

THE STAR, FRIDAY, FEBRUARY 25, 1972.

ESSOP: THE POLICE ARE RESTRAINED

THE Pretoria Supreme Court today confirmed an order restraining the Security Police from assaulting, unlawfully interrogating and applying undue pressure on the detainee, Mr Mohamed Salim Essop (21).

Mr Justice Marais and Mr Justice Theron, who concurred in their judgment, rejected some of the evidence of the Witwatersrand Security Police chief, Colonel P. J. Greyling.

They did not regard the alleged withholding of a key witness, Dr V. D. Kemp, as deliberate, but found it was "a peculiar manner of setting out the facts."

The proceedings were instituted by Mr Ismail Essop, the father of the detainee, who saw his son through a fanlight after being refused access to him in the H. F. Verwoerd Hospital in Pretoria.

Mr Essop alleged that his son had been assaulted while in police custody. The son, a medical student at the University of Witwatersrand, was arrested at 11 pm on October 22. At 8.30 am on October 26 a district surgeon, Dr Kemp, found him slumped against a wall of an interrogation room at John Vorster Square.

Mr Justice Marais ordered that the Sheriff of the Transvaal was to inform the detainee of the order.

Judgment

Reading the judgment of himself and Mr Justice Marais, Mr Justice Theron said the hearing arose from the return date of an interdict that restrained the Commissioner of Police and the Witwatersrand Security Police chief, Colonel P. J. Greyling, from assaulting Mr Essop, interrogating him in any manner other than prescribed by law, and applying undue or unlawful pressure on him.

The order, granted on October 29, was extended on December 8 with an additional order that evidence be given on the return day, February 22, by nine doctors and nurses named in the order.

"I draw attention to the fact that, at this stage, no mention was made of Dr Kemp," the judge said, referring to the Chief District Surgeon of Johannesburg, Dr V. D. Kemp, who

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Timol family THE STAR FRIDAY JANUARY 28 1972. may yet see

documents

THE Timol family may yet have access to the documents concerning their son's death in terms of a judgment given at the Pretoria Supreme Court today.

The decision of a Johannesburg magistrate to prevent access to the documents was called "improper and irregular" by the Judge President, Mr Justice Cillie, with Mr Justice Marais concurring.

"The ruling of the magistrate cannot stand and must be set aside," he said.

An inquest should not be conducted as a criminal trial, the judges decided.

They ruled that the magistrate did have a right of discretion in allowing interested parties access to the documents before him.

IMPROPER

He should keep in mind that an interested party might be able to assist in ways not yet apparent to him or the prosecutor.

Where the magistrate in the Timol inquest had erred was in refusing the Timol's legal

representative access before he was acquainted with the full contents of the documents.

"His decision to refuse a perusal was therefore an improper exercise of his discretion," Mr Justice Cillie said.

INFORMAL

"It cannot be emphasised too strongly that the documents must be taken by the magistrate and not by, for example, the prosecutor whom he may have asked to lead evidence."

The legislature could not have intended the prosecutor to be the person who decided what witnesses to call and to hear evidence from.

For the magistrate to decide which parties had a substantial interest and should be notified, he had to be in possession of all the relevant documents.

Mr Justice Cillie said inquiries were "somewhat informal hearings" and this accounted for misconceptions in this regard.

PROVISIONS

"We think the legislature provided for the prosecutor because of his relationship to the Attorney General who has an interest in the proceedings because he might yet institute a prosecution," the judge said.

The prosecutor was present to assist in bringing out the truth. The witnesses were witnesses of the inquest court —not of the interested parties.

"It is also because of the informality of inquests that the magistrate follows informal procedure. This may be, provided it is in compliance with the provisions of the act and his functions as a judicial officer. (Judgment on Page 14)