



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NUMBER: 01/2022

In the matter of

RE-OPENED INQUEST: LATE ABDULLAH HARON

Date of Hearing: 07 November 2022 -17 November 2022 & 24 April 2023

Date of Judgment: 09 October 2023

**THE LAST DAYS IN THE LIFE OF THE IMAM AND ANTI-APARTHEID GUERILLA:
28 MAY TO 27 SEPTEMBER 1969.**

THULARE J

[1] This is the judgment on the re-opened inquest into the death in detention of a political detainee during apartheid South Africa in September 1969. From the 18th of February 1970 a formal inquest was held before Additional Magistrate JSP Kuhn (the magistrate) into the circumstances attending to the death of Abdullah Haron (the Imam). The Inquest was held in Cape Town in the district of the Cape. On 10 March 1970 the magistrate made four findings in terms of section 16 of the Inquest Act, 1959 (Act No. 58 of 1959) (the IA). The findings were:

(a) On the identity of the deceased: Abdullah Haron (also known as Abdulah Haron, Malay male, about 45 years of age, Shopkeeper.

(b) On the date of death: 27th September 1969.

(c) On the cause or likely cause of death: Myocardial Ischemia; a likely contributing cause being a disturbance of the blood clotting mechanism and blood circulating due, in part, to trauma superimposed on a severe narrowing of a coronary artery.

(d) On whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person: A substantial part of the said trauma was caused by an accidental fall down a flight of stone stairs. On the available evidence I am unable to determine how the balance thereof was caused.

[2] For the past 54 years, the Imam's family, friends and comrades in the anti-apartheid struggle never accepted the findings of the magistrate as regards (c) and (d). According to them, the Imam was one of those 'for whom before and after their deaths justice was not only blind but also deaf and dumb' 'to what was being done to those who suffered under and had the courage to oppose a racist regime turned brutal tyrant' [*No one to Blame, In pursuit of Justice in South Africa*, Adv. George Bizos SC, David Philip Publishers, Cape Town, Mayibuye Books, University of the Western Cape, Bellville]. In its introduction, the book quotes two outstanding thinkers of their time in the opening stanza. Milan Kundera said:

"The struggle of man against power is the struggle of memory against forgetting."

President Nelson Mandela when he signed the Promotion of National Unity and Reconciliation Act on 19 July 1995 said:

"We can now deal with our past, establish the truth which has so long been denied us, and lay the basis for genuine reconciliation. Only the truth can put the past to rest."

Simply put, the questions that the family, friends and comrades of the Imam have, in respect of the disputed findings, can be reduced to the following: Was the Imam killed? and if so by who and how?

THE CONTEXT

[3] In 1960 popular opposition to apartheid became more visible. The Pan Africanist Congress (PAC) called protest marches against pass laws including in Langa and Nyanga in Cape Town. In another protest called by the PAC in Sharpeville 69 protesters were gunned down by the police. The government declared a State of Emergency. Some 18 000 people were detained. The Unlawful Organisations Act was passed banning amongst others the PAC and the African National Congress (ANC). The organisations went underground. The Imam worked for the organisations struggling for the liberation of the majority of South Africans. He amongst others served on a fundraising committee which provided money for the legal defence of victims of the security police, which were inherently opponents of colonialism and apartheid. He was appointed the Imam of the Al-Jamia Mosque, Stegman Road, Claremont in 1955. He was a respected Muslim religious leader, a recognized authority on Islamic theology and law and a spiritual guide. He gave sermons and public lectures in which he was critical of apartheid South Africa's racial laws. Amongst others on 7 May 1961 at the Cape Town Drill Hall he described the Group Areas Act as an inhuman, barbaric and un-Islamic law and as a complete negation on the fundamental principles of Islam. He told the audience that the laws were designed to cripple his people educationally, politically and economically and that the people could not accept that type of enslavement. He worked with African anti-apartheid activists in Langa, Nyanga and Gugulethu. He urged Muslims to support Africans in their fight against apartheid. He had contact with anti-apartheid activists like Alex la Guma, Albie Sachs, Prof. Hoffenberg, Robert Sobukwe, and Barney Desai (Desai). It was through Desai that he supported underground activities of the PAC and the ANC. He discovered that police had informers in his congregation. This is how he became known to the Security Branch of the Police. By 1965 he was identified by the Security Branch as a 'security risk'.

[4] He travelled to Mecca in 1966 and together with Ebrahim, Barney Desai's brother, lobbied the Islamic World Council to intercede with their governments against apartheid. He engaged with PAC members in Cairo and addressed a conference attended by members of both the PAC and the ANC. He became involved in recruiting young men to undertake short courses on guerilla training outside South Africa under the auspices of

leaving the country to go on *haj*, a religious pilgrimage to Mecca. He met Canon John Collins who through Christian Action, established a fund from which funds were channelled to the Imam to assist those left poor and destitute through political activities. The Security Branch started to pay intermittent visits to the Imam's home. They also raided the mosque and scrutinized his bank accounts. Desai warned the Imam to leave South Africa. The Imam did not leave immediately. The Imam was arrested by the Security Branch on 28 May 1969, the day of *Milad Un Nabie*, the celebration of the birth of Prophet Muhammad. The Imam was detained for being a political opponent of the apartheid regime. The arrest of the Imam on this date, signified two things. First, that he was sold out by a Muslim. Secondly, that the SB sought to undermine the Imam's stature and his faith.

[5] To sell out, you betray your own benefits. You corrupt your own goodness with a character trait that is temporary, weak and selfish for a quick comfort. You abandon your own principles for reasons of expediency. You trick and deceive your own destiny and legacy. Well aware of this betrayal of the Imam, Muslims, including outside the borders of the Republic, are eagerly awaiting this judgment in the hope that it will set the record straight, not only about the death of the Imam, but about the truth of their faith. During a lifetime of oppression a religious leader, following his faith, stood up and spoke out against injustice and oppression. Not to speak out would have been a refutation of his beliefs, his morals, his principles and his reason for being. For doing that, he was detained by the SB. On the day that he was buried, many Muslims remember that the earth shook, in what in the Cape became known as the Tulbach Tremor. This was a reminder to Muslims that even the natural order had been unbalanced by the unnatural demise of the Imam. A verdict was handed down to his family and the community that no wrong was done and no criminal liability could be attributed. The Muslim community did not forget that the Minister of Police at the time said: "It was not in the interests of the public to know why he was detained." From an Islamic perspective, a great wrong was done. A wife was widowed, children deprived of their father, a family torn apart, a community wounded, a society aggrieved. The apartheid State hid the details of what happened to the Imam. The purpose of this re-opened Inquest must be to go back and

uncover that which had been hidden and to assert that in a constitutional democracy it is very much in the public interest to know the truth. I am mindful of the wound that a family, a religious community, the greater society of South Africa and others around the world have carried for over five decades.

[6] Oppression is described in the Quran as a dark covering cloud. The dictates of truth require that we dispel the cloud of oppression that has hovered over this case and to bring the light because with light we know that truth can begin to be revealed. There is a hadith which reads:

“And say: “Truth has (now) arrived, and Falsehood perished: for Falsehood is (by its nature) bound to perish” [The Holy Qur’an, Bani Israil 17:81].

The context of this hadith is not for me to comment on, but as a principle it is noted that when a society starts to live truthfully, the dark clouds of oppression will dissipate. Truth has the quality of rolling back the darkness little by little. We cannot say Truth has now arrived, but by dismantling falsehoods we can begin to arrive at the truth and, as I stated in my remarks at the start of this Inquest, begin to restore the balance. I am aware that in particular many Muslims are eagerly awaiting this judgment because it would shed light where there had been darkness and set the record straight. If we are serious about social justice we cannot twist and turn away from and deviate from the truth. What is known to be true must be set out. The question that will remain for the families, individuals and for society is: When we have the truth or arrive nearer to the truth, what do we do with it? Truth is powerful and can empower individuals, families and societies. I am humbled to know that from an Islamic perspective, revenge is secondary. A much better path is to continue to counter evil with good. We know that the Imam’s life taught courtesy, kindness, courage, endurance, values and principles. The Imam’s life was one well-lived. It was a display of the virtues and victories of his Islamic faith. This manifested in a humble, courteous and kind man with a trait of excellence in his social, moral, intellectual and political outlook. His disposition was to choose to do what is right even when it was difficult and resulted in excruciating pain to his physical body and led to immeasurable struggles for his family, friends and comrades.

