

ICTR-98-44D-1  
15-11-2011  
(8876-8872)

8876



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

UNITED NATIONS  
NATIONS UNIES

1-0577

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Solomy Balungi Bossa, Presiding  
Bakhtiyar Tuzmukhamedov  
Mparany Rajohnson

**Registrar:** Adama Dieng

**Date:** 15 November 2011

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**

*Case No. ICTR-98-44D-T*

JUDICIAL RECORDS/ARCHIVES  
RECEIVED  
2011 NOV 15 15:16  
3-46

**DECISION ON NZABONIMANA'S MOTION  
FOR CLARIFICATION ON SITE LOCATIONS**

**Office of the Prosecutor**

Paul Ng'arua  
Memory Maposa  
Simba Mawere  
Mary Diana Karanja

**Defence Counsel**

Vincent Courcelle-Labrousse, Lead Counsel  
Philippe Larochelle, Co-Counsel

88

## INTRODUCTION

1. On 19 September 2011, the Registry filed its report on the Site Visit conducted on 5-9 September 2011 ("Site Visit Report").<sup>1</sup>
2. On 26 September 2011, the Registrar circulated an Addendum to the Report on Site Visit ("Addendum").<sup>2</sup>
3. On 6 October 2011, the Defence filed a Motion for Clarification on Site Locations ("Defence Motion").<sup>3</sup>
4. On 10 October 2011, the Prosecution filed its Response to the Defence Motion ("Prosecution Response").<sup>4</sup>
5. On 12 October 2011, the Defence filed its Reply to the Prosecution Response ("Defence Reply").<sup>5</sup>

## SUBMISSIONS OF THE PARTIES

### *Defence Motion*

6. The Defence requests the Registrar to confirm that what is referred to in the Site Visit Report as "Gitarama Junction" is locally and commonly called "Nyabikenke Crossroad", as was designated in Defence Exhibit 127, map Z721, Sheet 23 Gitarama.<sup>6</sup>
7. The Defence submits that the Registry erred in its calculations that the distance between the French Embassy in Kigali and Nzabonimana's house was around 90 kilometres and 90.3 kilometres up to the actual house. It submits that although Nzabonimana's house was seen from 300 metres away, the actual house was reached by a 1600 metre drive up a steep road, for approximately five (5) minutes.<sup>7</sup>

<sup>1</sup> *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Report on Site Visit, 19 September 2011.

<sup>2</sup> *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Addendum to Report on Site Visit, 26 September 2011.

<sup>3</sup> *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Motion for Clarification on Site Locations, 6 October 2011.

<sup>4</sup> *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Confidential Nzabonimana's Motion for Clarification on Site Locations, 10 October 2011.

<sup>5</sup> *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Reply to Prosecutor's Response to "Nzabonimana's Motion for Clarification on Site Locations dated 6 October 2011, 12 October 2011.

<sup>6</sup> Defence Motion, para. 5.

<sup>7</sup> Defence Motion, para. 5.

8. The Defence further submits that based on stops along the route and road impediments, the route from the French Embassy to the trading centre at Gasenyi ("Gasenyi Trading Centre"), was 101.2 km and took two (2) hours and thirty-nine (39) minutes.<sup>8</sup>
9. The Defence requests for confirmation or provision of the measurements in hectometres for the "Gitarama Junction".<sup>9</sup>

*Response*

10. The Prosecution objects to the Defence Motion on the grounds that the Defence has not shown evidence on record that supports the assertion that the "Gitarama Junction" is commonly and usually referred to in the *commune* as "Nyabikenke Crossroad", nor did it make any observations of a factual nature at the location concerned, in accordance with the Practice Direction on Site Visits ("Practice Direction").<sup>10</sup>
11. The Prosecution submits that it is improper for the Defence to contradict a specific recording by the Registry, in order to give effect to their own calculations.<sup>11</sup>

*Reply*

12. The Defence, noting that the Prosecution did not contest certain matters in the Defence Motion,<sup>12</sup> submits that when the Registry filed the Site Visit Report, the Prosecution made no comments. The Defence requests precisions on the Registry's Report. Furthermore, the Prosecution did not submit any geographical evidence or any distance based on hectometres and therefore is not in a position to criticise the Defence Motion.<sup>13</sup>
13. The Defence submits that it only noticed the number of ambiguities and the degree of imprecision after it received the Registry's Report and therefore could not have made factual observations on site. Since the Prosecution made no attempt to tender evidence or comment on the Site Visit Report, it is dishonest for it to object to this Motion.<sup>14</sup>
14. The Defence submits that no maps actually refer to the "Gitarama Junction" and Rwandan locals do not refer to it as so. Consequently, the Defence requests

<sup>8</sup> Defence Motion, para. 5.

