INQUEST PAPERS DISPUTE

TIMOL CASE JUDGMENT ON FRIDAY

STAFF REPORTER

JUDGMENT in the dispute over the availability of inquest documents and papers to the legal representatives of the family of Ahmed Timol will probably be given in the Pretoria Supreme Court on Friday.

The Judge President of the Transvaal, Mr. Justice Cillie, and Mr. Justice Marais, who are hearing the dispute, reserved judgment yesterday after counsel for the Timols and the State completed their representations.

Mr. Justice Cillie said the court would attempt to give judgment on Friday but counsel would be informed if this was not possible.

Mr. Ahmed Timol, a Roodepoort school teacher, fell to his death from the tenth floor of John Vorster Square in Johannesburg on October 26. He was being detained by Security Police at the time.

Subsequent to the inquest into Mr. Timol's death, which opened in the Johannesburg Magistrate's Court on December 1, his parents, Mr. Yusuf and Mrs. Hawa Timol made an application to the Supreme Court to have a ruling by the presiding magistrate, Mr. J. J. L. de Villiers, refusing them access to inquest papers, set aside.

In papers before the court the Timols claimed that the magistrate was obliged to permit their legal representatives to inspect the inquest papers.

They also claimed they would be prejudiced in the conduct of the inquest if all statements, documents and information pertaining to the inquest were not made available to their legal representatives.

Alternatively, they asked that the magistrate be ordered to state what documents and information had been placed before him at the inquest.

The Timols also claimed that insofar as the magistrate might have had a discretion to make the inquest papers available he did not exercise this discretion properly when he refused to grant them access.

Replying to argument by Mr. W. S. McEwan, SC (for the State), yesterday, Mr. I. A. Maisels, QC, who is appearing for the Timol family, told the court there could be no objection to giving the applicants access to all the papers in the inquest if it was conceded by the State that it was in the magistrate's discretion to grant access to individual statements as witnesses were called.

However, Mr. Maisels submitted, the magistrate had "not applied his mind" to the matter as he had only made a cursory examination of the inquest papers.

This was to the effect of establishing whether Mr. Timol had died an unnatural death — a fact he already knew or he would never have ordered an inquest, Mr. Maisels said.

This action on the part of the magistrate had provided a clue as to what was "constantly lurking in the magistrate's mind" and this was the magistrate was in some way trying to equate the inquest proceedings with proceedings at a criminal trial.

The State's argument that access to the inquest papers could prove to be prejudicial to possible criminal proceedings at a later stage, was wrong, Mr. Maisels submitted.

PRIVILEGE

The State could not claim privilege as grounds for withholding the papers, because no criminal proceedings were being contemplated at the time the papers were obtained, he added.

This submission by the State again pointed to what was lurking in the mind of the magistrate — which was to conduct the inquest as if it was a criminal matter.

Turning to the question of what constituted the record of an inquest. Mr. Maisels submitted that all statements, documents and information in an inquest formed part of the record even before inquest proceedings were started.

If it was argued that they were not part of the record how would the Attorney-General — to whom the inquest record was sent later — know the contents of papers initially held by the prosecutor but not used in the inquest proceedings, Mr. Maisels asked.

And unless the Inquest Act was interpreted to the effect that all papers before and during inquest proceedings constituted the inquest record, one would get an incomplete record of the inquest, he submitted.

It was unthinkable that the magistrate or the prosecutor could retain documents not used in the inquest and not

Maisels submitted that this amounted to the prosecutor alone having the right to decide what witnesses should be called to give evidence.

Mr. Maisels submitted that this was wrong. The prosecutor's function at an inquest was to assist the court in making a finding — "He is there in a non-partisan manner."

And, Mr. Maisels added, it was the magistrate's duty to be on guard against a prosecutor who had already made up his mind as to how the inquest proceedings should be conducted.

JEALOUS

"The magistrate must be jealous of his right to conduct the inquest proceedings and must allow nothing to interfere with this right."

Replying to Mr. Maisels, Mr. McEwan said the Inquest Act made it clear that documentation collected by the police before an inquest did not constitute a record of the inquest proceedings.

The Act stated that the record of an inquest included those papers used from the start of proceedings. He submitted that documents in the hands of the police and the Attorney-General before the start of proceedings could never be regarded as part of the inquest record.

Attending the hearing yesterday was Mr. Kenneth Costa, on his first assignment as an official observer for the International Commission of Jurists.

Mr. Costa is a former Students' Representative Council president of the University of the Witwatersrand.

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It was unthinkable that the magistrate or the prosecutor could retain documents not used in the inquest and not make them part of the record sent to the Attorney-General.

Referring to the State's interpretation of the functions of a prosecutor at an inquest, Mr. Maisels submitted that this amounted to the prosecutor alone having the right to decide what witnesses should be called to give evidence.

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