[7] Extra-judicial killings and criminality were the order of the day during the anti-apartheid struggle, especially within the Security Branch of the South African Police. Legislation, including the Terrorism Act, especially the provisions which allowed detention without charge and trial at the instance of the Security Branch without any judicial oversight, became a tool in the hands of the Security Branch to torture and even kill detainees with no consequence management for perpetrators. At the Truth and Reconciliation Commission, a former Commander of the Security Branch, Johannes Velde van der Merwe put it in these words:

“All the powers were to avoid the ANC/SACP achieve their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of the law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts.”

[Truth and Reconciliation Report, Vol 5, Chapter 6, Findings and Conclusions, para 77]

THE 1970 INQUEST

[8] The magistrate was assisted by Prof L Smith. Mr JS Van Graan was the State Prosecutor. Adv. WE Cooper SC, assisted by Adv. BM Kies appeared for Mrs Haron and her then three minor children, instructed by Frank Bernardt & Joffe. The parties agreed that some statements will be admitted into the record without the witnesses being called. The statements of Dr Kossew, Constable P. Erasmus and Warrant Officer Blake were admitted in this way and marked exhibits A to C respectively. Dr Kossew was the District Surgeon for Cape Town who attended to Maitland Police Station (Maitland) on 27 September 1969. Two remarks to be made about his affidavit is that it comprises two paragraphs each followed by a signature. The first is one sentence, which reads:

“This is to certify that the body of a male (whose name was given to me as ABDULA HARON) seen by me at the Maitland Police Station today; that life was extinct.”

There is a place where the District Surgeon was supposed to sign, which remain unsigned. The second paragraph is a certificate that the deponent acknowledged that

he knew and understood the contents of that affidavit which was sworn before Lt. Col, CJF Pienaar, who was Justice of the Peace. It is also unsigned.

[9] Petrus Erasmus was a Constable in the South African Police stationed at the Government Mortuary, Salt River (GMSR) in the district of the Cape. He was the mortuary vehicle driver who fetched the body of the Imam from Maitland and took it to GMSR on 27 September 1969. The body of the Imam was handed to him by Constable Burger. He marked the body DR 2013/69. The body did not sustain any further injuries or lesions whilst under his care. On 28 September 1969 he handed the body over to Warrant Officer Blake. ..Blake acknowledged having received the body of the Imam from Erasmus on the 28th into his care. On the 29th September 1969 Blake identified the body to Dr. T.G. Schwar, who did the postmortem in the presence of Lt. Col. CJF Pienaar.

[10] The affidavit of Major Dirk Kotze Genis (Genis) was marked exhibit D and he also gave oral evidence. He was a member of the South African Police and in the Security Branch in Cape Town. His evidence-in-chief was in the main reading his affidavit into the record. The Imam was known to him the beginning of 1965 and the Imam was considered a security risk. The Imam was arrested on 28 May 1969 in terms of section 6(1) of the Act on Terrorism, 1967 (Act No. 83 of 1967) (the AT) and was detained in Cape Town. On 11 August 1969 the Imam was transferred to Maitland where he was detained until his death on 27 September 1969. The Imam was detained because the police had over the years acquired trustworthy information that the Imam-

(a) had instructions to recruit students who wanted to study overseas and young Muslims who wanted to go to Mecca, and arrange travel amenities and facilities for terrorist training in China.

(b) involved in the continuing activities of the banned PAC organization and the recruitment of its members.

(c) received thousands of rands from overseas through different local banks for unlawful use.

(d) contravened Exchange Control Regulations by taking out thousands of rands out of the Republic of South Africa through unlawful means amongst others for political emigrants outside the country.

(e) visited the Terrorist Headquarters in Cairo and made contact with members of the PAC movement.

(f) held discussions overseas with known terrorists and received their instructions.

(g) continuously made secret contact with terrorists outside the country.

[11] According to Genis the Chief Magistrate of Cape Town visited the Imam in detention a number of times as envisaged in section 6(7) of the AT. It was on 9 June, 23 June, 7 July, 21 July, 4 August, 18 August, 3 September and 17 September 1969. Genis explained the detention treatment of the Imam as follows:

(a) The Imam was kept alone in the cell and only authorized persons had access to him.

(b) After his detention the Imam received his food from the police mess and could order whatever he wanted. Because the Imam was a follower of the Islamic Prophet Muhammad, and had particular eating habits, a few days after detention he was allowed to receive food, fruits and other edibles from his home. The Imam fasted during the day so these were brought in the evening.

(c) The Imam was allowed his Bible, a mat for his prayers, extra blankets, pillow, toiletries, face cloths etc in his cell. He was allowed to regularly take a bath and to shave under supervision and regularly received clean clothes, underwear and sleepwear. Genis had arranged that if the Imam's wife brought him clean clothes they should be received and the dirty clothes were given to her.

(d) The Imam's religious practices, which were Islamic, were respected and he was allowed even during interrogation to do his regular prayers if he asked therefor.

(e) messages from and to his wife and employer were conveyed for example on how the money due to him received whilst in detention were to be used and the necessary powers were signed by the Imam in the police presence.

[12] The Imam appeared as a healthy person to Genis when he was detained. The Imam was arrested by Detective Sergeant Johannes Petrus Francois van Wyk (Spyker)

after Spyker had obtained the authority from an officer with the rank of Luitenant-Colonel. Genis saw the Imam on the day the Imam was arrested, 28 May 1969 at around 10 or 11 in the morning in the offices of the Security Branch in Caledon. After the arrest Spyker went to search the Imam's home. Spyker took the Imam with him. Genis was in the office until around 4:30pm. The Imam was interrogated by Genis and other members of his personnel. These were Spyker, Sergeant van Wyk (van Wyk), Luitenant-Colonel Carel Johannes Preysen Pienaar (Pienaar), Captain Ebanis Jogiemus Johannes Geldenhuys (Geldenhuys), Major Kotze (Kotze) and possibly other members that Genis would not know who it was. Genis and Spyker fulfilled the role of being in charge of the interrogation of the Imam but for all practical purposes Genis was in command of the interrogation.

[13] The Imam was never interrogated for periods longer than 5-6 hours consecutively. The interrogation would start at 8 in the morning until 1 at the break for lunch. Half past 1 or quarter to 2 it will resume and continue until half past 4 or 5 or for as long as it took depending on the particular issue that evening. Sometimes they came as late as 4:30 in the afternoon on duty. There were times when the Imam was interrogated until midnight. Between 28 May and 11 August there were times when almost a week went past without interrogating him. They would in between just go to the cells to ask him how he was doing. Sometimes the Imam stood, but usually elected to sit because his legs were quick to be lame. The Imam got sufficient sleep. Exercise was the responsibility of the Station Commander where the Imam was kept with the specific instruction that he should get sufficient opportunity to do it. According to Genis, the Imam was since his detention in a grievous emotional tension. The Imam realized that he was caught out. What disconcerted the Imam and what the Imam feared, according to Genis, was that it would be revealed that the Imam as a pastor and so-called leader, was, behind his co-religionists, involved with so much unlawful activities and he would consequently lose his prestige if he was arraigned. A terrible worry for the Imam was the welfare of his wife and children. He also feared for the safety of his daughter overseas and was afraid of retaliation from those involved as he knew that he would implicate them during interrogation.

[14] The Imam had made an affidavit in July and the Security branch discovered that that affidavit was full of untruths. After that, the Imam was interrogated from time to time on the contents of the affidavit which in the Security branch's view were false. He was interrogated for them to determine the truth. After July he was interrogated at most for 5 to 6 hours. On the 7th of July Genis was told by the Chief Magistrate that the Imam had complained about a pain in the chest. That is the only complaint that Genis heard about. Genis had on occasion accompanied the magistrate on the magistrate's visits to the Imam. He would wait at the door and the magistrate would go inside the cell alone. Van Wyk had never reported to Genis that the Imam complained. Genis was surprised to learn that the Imam had 27 bruises spread out through his body when the postmortem was conducted.

[15] Genis could not remember if he had interrogated the Imam from 17-19 September. He did not keep a record of the dates and times of the interrogation. According to Genis the Imam was interrogated for the last time in Genis' office on the first floor of Caledon Square Police Station (Caledon) on the evening of 19 September 1969. Genis started work at 4:00pm that day. By that time the Imam had not yet satisfactorily answered some aspects, some untruths in his affidavit. Only Spyker was present. Genis could not remember but it could have been van Wyk who brought the Imam to his office. The Imam stills did not want to tell the truth. The Security Branch wanted the truth. They finished at around 9pm and left the office to take the Imam back to Maitland. The three of them walked through the passage in front of their offices to a wire threaded gate which separated the steps between the floors of the building where their offices were located. That passage had light. Genis unlocked the gate and walked ahead down the stairs. Spyker had to lock the gate. The Imam stayed behind with Spyker.

