Decision, the Trial Chamber has had the opportunity to review, consider and analyse the evidence in much greater detail in preparation for delivery of the Judgement. It is now of the view that it is in a position to assess the evidence before it without the benefit of a site visit. In light of these new circumstances, the Trial Chamber *proprio motu* reconsiders its Decision of 17 March 2010, and cancels the site visit previously scheduled for 30 May to 2 June 2010.

⁹ See e.g., *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera*, Decision on Reconsideration of Protective Measures for Prosecution Witnesses, 30 October 2006, para. 2; *Karemera*, Decision on Reconsideration of Admission of Written Statements in lieu of Oral Testimony and Admission of the Testimony of Prosecution Witness GAY, 28 September 2007, paras. 10-11.

¹⁰ The Decision para 7

ACCORDINGLY, THE CHAMBER

RECONSIDERS its Decision of 17 March 2010, and thus cancels the site visit
scheduled for 30 May to 2 June 2010 and

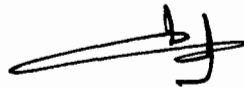
ORDERS the Registry to cancel all arrangements made towards the site visit.

Arusha, 07 May 2010, done in English.



Florence Rita Arrey

Presiding Judge



Mparany Mamy Richard
Rajohnson

Judge



Aydin Sefa Akay

Judge

[Seal of the Tribunal]