<sup>9</sup> A hectometre is a somewhat uncommonly used unit of length in the metric system, equal to 100 metres.

<sup>10</sup> Prosecution Response, pp. 2, 3; Practice Direction, Article 6.1.

<sup>11</sup> Prosecution Response, pp. 3-4.

<sup>12</sup> It did not contest that Nzabonimana's house was only seen from 300 metres away; the distance between the French Embassy and Nzabonimana's house was calculated to be *around* 90 kilometres; and the distance between the Embassy and the Gasenyi Trading Centre was recorded to be 100.7 kilometres but based on stops along the route and road impediments was estimated by the Defence to be 101.2 kilometres and to have taken two (2) hours and thirty-nine (39) minutes – Defence Reply, para. 7.

<sup>13</sup> Defence Reply, para. 8.

<sup>14</sup> Defence Reply, paras. 9-10.

confirmation that the terminology used actually refers to the same location. The Defence is prepared to adopt the vocabulary pursuant to any clarification brought by the Registry.<sup>15</sup>

## DELIBERATIONS

### *Applicable Law*

15. Section 3 (v) of the Practice Direction on Site Visits ("Practice Direction") provides that:

"The composition of the delegation shall not at any time exceed:

- (v) Staff appointed by the Registrar to provide assistance with respect to:
- (a) coordination functions;
  - (b) witness and victims protection issues;
  - (c) record taking;
  - (d) security;
  - (e) transportation; and
  - (f) audio and video recording, if requested by the Chamber."

16. Section 8 of the Practice Direction states that:

"The parties' submissions, if any, on the site visits, the report and the audio and video recordings, if any, shall be included in the parties' closing briefs and be addressed by the Chamber in the judgement."

### *Analysis*

17. The Chamber notes that the Registry has specified that all parties, whether they refer to the "Gitarama Junction" or the "Nyabikenke Crossroad", are referencing the identical geographical location, which was observed by the Trial Chamber during the course of the site visit. The Trial Chamber directs the registry to file an Addendum to the Site Visit Report accordingly.
18. The Chamber observes that the Defence made no objection to the Registry's calculation of 300 metres to the Accused's house as observed from the main road, when the delegation was on site and has adduced no evidence with regards to the 1600 metres of steep road to reach the Accused's residence. The Defence attempt to tender evidence by way of pleadings is improper. In the absence of any evidence to the contrary or any objection during the site visit, the Registry's calculations stand; the Registry being

<sup>15</sup> Defence Reply, paras. 12, 14.

charged with making the official calculations during the site visit, pursuant to Section 3 (v) (c) of the Practice Direction.

19. Lastly, and with regard to the distance between the French Embassy and the Gasenyi Trading Centre, the Registry has informed the Chamber that the odometer did not continue running when a vehicle was stationary. Therefore any pauses during the procession of the site visit occasioned by road impediments or any other factor would have no bearing on the calculations recorded by the Registry. Moreover, the Trial Chamber reiterates that the Registry is tasked with providing the Trial Chamber with official calculations throughout the site visit and in the absence of any compelling reason to challenge these measurements the Trial Chamber shall not question them based upon the pleadings of a party.

**FOR THESE REASONS, THE TRIAL CHAMBER**

**GRANTS** the Defence Motion to the extent that it directs the Registry to file an Addendum;

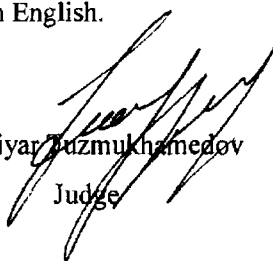
**DIRECTS** the Registry to file an Addendum, specifying that the "Gitarama Junction" and "Nyabikenke Crossroad" are one and the same location;

**DENIES** the Defence Motion in all other respects.

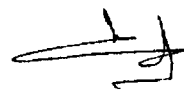
Arusha, 15 November 2011, done in English.



Solomy Balungi Bossa  
Presiding Judge



Bakhtiyar Tuzmukhamedov  
Judge



Mparany Rajohnson  
Judge