[16] When Genis reached the bottom of the stairs at the ground floor, he heard a splashing sound behind him. It was too dark to see what happened. What he saw next was the Imam slipping off on the last steps. He first saw the Imam's feet so the Imam must have been slipping on his buttocks according to Genis. The Imam was in the

process of standing up so he helped the Imam up. The Imam told him that he (the Imam) lost his balance and fell. Genis asked the Imam if the Imam was injured, and the Imam answered in the negative, but added that he felt lame out of fright. Genis saw the silhouette of Spyker coming down the stairs as he helped the Imam to stand up. The Imam had long pants, a shirt, long sleeved jersey and shoes. Genis saw no injuries on the Imam. He saw no damage or torn clothes on the Imam. It was dark in the steps at the time of the incident. The steps were made of smooth black clay stone. On the right side of the stairs there was a wooden railing with iron grids. The passage on the ground floor at the end of the stairs had a dull lighting. The incident happened before Genis reached the switch which lightens the area, which was the reason he went ahead of the two. Genis and Spyker took the Imam to Maitland where he was placed back in the cells at around 9:30pm. The Imam appeared normal. If the Imam had complained and needed medical attention, the commanding officer of the Security Branch, Pienaar would have been informed. Genis heard from Pienaar that the Imam had received medical attention before 19 September 1969.

[17] On the morning of 22 and 24 September 1969 on his way to his office in Caledon, Genis visited the Imam. The Imam had no complaints except that on one occasion he complained of a headache and eagerly asked to have two headache pills. Genis arranged for the Imam to get the pills. When he arrived at the cells on the 22nd the Imam was lying in the cell but not asleep. The Imam sat when Genis spoke to him. Genis did not observe anything abnormal. He was with the Imam for about two three minutes between around 7:20 and 7:30. They exchanged greetings. He could not remember whether it was on this day or the 24th where the Imam reported a headache. On the day the Imam reported a headache Genis asked the Constable who opened for him the cell door to ask the Special Matron, Mrs Kruger, for the headache pills. On the 24th the Imam was lying on the bed when he arrived around the same time and also spent around the same time. He could not remember of the Imam stood up. The Imam looked normal. On 26 September 1969 at about 12:20 afternoon Genis and Spyker again went to speak to the Imam in the cells in Maitland. There was something specific that Genis wanted to ask him which he did. They were about 5 minutes with him. He appeared

completely normal and healthy and had no complaints. He asked them to come and fetch them on Monday 29 September 1969 so that he could tell them something. That was the last time that Genis, according to him, saw the Imam alive.

[18] Even before 22 September Genis and Spyker now and then, on days and periods that they did not interrogate the Imam, went up to his cells either individually or together just to find out how he was doing. From 19 to 27 September 1969 the Imam was never taken out of the cells in Maitland for interrogation. A strong case had been built against the Imam and the reason that he was kept for such a long time was because the investigation covered a broad field including out of the borders of the country. Genis learnt about the death of the Imam on the evening of Saturday 27 September 1969 at around 7. He saw the body of the deceased during the day on 28 September 1969 at the Government Mortuary in Salt River. He saw some bruises on the body and limbs of the Imam and the only explanation therefor, he could attribute to the incident on the evening of 19 September 1969 when the Imam tumbled down the stairs. Genis denied that the Security branch had given instructions that the Imam's dirty clothing should not be handed over to his family on 18 September 1969. He did not know that a family member arrived with clean clothes on both the 18th and the 25th September and asked for the dirty clothes, which were fetched on Thursdays as per arrangement, and was told that instructions from the SB was that the dirty clothes should not be given to the family.

[19] Exhibit E and F were the photos of the stairs at Caledon. Pieter Louis Malan's affidavit was handed in as exhibit G. He read it into the record as part of his evidence-in-chief. He was a Captain in the SAP stationed at Maitland as the Station Commander where the Imam was detained on 11 August 1969. The Imam looked healthy at the time. The Imam was detained alone in a cell which had two distinct locks with separate keys. The one key was kept in the safe in the charge office and the other key was in possession of the driver of the patrol van at all times. This was to ensure that there were at least two members of the SAP when the Imam was visited in the cells. The cell was 13' 10"x8 and had two large windows. The cell led to a 50 feet x 26 feet courtyard,

where the Imam was taken daily for half-hour or an hour of exercise. To his knowledge the Imam did not exercise or walk around. The Imam always sought the sunshine and would sit in it.

[20] Malan and personnel at Maitland had no particular interest in the Imam. The Imam was under the Security Branch. It was the SB that arrested and interrogated the Imam. Malan was aware that the SB, from time to time, visited the Imam in the cells. There were entries made on such visits in Maitland records, the Occurrence Book (OB). The State objected to the handing in of the OB, but agreed to provide the dates on which the visits happened and who were all present during those visits. Malan was able to testify, from the records, upon questioning by Cooper SC, that the Imam was removed from Maitland cells on 17 September 1969. It was when Cooper SC questioned the movements of and to the Imam from 11 August until the date of his death. Malan visited the Imam daily during office hours and even after hours. His first visit was normally between 8 and 9 in the morning.

[21] During the whole time that the Imam was in Maitland, he did not eat food that was provided by the State. The instructions from the SB, by Genis to Malan, was that the Imam's family would bring the Imam food in the evening. The Imam only ate in the evenings, and ate only food provided by his family. The Imam was provided with warm water to bath. From the State's provision the Imam used only the mat on which he slept. There was no bed or mattress. There was no bench in this cell. There was a toilet at the corner of the cell. The Imam used his own bedding, clothes and even sleeping clothes. He used his own Bible and his own mat for prayers. The Imam prayed at 9 every morning and the police would let him know when it was time for his prayers. At all times that he visited the Imam, he always found the Imam in bed. The Imam was polite and came to his feet or sat up when he came in. he last saw the Imam alive on the 26th. The Imam did not exercise but sat in the sun outside in the courtyard around that period. Malan could not remember what the Imam did on the 26th.

[22] On 27 September 1969 he again went to visit the Imam. He was accompanied by Sergeant Rademeyer. When they opened the cell door he noticed the Imam lying on his right side on the cell mat. The Imam's right hand was under his head on the pillow and his left hand was tucked in the front in his sleeping trousers. The Imam looked like someone sleeping. He found out that the Imam was seemingly deceased. A Doctor was called who declared the Imam dead. Throughout his visits the Imam had never complained to him that he was assaulted or treated badly by anyone. I was only the personnel at Maitland and members of the Security Branch who were allowed access to the Imam. He was aware that Dr. Gosling, the District Surgeon, had attended to the Imam on 14 September 1969 and that the Dr prescribed treatment for bleeding haemorrhoids. Dr Gosling was the only medical doctor who visited the Imam in the cells. It was the Imam who asked to see the Dr. on that day. According to an entry in Maitland's Occurrence Book the Imam complained of pain on his chest to Warrant Officer Visser on 21 September 1969. The Imam also told Malan about the chest pain on that day at around 9 in the morning. When Malan asked him how serious is the pain and whether the Imam wanted medical attention, the Imam said it was not necessary. Malan reported the chest pain to the SB, either to Genis or Pienaar. There were members of the SB who then came to visit the Imam on that day. On 26 September 1969 the Imam complained to Malan about chest pains. According to Malan, the Imam did not insist that a Dr should be called to see him. Malan informed Genis about this complaint, as Genis was in charge of the investigation.

[23] Arising from the cross-examination of Cooper SC, the evidence of Malan was interrupted as it required him to have access to records in the OB at Maitland. The other witnesses on the facts were called in between. It was the further evidence of Malan that caused that the court recalled Spyker for further testimony. Malan's further testimony revealed that members of the SB on various occasions from 11 August visited the Imam in his cells in Maitland. It was discovered that they did not on all occasions record those visits in the OB. What was recorded indicated that the Imam was booked out twice out of Maitland. This was at 7:50 in the morning on 21 August 1969, and he was brought back at 10 pm on the same date. The second entry was that he was booked out at

7:42am on 17 September 1969 and returned at 9:40pm on 19 September 1969. In both instances he was booked out by Genis. There was no record of who brought the Imam back on 19 September 1969. From 7:42 on 17 September 1969 to 9:40 pm on 19 September 1969 the Imam was not at Maitland.

