



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case no. I 01/2017

THE REOPENED INQUEST OF AHMED ESSOP TIMOL

STATEMENT IN TERMS OF SECTION 17A(1) OF ACT 58 OF 1959.

MOTHLE J

1. Inquest proceedings are regulated by the Inquests Act 58 of 1959. The purpose of holding an inquest is to investigate the circumstances of death apparently occurring from other than natural causes and where the prosecutor had declined to prosecute. To achieve this purpose, it is necessary for any person who bears knowledge of the circumstances leading to the death and/or the incident of death to avail such information to the court conducting the inquest proceedings.

2. The proceedings today relate to the reopening of the inquest into the death of **Mr AHMED ESSOP TIMOL who died in October 1971**. This Court will welcome any information that will assist these proceedings. Such information may be submitted through the office of the National Director of Public Prosecutions or the family of Mr. Timol

3. It is a matter of record that the incident which gave rise to the current proceedings, occurred on 27 October 1971, at which time Mr Timol died while held in custody by members of the South African Police. The then Attorney General, Johannesburg, declined to prosecute. Consequently an Inquest was held from April to June 1972, before a Regional Court Magistrate in Johannesburg, under case reference no. 2361/71.

4. In essence, the Regional Court Magistrate found and concluded that Mr. Timol had committed suicide and the police are not responsible for his death.

5. The family of Mr Timol has recently approached the National Director of Public Prosecutions with information that was not placed before the Regional Court Magistrate conducting the inquest then. This information was submitted in support of a request to have the 1972 inquest reopened. The NDPP referred the request to the Minister of Justice and Correctional Services for consideration.

6. Section 17A(1) of the Inquests Act 58 of 1959 reads as follows:-

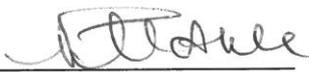
“The Minister may, on the recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court of South Africa to reopen that inquest, whereupon the judge thus designated shall reopen such inquest.”

NB. The words *“the attorney-general”* and *“a provincial division of the Supreme Court of South Africa”* in this section refers to **the National Director of Public Prosecutions** and **a Division of the High Court of South Africa**, respectively, as re-structured and re-named in terms of the provisions of the *Constitution of the Republic of South Africa, 1996*.

7. Acting in terms of this section of the Inquests Act, the Minister directed the request from the NDPP to the Judge President of the Gauteng Division of the High Court of South Africa, who in turn designated me to reopen the Inquest.
8. I have received and considered part of the record of the inquest proceedings before the Regional Court, Johannesburg as well as the recent information supplied to the NDPP. In addition, my attention has been drawn to the intention of the NDPP and the family of Mr Timol to present additional information as evidence during the proceedings.

9. At the end of the proceedings and in terms of section 16 of the Inquest Act, I am required to record a finding upon the inquest as to the identity of the deceased person; the cause or likely cause of death; the date of death and whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person. Should I be unable to record any such finding, I am required to record that fact.
10. Considering the conspectus of the documents submitted thus far, there is no doubt in my mind that during these proceedings we, as South Africans are about to enter a door that will rekindle painful memories. A door that invites us to embark on a journey which will cause all of us to confront the sordid part of our history. That door will only close, once the truth is revealed.
11. I therefore find that there is sufficient cause, in the interest of justice, to reopen the inquest. In terms of section 17A (1) of the Inquests Act 58 of 1959,

**I HEREBY REOPEN THE INQUEST INTO THE DEATH OF
MR. AHMED ESSOP TIMOL.**


**JUDGE S P MOTHLE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA.**

DATE: 26 June 2017

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case number: 2361/ 71

In the matter of:

REOPENED INQUEST: LATE AHMED TIMOL

**OPENING ADDRESS
ON BEHALF OF THE TIMOL FAMILY**

INTRODUCTION

1. My Lord I appear on the behalf of the Timol family with my learned junior, Mr. Musatondwa Musandiwa. We are instructed by Moray Hathorn of Webber Wentzel Attorneys and Naseema Fakir of the Legal Resources Centre and their respective teams.
2. Nearly 46 years ago Ahmed Timol met his untimely death at police headquarters in downtown Johannesburg. The building, then named John Vorster Square, was named after one of the arch-proponents of apartheid. According to the police Timol committed suicide by jumping out the window of room 1026 in the south wing of John Vorster Square. This is a version which was enthusiastically adopted by Magistrate Mr J J L De Villiers in the first inquest.
3. This inquest reopens just over 45 years after the first inquest into the death of Ahmed Timol while in Security Branch custody. The Timol family has called for

this inquest to remedy a great injustice. They hold the firm view that the police fabricated a version to mask the brutal torture of Timol and his likely murder at their hands. They contend further that the court, presided over by Magistrate De Villiers, ignored key forensic evidence in exonerating the police from all wrongdoing. They have had to endure the burden of this official falsehood for 45 years.

