

15th December, 1971.

Inquest on Timol set for Jan. 24

STAFF REPORTER

THE INQUEST into the death of a 30-year-old Indian political detainee would be seriously hampered if the State did not make available all relevant reports and documentation on his death, the Pretoria Supreme Court was told yesterday.

In the court, the Judge President of the Transvaal, Mr. Justice Cillie, with Mr. Justice Hill, postponed to January 24 a dispute between the detainee's parents and a magistrate of Johannesburg.

The hearing is an appeal against the refusal of a Johannesburg Regional Court magistrate, Mr. J. J. L. de Villiers, to give the family of Mr. Ahmed Essop Timol access to documents and information when the inquest started on December 1.

The application has been brought before the court by Mr. and Mrs. Yusuf Timol, Mr. Timol's parents, of Mare Street, Roodepoort.

Mr. Timol, a teacher, who was arrested in the Security Police raids at the end of October, fell to his death from the 10th storey of John Vorster Square on October 26.

In court yesterday, Mr. G. Bizos, for the Timols, said that despite all efforts by both

parties the papers had not yet been completed in the matter. He asked for a postponement by consent.

Mr. Justice Cillie said that he would postpone the matter to January 24, when it could be heard if arrangements could be made for a court to sit on that day.

In an affidavit before court yesterday the Timols said they heard of their son's death on October 27. They instructed a Johannesburg firm of attorneys, Messrs. M. S. H. Cachalia and M. A. Loonat, to act for them.

On their instructions a specialist pathologist, Dr. Jonathan Gluckman, was appointed to act for them in connection with a post-mortem to have been conducted by a Dr. Scheepers.

On November 3 the attorneys wrote a letter to the inquest court magistrate in Johannesburg asking for sections of specimens taken from Mr. Timol's body and for the post-mortem report. Permission was granted.

On November 8 the magistrate wrote a letter, containing certain photographs and a copy of part of Dr. Scheepers report — in which no conclusions were drawn.

On November 25 a Major Fick telephoned to tell the Timols that the inquest had been set down for December 1. Major Fick was referred to the Timols' legal advisers.

They said in the affidavit that it was agreed that everything possible should be done to hold the inquest as soon as possible, and particularly because of interest in the case.

In a letter on November 29 to the magistrate, their attorneys told him it was assumed that, in terms of the Inquests Act, certain information had been placed before the magistrate by the Public Prosecutor.

The attorneys requested copies of this information but none were made available to them before December 1.

NO COPIES

A letter written on November 30 by the magistrate was received on December 2. It was made clear that the second respondent — in this case, Mr. Dennis Rothwell, for the Attorney-General — that no copies of documents would be furnished.

The Timols submitted that no inquest should have been started or held without all the statements, documents and information in the possession of the prosecutor being placed before the inquest court magistrate.

The magistrate performed a judicial, or at least a quasi-judicial function in the inquest he was about to conduct.

It was submitted that he was

practise in South African courts that such information was made available to all interested parties.

It was felt in this case, that this was particularly so against the background of the fact that the photographs and Dr. Scheepers' report were made available, and the fact that copies of statements made by them to the police had been made available to the legal representatives on request.

They submitted that the public prosecutor had acted irregularly and not in accordance with the Inquest Act in not making available the documentation.

DISCRETION

They repeated too, that all parties concerned felt that a start should be made as soon as possible with the inquest.

But all documentation should be made available. The matter could be prejudiced in that the public prosecutor had stated he would use his discretion as to what information he would place before the court.

"In the absence of such information our legal representatives would be hampered in cross-examination of witnesses, although the first respondent (the magistrate) has said he would allow all adjournments to enable witnesses to be cross-examined.

"The additional expenses would be unrecoverable," said Mr. and Mrs. Timol.

The legal representatives would also be prevented from conducting further inquiries which might suggest themselves if they did not have all the information available.

In addition the conclusions of the pathologists were important for the cross-examination of other witnesses. The absence of these conclusions at the start of the inquest would unnecessarily prolong the inquest.

"It is in the interests of all concerned that a start should be made as soon as possible and that it should continue uninterrupted."

"The second respondent (the Attorney-General) has no interest in the outcome of the proceedings and, it is irregular for his representative to claim sole or exclusive possession of statements, documents or information," they said.

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The magistrate performed a judicial, or at least a quasi-judicial function in the inquest he was about to conduct.

It was submitted that he was obliged to let the Timols' legal representatives have all relevant statements and documents, and that it was an invariable

practice in South African courts that such information was made available to all interested parties.

It was felt, in this case, that this was particularly so against the background of the fact that the photographs and Dr. Scheepers' report were made available, and the fact that copies of statements made by them to the police had been made available to the legal representatives on request.

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