[24] Malan also indicated that after his return on the 19th, the very next day, the 20th, the Imam reported to Malan the chest pain at 9:45am when Malan went to visit him. When Malan asked the Imam if he wanted to see a Dr. the Imam said he wanted to see a member of the SB. The Imam looked like a person in pain. Even on that day, at exercise time the Imam just sat in the sun. Malan's records indicated that the Imam complained to him twice about chest pains, on the 20th and on the 26th. It was a result of Malan's report of the chest pain on the 20th, to the SB, that Geldenhuys came to visit the Imam. According to Malan, Geldenhuys went to fetch a prescription of pain killers which the Imam regularly drank from that day. The Imam sometimes put his hand on his chest and when Malan asked him where the pain was, the Imam would answer that he had pain on his chest. There were no pain pills given to Imam on the morning of the 20th.

[25] Petrus Jacobus Rademeyer (Rademeyer) was a Sergeant in the SAP and stationed at Maitland. His evidence-in-chief was also in the main a reading of his written statement, marked exhibit I in the record. He went on duty at 12:35 on 11 August 1969 as office sergeant and took over from Sergeant Smit. Smit handed to him a file of the Imam who was detained in terms of the Act on Terrorism. The file dealt with the treatment and oversight over the Imam including in relation to his food which he would receive from his family and that everything should be thoroughly inspected before being handed over. On his first visit to the cells on that day he met the Imam who appeared completely healthy to him. From 11 August until 27 September 1969 when the Imam died, he visited the Imam at the cell every day when he was on duty. At the times that the SB visited the Imam when he was there, he would be with the SB members with the Imam until they left the cells. He could not remember if interrogation happened when he was there at the cells. However, the Imam was never interrogated for five to six hours with him waiting at the cells. In the beginning when the Imam was taken for exercises in

the courtyard, the Imam walked and moved around the courtyard. Later on the Imam did not move around when moved to the courtyard. He would sit or stand in the sun if the sun shined. Rademeyer noted this around the last part of the month of September.

[26] The first time that the Imam complained to him that he felt unwell was on 14 September 1969. The Imam reported blood on his stools and also showed him blood stains on the toilet bowl. Rademeyer immediately telephonically reported to Pienaar. Pienaar instructed Rademeyer to call the district surgeon. He called Dr. Gosling and was later that morning together with Dr. Gosling when Dr. Gosling examined the Imam. Dr Gosling gave a prescription for medication to be collected at Nite-Kem. He sent Constable Burger to collect the medication and Burger returned with a bottle containing Anusol pills, part of which Rademeyer gave to the Imam to use. On a later occasion he found other pills in the office which should be handed to the Imam when requested. Rademeyer gave these pills to the Imam whenever the Imam complained of stomach or chest pains.

[27] On 26 September 1969 the Imam was moved to cells reserved for White people because the cell in which he was detained was being scrubbed and cleaned. The rest of the cells had only one lock. There were only two cells with two locks, the one for Blacks in which the Imam was ordinarily detained, and the one for Whites in which he was temporarily moved on the 26th. On the 26th Rademeyer worked the 1pm to 8pm shift. He was not on duty on the morning of the 26th. In that week he worked night shift until the Wednesday morning and only resumed work the Friday during the day. He did not work that Thursday. The Friday only food was brought for the Imam, not clothes. The family member who brought food and clothes would generally wait for the patrol van to arrive with the other keys so that they could get the dirty clothes on the same day, or if they dropped off the food and clothes, they would collect the dirty clothes the next day. The SAP did not allow the dirty clothes to lie around in the charge office for fear of them getting lost.

[28] On the morning of 27 September 1969 he sent Burger and a student Constable to the cells to take the Imam out for exercise and also return him back to the cell where he was usually detained. The student Constable came to report that the Imam requested pain pills and toilet paper. These were provided. Earlier that morning the Imam had not reported to Rademeyer that he felt sick. Around 9 am Rademeyer went to the cell where the Imam was detained. He only looked through the peeping hole and saw the Imam lying on his side on the mat. The Imam appeared normal. At 10:15 he visited the cell again with Captain Malan. They found that the Imam was deceased. The Imam was later declared dead by a district surgeon. The Imam was courteous and carried himself politely. When Rademeyer visited the cell, most of the time the Imam would be lying or sitting. Rademeyer never saw the Imam do any exercises. The Imam never complained to Rademeyer that he had been assaulted or ill-treated by anyone. The Imam was never visited by any member of the SAP alone. There were still some food of the Imam in the cell on the day of his passing and this included dried fruits, biscuits, sweets etc.

[29] Johannes Hendrik Hanekom Burger (Burger) was a constable in the SAP stationed in Maitland at the time of the detention and death of the Imam. He was the only surviving eye-witness at the reopened inquest. For convenience I will do two separate summaries of his evidence, one at the initial inquest and the other at the re-opened inquest. In 1969 he was one of the patrol van drivers at Maitland. From 11 August to 27 September he saw the Imam many times when he was on duty. He was in possession of the other key to the Imam's cell when he was on duty as the patrol van driver. The Imam only at in the evening at 6:30 and many times when he was on duty, he took the food that the family brought, to the Imam. During the period, he also took the Imam out of the cell for exercise either in the morning or afternoon, sometimes only once and sometimes twice a day. In the beginning during that time the Imam regularly walked around the courtyard. The Imam did not do any physical exercise. But later the Imam did not want to walk and only sat in the sun. There were times when the Imam did not want to leave the cell, and they would only open the cell door for fresh air. It was around the last 14 days that he noticed that the Imam no longer walked around during exercise.

He had told the Imam to at least walk around, to do some breathing-in and out but the Imam was not interested.

[30] On 14 September at 8:20am he took the Imam out of the cell. The Imam called him and showed him blood stains on the toilet bowl. The Imam said the blood came with his stools. Burger made a report to Rademeyer. Later he was sent to Nite-Kem where he received Anusol pills. He personally handed three of these pills to the Imam. The Imam was courteous and discussed a lot of things with him, but never complained to him about any other person or issue. Burger worked night shift for a week, from a Wednesday to the next Wednesday. The Thursday he was not on duty and he started to work the Friday at 2pm, and the next day, the Saturday, the Imam passed on. Burger did not know what happened the Thursday as he was not on duty. He also did not know what had happened the previous Thursday as well. The cell in which the Imam was ordinarily detained was scrubbed and cleaned on 26 September 1969. The Imam spent the Friday night in the cell reserved for Whites. This was procedure followed at least twice a week.

[31] On the morning of the 27th Burger started his shift at 6am. He saw the Imam from before 8 to about 8:30. The Imam stood, as he normally did, when he heard the cell door being opened. The Imam was dressed in his pyjamas and had his ordinary pants on top of his pyjama pants. At about 8:20 Burger returned the Imam back to the cell where he was ordinarily detained, on instructions from Rademeyer. Burger carried the Imam's bedding whilst the Imam carried his clothes, pillow and food. The Imam walked normally. The Imam had no complaints and seemed healthy. That was around exercise time and the Imam stood in front of the cell door and did not move. It was when Burger told the Imam that only five minutes of exercise time was left when the Imam told him that he had stomach pain. He asked the Imam if the Imam wanted to see a medical doctor. The Imam did not want to see a medical doctor but asked for pain pills and toilet paper. Burger sent a student constable to go and fetch the pain pills and the toilet paper at the charge office, whilst he took the Imam back to the cell. He waited for the student constable and when the student constable arrived, Burger handed the pills and toilet

paper to the Imam. He did not know who prescribed the pills but he understood that they had been prescribed by a doctor. The Imam wore his clothes at the time.

[32] The Imam sat with his feet on the toilet bowl, in a position to relieve himself and that is when Burger locked up and left. It was this evidence which caused the prosecutor to suggest to Burger when he testified, that the Imam may have slipped from the toilet bowl and fell and sustained injuries. The Imam was rubbing on his stomach when Burger locked the door. At around 10am Malan came into the charge office. Malan and Rademeyer then left for the cells and Burger remained in the charge office. When the two returned after about 15 minutes, he learned that the Imam died. He then went to the cell where the Imam was detained and saw the Imam lying on the cell mat. He noticed that the Imam was now wearing his sleeping clothes. According to Burger, the Imam at badly at the time that he was in detention. He ate only in the evening and sometimes did not eat at all and would ask Burger to hand over his food to other prisoners.

[33] The then Chief Magistrate of Cape Town, Andries Jacobus Barnard (the CM) did not testify, but his affidavit was handed in as exhibit "K". At the time of the inquest he was already retired, having retired on 31 October 1969. He was informed of the detention of the Imam at the police cells in Cape Town on 30 May 1969. He visited the Imam on 9 June 1969. The Imam had no complaints or requests, and reported that he was well taken care of. The Imam was eager to go home. In his absence on 23 June the Imam was visited by the then Acting Chief Magistrate, Mr J.W. van Greunen, and the Imam did not have any complaints. On 7 July he visited the Imam. During this visit the Imam reported to him about a chest pain. The CM told Genis to call a district surgeon to attend to the Imam. The CM visited the Imam on 21 July and 4 August at Caledon police cells. The Imam had no complaints or requests. On 18 August and 3 September the CM visited the Imam at Maitland. The Imam had no complaints and requests. On 17 September the CM found the Imam at Caledon and visited him. The Imam had no complaints or requests. This was the last time that the CM visited the Imam. The CM was later told that the Imam died in the police cells in Maitland.