4. My Lord, our instructions are to demonstrate to this Honourable Court that the police did indeed manufacture a version to cover up the truth of what happened to Ahmed Timol. We will contend that this cover-up was plainly visible to anyone wishing to acquaint themselves with the facts and the probabilities. We will argue that Magistrate De Villiers, in averting his gaze from the truth, acted disgracefully. He disgraced the legal profession and he disgraced his judicial office. Regrettably, your Lordship, this is not the only example where an apartheid era court has acted in such a manner. Indeed examples abound. The inquest courts in the Steve Biko and Neil Aggett matters are high profile examples where judicial officers readily accepted police versions, even when they smacked of cover-ups.
5. It is not just the legal profession that must hang their collective heads in shame. South Africa has largely abandoned the Timol family and so many other families of victims of apartheid era atrocities. Why did they have to wait 45 years for this day? Why have the promises of our constitutional compact to victims not been met? Why have virtually all the cases from the past been abandoned by the authorities? Why did the Timol family have to move heaven and earth to get this inquest off the ground? In particular, why have the real decision makers behind police atrocities and death squads not have to face justice? Why have pitiful reparations been handed out to apartheid era victims and why have the vast majority been excluded all together from any benefit, simply because they were unable to get see statement taker from the TRC?
6. Haji Yusuf Ahmed Timol and Hawa Timol, Ahmed's parents are not with us today and neither is Ahmed's sister, Ayesha Cajee. Yusuf passed away in 1981, Hawa in 1996 and Ayesha in 2013. They went to their deaths having to

bear a fraudulent official finding that stands as the antithesis to the truth – and the antithesis to justice. That burden must have cut deep into their lives. Ahmed's sister, Zubeida Chothia and brothers, Ismail, Mohammad and Haroon thankfully survive in order to see some justice done. Mohammed Timol himself had to endure torture at the hands of the Security Branch and suffered terribly. He was in detention at the time of Ahmed's death was cruelly prevented from attending his funeral.

7. Ayesha Cajee's son, Imtiaz, has devoted much of his life to keeping the memory of Ahmed Timol alive. He was only 5 years old at the time of Ahmed's death. Yet, Imtiaz has worked tirelessly to ensure that Ahmed's legacy shines brightly. Without his dedication to his late uncle and his resolute tenacity this inquest would not be happening today.
8. M'lord there are others who have made today possible. Yasmin Sooka, former truth commissioner, has stood by the Timol family through thick and thin. She is one of the few that has stood on the side of victims in their struggle for truth and justice. Her voice is inevitably the loudest when it comes to advancing the cause of Apartheid-era victims. The family's investigator, Frank Dutton, painstakingly investigated this case. He is in my view South Africa's leading investigator, and for good reason. His track record speaks for itself. Without his backbreaking investigations this inquest would never have happened. He started his career as a detective in the SAP, and notwithstanding withering opposition from his superiors, he was relentless from day one in his pursuit of evil.
9. M' lord I wish to single out one of our witnesses, Mr. Salim Essop. It was his bravery that made the reopening of this inquest inevitable. You will be hearing his evidence later today. Salim was Ahmed's comrade and was detained with him. He courageously agreed to recount what happened to him on the 10th floor of John Vorster Square. He stood up to the full might of the apartheid security machinery, notwithstanding the most brutal torture. No human being should ever have to endure what he went through. He will be asked to endure that terror again in this Court. He truly is one of South Africa's unsung heroes.

10. I mentioned earlier that the legal profession should hang their heads in collective shame. There were however notable exceptions which I am duty bound to highlight. Indeed, Nelson Mandela, Walter Sisulu, Bram Fischer and others used the law to fight for justice until their incarceration. Legal counsel for the Timol family, Issy Maisels and George Bizos, together with forensic pathologist, Jonathan Gluckman, fought an honourable and noble fight in countless courts. The same can be said of other lawyers who represented Salim and other detainees, such as Ismail Mohamed, Jules Browde, Arthur Chaskalson and Sydney Kentridge. They would have prevailed in courts that upheld the rule of law.

