

ALLEGATIONS OF 'TRIAL'

Timol: Plea on inquest documents

STAFF REPORTER

THE CONDUCT of officials at the Timol inquest could lead the public to believe that the State was trying to exonerate someone instead of making a finding, the Pretoria Supreme Court was told yesterday.

This was submitted to Mr. Justice Cilliers, Judge President of the Transvaal, and Mr. Justice Marais by Mr. I. A. Maiseis, QC, who was appearing for the Timol family in the dispute, over the availability of documents, statements and information to the family's legal representatives, which continued after being postponed on December 14 last year.

Mr. Maiseis submitted that the Johannesburg Regional Court Magistrate, Mr. J. J. L. de Villiers, had acted irregularly in refusing the Timol family access to statements and documents when the inquest into the death of Mr. Ahmed Essop Timol, 30, opened in the Johannesburg Magistrate's Court on December 1.

Mr. Timol, a Roodepoort school teacher, fell to his death from the tenth floor of John Vorster Square, Johannesburg, on October 26.

CLAIM

In papers before the court Mr. Timol's parents, Mr. Yusuf and Mrs. Hawa Timol, asked that the magistrate's ruling be set aside.

They claimed that the magistrate was obliged to permit their legal representatives to inspect the statements, documents and information. They claimed that they would be prejudiced in the conduct of the inquest if all the statements, documents and information 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 in so far as the magistrate may have had a discretion in making available the documents and information, he did not exercise this discretion correctly in refusing to grant them access.

In affidavits before the court the chief magistrates of Johannesburg and Durban and the principal magistrate of Cape Town said it was not the invariable practice in South African courts that statements, documents and information be made available to interested parties at the start of an inquest.

The Chief Magistrate of Johannesburg, Mr. S. Wessels, denied that the Timols would be prejudiced if they did not have access to the statements and documents. Mr. Wessels denied that it had been an invariable practice to make available all information at the start of an inquest.

He was supported in this by Mr. C. G. Jordaan, the Pretoria

magistrate in charge of courts, Mr. M. E. Goodhead, the Chief Magistrate of Durban, and Mr. J. H. Krige, the Principal Magistrate of Cape Town.

The Johannesburg magistrate in charge of inquests, Mr. W. P. Dornheim, said in an affidavit that he allowed access to papers of inquests only in non-contentious matters. He allowed inspection of the record after completion of the inquest, but not of any papers which had not formally become part of the record.

REQUEST

In his argument Mr. Maiseis said it was common cause that Mr. Ahmed Timol had died while detained by the Security Police. Police statements said that Mr. Timol had committed suicide.

Mr. Maiseis said that the applicant had asked the court to find that an irregularity had occurred at the start of the inquest. He asked the court for an order giving direction to the magistrate on inquest procedure. Mr. Maiseis submitted that according to the Inquest Act any person with an interest in the matter had a locus standi in terms of the Act.

He submitted that certain sections of the Inquest Act had not been carried out properly. Among these were the section which stated that any policeman to whom a death was reported had to report to the public prosecutor and that, in the event of the prosecutor deciding on an inquest, he had to forward all statements and documents to the magistrate.

Mr. Maiseis submitted it was irregular for the Public Prosecutor to withhold documents he obtained from the police, from the investigating magistrate.

He said the magistrate had been under the bona fide impression that the documents were in the hands of the chief magistrate while they had, in fact, been seen by only one person, Mr. Dennis Rothwell of the Deputy Attorney General's office.

Mr. Rothwell had conducted the inquest proceeding not as an inquest but as a prosecution. The magistrate, Mr. Maiseis submitted, had the same attitude. The whole proceedings had been divorced from what was contemplated in the Inquest Act, he said.

"The whole procedure was no different from the procedure adopted at a criminal trial. We were beginning to wonder whether we were the accused," he added.

It was clear that the inquest was not a criminal trial and was not to be equated to a criminal trial. It followed from

the framework of the Inquest Act that the proceedings should be conducted by the magistrate and not the prosecutor.

Mr. Maiseis submitted that once there had been a decision not to prosecute in an inquest — and this was clearly the case in the Timol inquest — all papers placed before the magistrate amounted to nothing more than a record of the inquest.

And if papers placed before the magistrate were part of the record before proceedings started the Timol family was entitled to see the record, he added.

CLEAR

In papers before the court, the presiding magistrate at the Timol inquest, Mr. De Villiers, gave his reasons for refusing the Timols access to the inquest papers.

"It is perfectly clear that as far as the provisions of the Inquest Act are concerned the only legal right they have is to put such questions to the witnesses as may be allowed by the presiding magistrate, either personally or by counsel or attorney representing them," he said.

"In my view Mr. Maiseis has not advanced a single cogent or valid reason why the statements should be made available to them. Mr. Maiseis was considering only the interests of his clients in stressing that the interests of justice required that the statements be made available and that justice must be seen to be done.

"The State, and by that I mean the community at large, also has an interest in the issue of the inquest and this interest I consider to be paramount. The interests of the Timols had suffered no prejudice or irreparable harm," he went on.

"On the other hand, if the statements were made available to Mr. Maiseis's clients irreparable harm could possibly result to the interests of the State. In my view the interests of justice are more likely to be served at this stage by not making the statements available."

The hearing continues today. Mr. I. A. Maiseis, with Mr. G. Bizos, instructed by Mr. S. H. Cachalia and Mr. A. Leonat, is appearing for Mr. and Mrs. P. Timol. Mr. W. S. Macewan, SC, with Mr. P. J. Schabert is appearing for the State.