[34] Pienaar became the Commanding Officer of the Security Branch, Cape Town, on 1 August 1969. The Imam was already in detention at the Caledon police cells. Pienaar visited the Imam for the first time on 5 August at the Caledon police cells. The Imam appeared healthy, had no complaints, reported that he was well taken care of but that he was eager to go home. In subsequent visits on various occasions the Imam never had complaints. On 14 September he was telephonically informed by Rademeyer from Maitland that the Imam reported blood on his stools. Pienaar immediately arranged that the Imam be seen by a district surgeon. He later got a report that Dr Gosling visited the Imam, found that the Imam suffered from bleeding piles and had prescribed the necessary medication. He may have seen the Imam twice at Caledon before the Imam was moved to Maitland. He also saw the Imam a number of times in Maitland and also saw him in Caledon at the SB offices.

[35] He last saw the Imam alive on 17 September 1969 at the offices of the SB in Caledon. The Imam appeared healthy when he met him. He interrogated the Imam for about 2 and a half hours. It was in the office which at the time was used by what was called Non-Whites. It was the only interrogation that he conducted alone with the Imam. It was in the morning although he could not say the exact times, but it could have ended at around 12:30. The interrogation was about the affidavit that the Imam had made and the investigation that the SB was busy with. The Imam sat on the chair, now and then standing up and also standing right-up. The Imam was tense and very worried about his family and especially his daughter in London. The Imam rubbed his hands and asked what the "Kiemies" in London would do to his daughter now that he had been "caught out". The Imam also wanted to know for how long he was to go to prison as Genis had "caught him out with his lies". The Imam told him that his nerves were up and wanted to be brought before court as he could no longer handle the anxiety. He asked the Imam whether he still bled and the Imam told him that he was aware that it was piles which were caused by anxiety as a result of his detention. The Imam also told him that it was for a number of years that he suffered from bleeding piles. Pienaar did not ask the Imam if he wanted to make another affidavit. After the interview, he handed the Imam to Detective-Sergeant Koen who was a Coloured male, and went to inform Genis that he

was done with the Imam's interrogation. He was aware that Genis did further interrogation, for the SB spoke about the matter, but he was not aware of any further affidavits.

[36] He was informed by Rademeyer on 27 September about the death of the Imam. He went to the cell in Maitland and saw the Imam who appeared dead and was later certified dead by a district surgeon. He caused the body of the Imam to be photographed in the same position that he found it. In the Imam's pocket he found two pills which he established had been given to the Imam by the police. On 28 September he identified the body of the Imam to Dr. Schwar, the State Pathologist. Later he received parts of the intestines and blood specimen from Dr. Schwar which he took for further investigation to the Health Laboratory, adequately sealed. He saw the bruises on the body and limbs of the Imam during the post-mortem investigation, which he personally attended. He spoke to Genis about them and Genis made a report to him. He heard for the first time about the alleged stair fall on the Sunday with the post-mortem. It was during the post-mortem. Genis was at the mortuary. Genis was with Pienaar when the body was identified to Dr Schwar but was not inside when the post-mortem was done.

[37] Pienaar had accompanied the CM when he visited the Imam once in Caledon and had accompanied him several times to Maitland. He was not present when the CM visited the Imam on the 17th September and could not remember whether the CM's visit was before or after the interrogation. A number of people from the press approached Pienaar and wrote articles about the incident. Pienaar had a telephone discussion with a reporter on police matters for the Cape Times, as a result of which there was a news report in the paper on Monday 29 September 1969. Pienaar confirmed having told the reporter that the Imam complained about a pain in his chest and stomach, but denied that he said that happened a fortnight ago as the article read. Pienaar confirmed that he had said that a doctor had examined the Imam and prescribed pills which were to be given to the Imam whenever he asked for them, but claimed that part was from a previous discussion with the reporter. Pienaar could not remember if he told the reporter

that at 11am on 26 September the Imam complained of pain in the chest and was given pills. When asked if he told the reporter that at 8:30am on 27 September the Imam took the pills, Pienaar's answer was that he did not write the article. Pienaar confirmed that the SB kept cut out pieces of articles of interest. The SB did not do a correction of what was reported in that article because the report was not so far wrong. Pienaar did not tell the reporter about the fall at the stairs because he did not see the need for it.

[38] Petrus Jacobus Viviers (Dr. Viviers) was the First District Surgeon in Bellville. His affidavit was marked exhibit M and he read it into the record as his evidence-in-chief. In the last part of June 1969 Geldenhuys and another detective brought the Imam who was a political prisoner, to his surgery. This was in the second half of June 1969. The Imam complained of pain on his left chest cage. Dr. Viviers thoroughly examined the Imam's rib cage but could not find any marks or bruises. He could not, with a clinical examination, determine that there were any injuries to the ribs, pleura or lungs. Dr. Viviers did not keep the notes of his examination of the Imam, which took approximately 30 minutes. The Imam only removed clothes of his upper body for the examination. Dr. Viviers remembered examining a person who was dark in complexion. The doctor's evidence was that it was sometimes difficult to see a bruise on a dark person. It was sometimes difficult to establish a broken rib in an examination, which was sometimes even difficult under X-ray. The injury that the Imam brought to the doctor that day, according to Dr. Viviers, was definitely on the left side. This he could remember because he had used his right hand to press the Imam's ribs, as the Imam stood right in front of him as they faced each other.

[39] Dr. Viviers' suspicion was that the pain arose from the muscles between the ribs, and Dr. Viviers prescribed Analgen SA Tablets as a pain reliever. Dr. Viviers' evidence was that the pills required a prescription, to be issued. It was about ten pills in a bottle. The Imam had appointed in the region of the 5th, 6th or 7th rib on the left more or less around the middle line. The doctor could not remember the exact date on which he examined the Imam. He did not receive any complaints. The doctor was aware that the Imam was a political prisoner and his personal policy was not to extensively question

them. As a result the doctor did not ask him how he got the injury, when the Imam told him that he was injured. There were no symptoms of any heart problems on the Imam at that time. If there were, the doctor would have attended to it. The doctor did not ask the police to bring the Imam back again. On a later date Dr. Viviers gave pain killers to Geldenhuys for use by the Imam. This was after Geldenhuys had indicated to the doctor that the pills were very helpful but were finished. This was about a week to three weeks thereafter. On 28 January 1970 Pienaar showed him a bottle of tablets similar to the one he had given the Imam.

[40] Geldenhuys was a captain in the SB in Cape Town. His statement was entered as exhibit "N" and he read it out in his evidence-in-chief. He had personally interrogated the Imam soon after the Imam's arrest in Caledon but he could not remember the date. That interrogation took about 15 to 20 minutes. Geldenhuys accompanied Genis to take the Imam to the district surgeon in Bellville on 7 July 1969 for a medical examination. He did not remember but he suspects that he found the Imam at Caledon on that day. He could not explain why the Imam was taken to Bellville and not to the district surgeon in Cape Town. The Imam told the district surgeon that he had pain on the left side of his chest. After the examination the district surgeon prescribed pills for the Imam.

[41] Geldenhuys was the officer in charge on the morning of 20 September 1969. He was informed telephonically that the Imam, a prisoner of the SB wanted to talk to Genis, to the SB, because the Imam was not feeling well. Genis was not available so Geldenhuys drove to Maitland to see the Imam in the cells. It was around 11 in the morning. He found the Imam sleeping on his mat and under blankets. The Imam complained of a serious headache and wanted to know of Geldenhuys would give him something for it. The Imam complained of being thirsty and asked for cool drink and ice cream which Geldenhuys provided. The Imam sat up when he was given the cool drink and ice cream. Geldenhuys agreed with counsel that the Imam was a Muslim and possibly he was fasting. The Imam looked pale as he always was according to Geldenhuys. The Imam did not sweat and his skin was dry.

[42] According to Geldenhuys, the district surgeon's surgery were closed on Saturdays. This was the reason why he went to his own home to collect pain pills which a district surgeon had previously prescribed for his own personal use. He took these pills, Voloxines capsules, to Maitland to be given to the Imam to use one every four hours. On the morning of 22 September 1969 he approached the district surgeon in Bellville and asked for pills to be used by the Imam. The district surgeon prescribed pills for the Imam and Geldenhuys took the pills to Maitland for the police to give to the Imam if he asked for them. Geldenhuys last saw the Imam on 20 September 1969.