OUTLINE OF THE FAMILY'S SUBMISSIONS

11. In his finding, Magistrate De Villiers casted aspersions on the credibility of Ahmed's mother, stating that he "*only want[s] to say that I do not believe that Mrs Timol was a very honest witness*". On the hand he found that the police officers in question "*impress me more as people who could give the right version.*"¹
12. There is considerable irony in the finding of the Magistrate. This is because, in our submission, the police concocted a clumsy web of lies to cover up their brutal treatment of Timol. In reality Mrs Timol had no reason to lie, whereas the police had every reason to lie. The Magistrate bought this untidy brew of falsehoods hook, line and sinker. It will be our submission that the Magistrate, in his rush to exonerate the police, was unable or unwilling to discern fact from fiction.
13. In order to explain how it was that the bruised and battered body ended up 3m from the edge of the wall of the southern wing of John Vorster Square the police manufactured the following version:

¹ P 34 – 35, Translated finding of Magistrate J J L de Villiers.

- 13.1. Nobody was tortured or harmed. Indeed Timol was treated with “*care and consideration*”. Timol and Essop were both “*valuable assets which they did not want to harm*”.²
 - 13.2. According to the police, Timol who was enjoying a cup of coffee in room 1026, was suddenly prompted to “dive” through the window by the arrival of a mysterious “Mr. X” who announced that one Quinten Jacobsen had been found.³ Apparently, Timol and Jacobsen were deeply involved in a ‘communist conspiracy of sabotage.’ The identity of Mr X could never be revealed because of reasons of “state security”.
 - 13.3. Notwithstanding the best efforts of Sergeant João Rodrigues, the coffee making clerk, who was left alone with Timol, the latter managed to climb out the window and dive or fling himself 10 feet (3m) into the void thereby falling through some shrubs, which account for the multiple injury marks on his body. The body was rapidly removed from the scene.
 - 13.4. Timol committed suicide because it was acknowledged communist party doctrine to commit suicide rather than betray your organisation.
14. It will be demonstrated that the police version is devoid of truth.
- 14.1. Evidence will be led to show that virtually all security detainees who ended up on the notorious 10th floor of John Vorster Square were tortured and abused to various degrees. Particularly brutal torture was meted out to Salim Essop who was detained at the same time as Timol. Salim assisted Ahmed with various tasks, but he was not the “big fish”. He was not a member of the SACP or ANC and never had any communications with handlers on the outside. Timol did. If Essop was brutalised into a coma, within an inch of death, it stands to reason that Timol, the main target, was treated with equal or worse cruelty. Other

² Uitspraak page 1154 second last para; Affidavit Colonel van Wyk para 11; Affidavit Richard Bean para 5

³ Affidavit Joao Rodrigues paragraph 4; Uitspraak page 1156 second para.

witnesses detained on the 10th floor in this time period will provide their accounts of abuse. The expert and medical evidence point damningly to the brutality of his treatment prior to his death.

- 14.2. The prompting for Timol to jump will be exposed as a fabrication. Jacobsen barely knew Timol and was not part of any SACP or ANC structures, let alone spearheading a communist conspiracy of sabotage with Timol. The mysterious Mr. X was most likely a convenient invention of the Security Branch to avoid close scrutiny of the cover up.
- 14.3. The police version of what went down in room 1026 will be exposed as a fanciful story to cover up their crimes. By the time Timol was alleged to have sprung up and dived through the window it is likely he was in a condition similar to that of Essop. Aside from the physical constraints of room 1026 preventing the alleged 'diving', it will be argued that by this stage Timol could barely move, was already immobile, or indeed, was already dead.
- 14.4. The document relied upon by Magistrate De Villiers to back up his "suicide" theory is particularly revealing. The document exhorted communists to commit suicide rather than betraying the party. According to the Magistrate, Timol was involved in distributing it and presumably then must have been familiar with its contents. Part of the heading of the document is the date: February 1972. Its publication date is months after Timol's death. M' Lord this speaks volume as to the rank amateurism of the police cover-up and it speaks volumes about the Magistrate and his state of mind.

CONCLUSION

15. M' Lord, it is indeed a great pity that this inquest takes place when virtually all the police witnesses involved have died. They are not here to answer for themselves and defend their conduct. Their absence denies the family and all

South Africans of real accountability. The family would have much preferred a process in which the thugs behind Timol's death were compelled to account for themselves in open court. We hope that this lapse will galvanize the NPA and SAPS into action and to ensure that other deserving cases have their day in court before more witnesses and perpetrators pass on.

16. Ahmed Timol gave his young life for South Africa's democracy, with its enshrined freedoms. Timol was a selfless man. He sought no riches or advantage for himself. In Timol's death, his family lost a beloved son and brother; his girlfriend, Ruth Longoni, lost a soul mate; his friends and comrades lost a gentle freedom fighter; a man who was always there for them. South Africa lost a visionary young man who could have helped us through our troubled journey. We owe it to his family, friends and comrades to uncover the real truth of what happened to him. But most of all we owe it to Timol himself.

HOWARD VARNEY
MUSATONDWA MUSANDIWA
Counsel for the Timol Family

Chambers, Sandton
26 June 2017