

WEBBERS LETTERHEAD

11 September 2017

The Honourable Mr Justice Mothe
Chambers, High Court of South Africa
Gauteng Division

Dear Judge,

INQUEST INTO THE DEATH OF AHMED ESSOP TIMOL: CASE NO: I01-2017

Please find attached the Timol family's Main Heads of Argument.

While the Main Heads incorporate our Short Heads of argument, presented to you on 24 August 2017, there are some fresh sections that have been inserted to which we draw your attention. These sections are:

- An Outline of the new evidence presented in the reopened proceedings. The purpose of this section is to demonstrate that there is sufficient evidence before your Lordship to reach a decision even though the record on the original inquest is incomplete. In Annex B we supply brief legal argument to buttress this contention.
- We then provide a Brief factual background which is supplemented by a Summary of the evidence led in these proceedings in Annex A.
- The Highlights from the chronology is, in our view, an important section as it points to key events, explains their relevance and connects them to other developments.
- The next 2 sections, Police version and Police version is untenable are largely the same as in our Short Heads, however we draw your attention to a new subsection titled 'The ambivalent evidence of Doctors Schepers, Koch and Kemp', which deals with questions raised by your Lordship in relation to the peculiar roles played by these doctors.
- The next head is a fresh section titled 'Improbabilities in the evidence of Rodrigues' which identifies key aspects of his evidence which in our view are unsustainable. Essentially we submit that, even if the fall did take place in the afternoon, the version of Rodrigues remains untenable.
- The section on the Cover-up is bolstered by an additional 2 subsections dealing with the 'Commissioning of statements by Buys' and 'The unlawful detention of Timol in JVS offices.'
- Under the head 'Moving of Timol and no emergency services summoned' is a new subsection titled 'Conduct consistent with murder', in which we submit that there is an additional ground of liability to hold Rodrigues responsible for murder, namely *dolus eventualis*.
- The final new head is 'The timing issue: when did Timol fall?', which deals with the conflict of evidence between the civilian and police witnesses on the timing of the fall. In this section we urge your Lordship to accept the evidence of the 3 civilians that the fall did occur in the morning and we provide our reasons for making this submission.

- The heads titled 'Probabilities' and 'Recommendations' have been adjusted slightly to incorporate these new sections. Annex C provides short legal argument on the purpose of inquests and the standard of proof.
- At page 29, we deal with the question raised by your Lordship in relation to whether awaiting trial prisoners charged under the Terrorism Act could have been summoned to appear in the Inquest Court. We conclude that this could not have happened unless the Minister consented to such a request. No request was made.

Yours faithfully,

MORAY HATHORN