[43] Spyker was a detective sergeant in the SB in Cape Town. His affidavit was marked exhibit O and he read it into the record as his evidence-in-chief. He knew the Imam from the beginning of 1960. He came to know the Imam because of the active role that the Imam played in the activities of organisations which were opposed to the then system of government in the Republic of South Africa. On 28 May 1969 he personally detained the Imam at Caledon in terms of section 6(1) of the TA. On 11 August he moved the Imam from Caledon to Maitland for further detention. During the Imam's detention in Caledon Spyker was often present during the Imam's interrogation, and kept notes. From 2 July 1969 to 10 July 1969 Spyker had a conversation with the Imam every day. It was in Spyker's office and Spyker wrote out the Imam's statement. The statement was completed on 11 July 1969 and the Imam signed the statement the same day. The statement covered 43 typed pages in which the Imam disclosed all his activities to undermine government.

[44] Genis and Spyker interrogated the Imam again during the day on 19 September 1969 at Caledon. The three left the SB offices at about 9pm. They went through the wire fence gate to the ground floor. Just outside the gate the Imam waited for Spyker to lock the gate. Genis had walked down the stairs. After he locked the gate he and the Imam started walking down the stairs. They walked down the first flight of stairs and came to the corner of the staircase. The Imam apparently missed a step on the stairs and stumbled. The Imam tried to retain his balance but he fell the few last steps downwards. Before Spyker arrived where the Imam was, Genis helped the Imam up whilst Spyker

picked up one of the Imam's shoes. The Imam did not have his shoelaces and his shoes were loose and according to Spyker it was apparently the loose shoes that caused the Imam to miss the step or slide. Spyker did not see any injuries on the Imam and when Genis asked, the Imam answered that he was not injured. The Imam was then taken to Maitland for further detention. On 26 September 1969 at about 12:20 pm Spyker and Genis visited the Imam in his cell in Maitland and spoke to the Imam for about 5 minutes. The Imam was in high spirits and did not have any complaints. That was the last time that Spyker saw the Imam. He learned about the Imam's death the following day. Except the incident of the evening of the 19th September 1969 when the Imam fell down the stairs and possibly sustained light internal bruises or injuries, he was not aware of any injuries or bruises which the Imam sustained during his detention.

[45] D'Arcy Charles Gosling (Dr Gosling) saw the Imam, who was brought to the consulting rooms on 10 July 1969 in Cape Town. The Imam complained of general feelings of discomfort and painful chest. The Imam had localized tenderness over the lower ribs. Dr Gosling was aware that that the Imam had seen a district surgeon three days earlier. He concluded that the Imam had flu-like illness and prescribed a cough mixture. Dr Gosling knew that if a person was badly assaulted he might suffer from general malaise afterwards. Dr Gosling also saw the Imam at 10:15am at Maitland Police cells, at the request of the police on 14 September 1969. The Imam passed blood per rectum. The toilet had not been flushed and Dr Gosling saw that the water closet contained a fair amount of frank blood. According to Dr Gosling the Imam gave a history of this having happened in the past due to piles. The Imam gave Dr no particular history except that he was ill. Dr Gosling prescribed depositories. Dr Gosling revisited the Imam again on 15 September 1969, according to Dr Gosling, to ascertain whether or not the Imam had responded to treatment. According to Dr Gosling, the Imam had improved considerably so that further investigation was not considered necessary. Dr Gosling saw the Imam in the presence of the SB. Dr Gosling did not keep any records. According to Dr Gosling, the Imam's chest pain was unlikely to be due to cardiac ischaemia. The Imam appeared to Dr Gosling to be the nervous type, was a very quiet

type but he smiled. The Imam's pulse was fast but had no particular irregularity. With a flu-like disease the pulse tended to be on the slower side sometimes.

[46] Theodor Gottfried Schwar (Dr Schwar) was the Senior State Pathologist attached to the State Laboratory for Pathology in Cape Town. He was Head of Pathology Services. He conducted the post mortem examination on the body of the Imam on 28 September 1969. The body was identified to him by Pienaar and Blake. The examination was done in the presence of Dr E Slobedman, a pathologist in private practice in Cape Town. Dr Schwar recorded four findings:

- (a) coronary arteriosclerosis,
- (b) pulmonary emboli,
- (c) subplural petechial bleeding and
- (d) bruises on limbs and chest cage.

Dr Schwar found that the death occurred 12 hours or longer before the post-mortem examination. He further found that the cause of death could not be determined only with the post-mortem examination. He found bruises that were visible and discovered others with dissection. Of the visible injuries (marked A), he found those which had a green-yellow appearance and those which appeared red.

[47] The bruises with a green-yellow appearance were (a) on the lateral part of the left upper arm 2x1 cm, (b) on the lateral part of the left thigh 10x2cm, (c) on the right hip 10x9cm, (d) on the posterior superior part of the right thigh 10x5cm, (e) on the posterior part of the right knee 20x8cm, (f) above the left heel 5x2cm (g) scattered over the anterior of the right thigh, 2x2 and 8x3cm, (h) anterior on the right thigh, two parallel running bruises 7cm long with a total width of 2.5 cm, (i) above the medial part of the right knee 7x7 cm, and (j) over the medial part of the right lower leg more or less in its middle 10x8 cm.

The bruises with a red appearance were those scattered over the anterior and antero medial part of the right lower leg (a) 3x2 cm, (b) 4x 1.5cm, (c) 8x2 cm, (d) 1x1 cm and 2x1.5cm as well as those scattered over the anterior and antero medial part of the left

lower leg (f) 2x2 cm, (g) 1x1 cm and (h) 3x3 cm. The dissection of all these bruises showed that they were limited to the subcutaneous tissue.

[48] The injuries observed with dissection (marked B) were bruises in the subcutaneous tissue and haematoma. The bruises in the subcutaneous tissue were (a) over the antero lateral inferior part of the right rib cage 6x8cm with a yellow-brown colouring, (b) as in (a) but on the left side of the rib cage 1.5 x2, 6x1 and 3x3 cm (c) in the wall of the lower abdomen 1.5x1.5cm and (d) on the lateral, inferior part of the left cage 4x4 cm. In the subpleural part of the left rib cage under the bruises he found thin bleeding spread over an area of 8cm in diameter. The 7th rib was broken at its osteochondral connection (cartilage). There was no fresh bleeding in this area. The haematoma (localized bleeding outside of blood vessels) was about 2.5cm in diameter over the lumbosacral area (lower back). The other observations were clots in the deep veins of the calves more or less in the middle of the lower leg, less on the left and more on the right. The veins in the brains showed congestion but otherwise there was nothing abnormal found.

[49] As regards the pleurae and lungs, the right lung showed postural hypostasis (the accumulation of blood in an organ as a result of poor circulation), spread subpleural petechial bleeding (tiny spots of bleeding under the skin) as well as pulmonary emboli in the small veins (a blockage of an artery in the lungs by a substance that has moved from elsewhere in the body through the bloodstream, like a blood clot). As regards the heart and pericardium there was no air embolism (no blood vessel blockage caused by one or more bubbles of air or other gas in the circulatory system. The left circumflex of the coronary artery was constricted up to three quarters by arteriosclerosis (the thickening, hardening and loss of elasticity of the walls of the artery which gradually restricts the blood flow to one's organs and tissues and can lead to severe health risks) over an area of 1cm next to its origin. The myocardium (the middle muscular layer of the heart) appeared normal. The ventricular wall was .5cm thick. There were atheromatous changes of the mitral valve (development of small fatty lumps or plaques inside the arteries which are made of cholesterol, proteins and other substances and can occur over months or years and can narrow or block the blood flow through the arteries. As

regards the large blood veins, the aorta showed mild atherosclerotic changes (a pattern of the disease in which the wall of the artery develops abnormalities called lesions which may lead to narrowing due to the buildup of plaque). As regards intestines and mesenterium, the lower part of the anal canal lumen had little bloodiness. There were no injuries to the mucous membrane or intestinal wall. The blood, liver, kidney and stomach samples were taken for toxicological examination for routine exclusion of poisoning.

[50] Various tissue samples were also taken for histological investigation. The cuts showed the following: kidneys, congestion; lungs, congestion and areas of oedema (build up of fluids in the tissue); liver, mild fatty changes; Adrenal, spleen and brain, normal; heart, capillary veins filled with polymorphonuclear leucocyte (a type of white blood cell which protect the body against infectious organisms); coronary artery, advanced atherosclerosis with serious constriction; thrombus, had appearance of antemortem clotting of blood. The tissues showed the following: red bruises, deeply situated bleeding; green-yellow bruises, deeply situated bleeding; back, deeply situated bleeding; left calve, calcination in artery (hardening of the arteries) and antemortem presence of thrombus (blood clot) and right calve, antemortem presence of thrombus. The discolouring which was spread on the right lateral side of the body of the Imam led Dr Schwar to presume that the body of the Imam lay for some time after death on that side and was possibly found in that position. The samples were handed to Pienaar.

[51] Dr Schwar concluded that there was myocardial ischaemia. This he described as decreased blood flow to the heart muscle because of the condition of the coronary blood vessel, the constriction. This could be caused by greater pressure being put on the heart muscle by for example an increased heart rate or heart function. There was also a second factor, which was the presence of the small pulmonary embolisms whereby one could possibly get spasms of the pulmonary vessels and possibly also of the coronary vessels. The general summary of Dr Schwar's determination was that the myocardial ischaemia was the cause that was precipitated by the emotional state and the small pulmonary embolisms that was present in the lungs. Which one of the two was

the actual precipitating factor he could not determine during the post-mortem. Dr Schwar did not give the cause of death in his report, was that the report was written on the same day that the post-mortem was performed. He and Dr Slobedman were not sure whether the pulmonary emboli in the smaller vessels of the lung were in fact ante or post-mortem clots. The other reason was that he wanted to have a look at the histology of the heart and also of the other organs, in order to exclude any other cause of death which may not have been obvious at the post-mortem examination. The impression that they had at the time of the post-mortem was that especially in the view of the diseased coronary vessel, this may have been the prime cause of blood ante-mortem, that this was a contributing factor.

[52] According to Dr Schwar if the Imam experienced emotional stress for some time, in relation to fears for his daughter who was abroad, and really wanted to be released and was very tense, this could have resulted in an emotional state which normally caused an increased heart rate whereby a person could develop a myocardial ischaemia with a coronary vessel. Because the Imam was not inclined to exercise, the effect would be that blood circulation slowed down, causing the blood to clot, especially in the legs. The injuries to the legs was limited to skin and subcutaneous tissue. There was no scarring of muscles. There was in his opinion no direct link between the superficial injuries and the thrombosis in the deep venal of the calves. There was a broken rib but in that area there was no fresh bleeding present. There was yellow-brown bruising in the subcutaneous tissue in that area. The subcutaneous injuries mainly spread across the legs but there was not a lot of scarring on the arms. He could only say that it was possible that the scars could be caused by the fall down the stairs. He concluded that the rib fracture was already a couple of days, possibly a week old. It could have been sustained during the fall. He found no signs of healing of the rib. If the Imam prayed in a crouched position for longer periods of time that could also cause circulation to slow down.

[53] The fasting of the Imam could have caused a vitamin deficiency and general deterioration, general reduction in resistance etc. The Imam was of average weight for

his size. His nutritional condition appeared normal to Dr Schwar. There was no reason to believe that the Imam was a bleeder or that he was suffering from chronic malnutrition. Some people bruised easier than others, especially where there was for example a vitamin deficiency or abnormality of the blood vessels or of the coagulation mechanism etc. The Imam had multiple bruises. The bruises had two different appearances. The one had a red appearance and the other had a yellow-greenish appearance, which indicated their age was different. The bruises with the yellow-green appearance were older than the ones with a red appearance. It was not possible to determine the exact age of a bruise although their age could more or less be indicated. The yellow-greenish bruise was usually one which was seven days old, perhaps ten days or even older, whereas the red ones would be relatively fresh, maybe two to four days old but it was very difficult to say if they could be older than four days. After a week one usually finds colour changes already. The bruises appeared to have been caused by the application of force or blunt trauma, the exact nature of which could not be established.

[54] The bruises on the right leg and left leg were localized and the histological examination indicated that there was bleeding which one does not find and can attribute to post-mortem discolouring. There was no visible damage to the tissue which could be further investigated with a microscope. It was just a question of tissue without any wounds, but with blood elements. Red blood bodies in the tissue. Haemosiderine was present, which indicated that the wounds were already 20-24 hours or longer in the tissue. The results of the liver, kidney and stomach toxicology tests which were conducted by Frederikus Jacobus van Riet were admitted into the record before the magistrate as exhibit T. No adverse substances were found in the samples. The Public Prosecutor closed the State's case without presenting the results of the tests which were to be done on the samples of the blood and the various tissues which Dr Schwar had handed to Pienaar to take to the laboratory for toxicology and histology investigation. The photo of the staircase was handed in as exhibit E and the magistrate placed on record that the staircase was very slippery, was steep and that a person could easily fall down, especially when there was no light.

[55] The Imam's family wished to have two doctors called as a witnesses, Dr Louis Sternberg and Dr Percy Helman and the magistrate called both. Dr Sternberg read his affidavit, marked exhibit U, into the record. He was a medical practitioner in Cape Town. Dr Sternberg took a personal statement from the Imam and also personally compiled a report arising from a medical examination which he had conducted on the Imam on 23 November 1967 at his surgery in Cape Town. This was in connection with the Imam's application for a policy of life insurance. At his next birthday the Imam was going to turn 44. The Imam did not consume alcohol, did not smoke and was not in the habit of taking sedatives, tranquilisers or drugs for any purpose and did not have a weight change during the past year. The Imam's immediate family did not have any history of a state of health that was not good, although his mother died at 27 years of age and a sister died in infancy. The Imam reported to have been involved in a motor accident at age 5, had sustained head injuries whose nature was unknown. He was treated at a hospital, had a perfect recovery and had no after effects. He did routine yearly check-up and was always normal. The Imam's height was 5 feet 6 inches. The Imam's pulse was normal in character, time and force. The circumference of his chest was 142. He had a healed scar on the scalp from left frontal area.

[56] The Imam had a normal pulse. His blood pressure was 124 systolic mm.Hg and 82 diastolic mm.Hg. His apex beat was normal. His pulse beats per minute were 74 at rest, 98 immediately after ten genuflexions, 74 at two minutes after ten genuflexions and the heart sounded normal before and after exertion. Dr Sternberg was perfectly satisfied from his examination of the respiratory system by stethoscopy and otherwise of the soundness of the heart and the absence of any indication of past or present disease. He had no evidence of disease of the brain, nerves or spinal cord. The Imam was unknown to Dr Sternberg. Dr Sternberg described the medical condition of the Imam as first class fit. The pulse was normal and the response to exercise was normal. There were no signs of narrowing. One cannot dispute narrowing of the artery but Dr Sternberg would not say it was that far, three-quarters.

[57] Dr Helman was a specialist surgeon in practice in Cape Town for 14 years. He read out his statement which was marked exhibit V. He had been a government pathologist for two years in Cape Town before training as a surgeon. He was also a Senior Lecturer in the Department of Surgery at the University of Cape Town and a Consultant Surgeon at Groote Schuur hospital. Dr Helman read the post-mortem report by Dr Schwar. Dr Helman felt that the extensive bruises covering both legs, abdomen, chest and left arm of the Imam probably caused a great deal of pain, suffering and immobility. These bruises, mainly because of immobility, could have resulted in venous thrombosis of the legs. The venous thrombosis of the legs was the source of the pulmonary emboli. One of the common sources of pulmonary emboli is thrombosis in the leg veins. Pulmonary emboli usually occurred about the tenth post-operative or post-injury day. Following bruising there is an increased tendency to clotting of blood due to the increased amount of fibrinogen and the increased platelet thickness. This increased thrombosis state can occur about three to nine days post injury or post operatively.

[58] In a patient with a narrowed coronary artery, like the Imam, it was reasonable to suggest the possibility of a small thrombus forming in the narrowed coronary artery which precipitated an arrhythmia, which may have killed the Imam. Such a thrombus was likely to occur in a patient suffering from soft tissue trauma. Dr Helman said that he did not think that the injuries caused the Imam's death, but that his opinion was that the injuries probably played a part in causing the Imam's death. Dr Helman noted that it was very difficult to come to a definitive conclusion as to the exact cause of death, and agreed with Dr Schwar that the Imam probably died of two basic factors, to wit, the pulmonary emboli and the narrowed coronary artery. The thrombosis of the leg resulted in the emboli in the coronary artery. The thrombosis was based on a combination of soft tissue injury of the leg plus pain and suffering and immobility with the development of the thrombosis.

[59] By immobility Dr Helman meant moving around much less than before, sitting or lying because of the soft tissue injury of his leg. The fracture of the rib can also cause less movement. If a rib is fractured it is very painful, no matter where the rib is fractured.

The pain last for about 3 weeks. When you take a deep breath it hurts. Because you have a fracture and it hurts a lot you do not move about because when you move, you tend to breathe more rapidly and the breathing causes pain so you limit your pain that way. The soft tissue injury and the fractured rib limited movement. Dr Helman also saw the staircase where the Imam allegedly fell. It had eleven steps and was fifty-two inches wide with a depth of 9. All the bruises could not have been caused by the falling down the stairs. When one falls down the stairs it will be on some part of the anatomy usually the buttocks, back or shoulder which will break the fall. He may then fall again in a lighter way. Dr Helman could not fit the bruises on the Imam's body in front, behind, the sides, including chest in falling down the stairs. Maybe individual bruises, but not a combination. Dr Helman found the alleged complaint of the deceased about stomach pain, and not chest pain, very odd. He would have expected the deceased to complain of chest pain if he died from his chest or heart. Having regard to the Imam's height and the width of the staircase, Dr Helman could not see how the Imam could roll down all those stairs, unless he banged himself all the way down. The site of the injuries, their circumferential nature, made it difficult to have been sustained in a fall down the stairs.

[60] In closing the evidence led at the 1970 inquest, there was a photograph marked exhibit H which was handed in. It depicted the position of the body of the Imam in the cell at the moment that it is said he was found dead. The photo is in black and white. The Imam is lying on his right side. His head is on a pillow. The right arm is flexed laying between the face and the pillow. The right leg is also flexed. The left leg is also flexed but extends a little beyond the right leg. The Imam has clothing on. The left arm is extended and appeared to extend underneath the waistline of the trousers. It is unclear whether it ends between the thighs.

THE RE-OPENED INQUEST

[61] Dr. Itumeleng Jacobeth Molefe had a Masters in Forensic Medicine and was a Consultant Specialist in the Division of Forensic Medicine and Toxicology for the Western Cape Department of Health and had been a Specialist since 2012. She

performed autopsies on persons who have died of both natural and unnatural causes that are admitted at the Soul Trigger Forensic Pathology Laboratory. She also taught both undergraduate and post graduate medical, law and biomedical forensic science and also performed research. She had worked as a district surgeon who are now called clinical forensic practitioners. She responded to a request for a senior pathologist to volunteer help on a *pro bono* basis with regard to clarifying specific questions and the interpretation of certain findings pertaining to the report on the post-mortem performed on the Imam. Dr. Molefe received both the post-mortem report, the inquest report, information around a staircase alleged to be where the Imam was injured and an excel document detailing the timelines of the Imam's life which document was largely based on the inquest report as well as a health timeline.

[62] Dr Molefe explained what was given as the cause or likely cause of death of the Imam. She explained that myocardial ischemia was basically lack of blood supply to the heart muscle. Myocardial was heart muscle. Ischemia was reduced or lack of blood supply to a specific part of the body. Myocardial ischemia would mean that there was reduced blood flow or compromised blood flow to the heart muscle. Myocardial ischemia was different from myocardial infraction, which was actually a heart attack. Myocardial ischemia just simple meant that there was reduced blood supply but the heart muscle was essentially still alive and could potentially recover. Myocardial infraction on the other hand was fatal in that that place of the heart muscle cannot recover. With ischemia there was still potential to revive the tissue. The heart muscle was vulnerable tissue, like the brain and it is preferable to have a good amount of blood supply at all times. If the cause of death was stated as myocardial ischemia, then one had to consider that there may be other factors that caused the person to die for myocardial ischemia to be responsible for the terminal cause of death, unlike myocardial infraction which on its own would be able to case the death of a person.

[63] Dr Molefe also explained pulmonary embolism which was found to be originating from a thrombin which had formed in the deep veins of the Imam. Thrombin were blood clots that formed within blood vessels, that is, an artery or vein. It is generally

understood in medicine that a thrombin is formed by a triad. The first of the three is stasis blood, that is, unique blood that is not moving. A typical example would be a situation where a person who is unable to move, like being bed-ridden, because of a stroke or cannot move because of pain. The second component is called a hypercoagulable state. This is when one's body's physiology and the chemical changes that occur in the body are such that one is bound to clotting rather than blood moving freely and not bleeding profusely or forming too much clots. One of the examples that would cause such a hypercoagulable state would be trauma. When there is injury to the body, the body responds in two ways, immediately there would be bleeding, but one's body knows that to protect itself it has to stop the bleeding. So within that day there will be bleeding which would cause the bruising and then the body responds to stop the bruising and then activates this clotting factors within it. Their function is to stop the bruising from progressing uncontrollably. If not well regulated and well balanced in a person who already have stasis, this contributes to the formation of a clot. The third component that one would need for a clot or thrombus to form, is a blood vessel injury. Trauma would still be a typical example. Where there is injury to the body, the blood vessels are exposed. There are blood components, including platelets and some other chemicals that causes the blood to adhere to the blood vessel wall and over time you have cells and factors that are called fibrin which are supposed to help the body to stop bleeding, but unfortunately then attaches to the wall of the blood vessels and over time, over a few days to a week or so, that clot just steadily grows further and ultimately blocks the blood vessel. In that way, stasis increase coagulability or increase propensity to clotting and a blood vessel injury could cause a clot or thrombus.

[64] The heart depends on blood supply of three coronary arteries. There is the left and the right coronary artery. The right coronary artery supplied the right side of the heart and a small part of the bottom of the heart called the apex. The left coronary artery has two main branches. The left main anterior descending coronary artery and another artery that supplied the side of the heart. The arteries form a crown over the heart. One of the two branches goes to the front of the heart and the other goes to the left side. In the Imam's case, there was a compromise of the left circumflex coronary artery, which

is the artery that supplies the left side of the heart. The blood supply of the heart is not as straight forward as one would think. It is generally understood that each artery would supply different parts of the heart, but with time and depending on how well the person exercised and many other factors, there was a sort of sharing of blood supply between the three coronary arteries. This was the way that the body tried to protect itself over time.

[65] The left circumflex coronary artery of the Imam was found to be diseased. The disease was due to arteriosclerosis which was basically the degeneration of the blood vessel, generally primarily caused by high blood pressure. The disease of the left circumflex coronary artery was not complete. It was only 75%. There was still 25% of blood flow through the artery, which meant at least 25% of the lumen of the artery was still open. The left circumflex coronary artery would supply the left lateral aspect of the heart with the rest of the heart essentially being fully supplied by the other blood vessels which did not have any disease. The heart is divided into right and left and in the middle is the septum, the partition. The left circumflex coronary artery may in some people supply the posterior one third of that division of the heart. The medical practitioner looking after the patient would particularly note that that person has blood supply that is dependent on the left circumflex artery. The thrombosis would affect the amount of oxygenation of the blood that supplied the heart.

[66] There was thrombosis of the deep calve veins in the legs of the Imam. There was a finding of pulmonary thromboembolism at the post-mortem. There was a thrombus or a clot in the deep calve veins and something happened and it broke off and travelled to the heart. A thrombus travelled and when it travelled it becomes an embolus. In simple terms, the clot was washed away by and travelled with or in the blood through the vein to the heart. The post-mortem report also indicated that there were fresh clots in the coronary arteries of the heart. The artery did not have a clot of its own. It had narrowed but did not have a clot. The clot referred to was the clot that travelled from the deep veins in the calve to the lungs. A person has blood that supplied the rest of the body, our organs. That blood return in the veins back to the right side of the heart and from

there it goes to the lungs. The whole point of the blood going to the lungs is for it to have fresh oxygen and then it goes back onto the left side of the heart and now supplied the rest of the organs again.

[67] If there is a blood clotting in the lungs, there is a problem because one is not oxygenating the blood that is coming from the veins. You have blood flowing but it has very poor oxygen. That state would contribute to the heart muscle experiencing some form of ischemia. In the case like that of the Imam, where you have blood supply that is not very efficient or at least adequate in its oxygen content or saturation superimposed on a blood vessel that is otherwise narrowed, then you have the risk of myocardial ischemia. If the causes are not corrected, over time there will be myocardial infarction. There was a difference between a cause of death and the mechanism of death. The primary cause of death is the disease or the injury that is responsible for the death. That is, if that disease was not there or if that injury did not occur, the person would not have died. A mechanism of death on the other hand simply referred to how the person died. It said nothing about what the cause was, but simply told which body functions failed towards the moment of death. In the case of the Imam, myocardial ischemia was simply the mechanism of death and did not say anything about the cause of death.

[68] Dr Molefe noted that the Imam was a detainee, and as such a vulnerable person in the field of forensic medicine, as he was a person who did not have the liberty of healthcare that any other individual would be able to have. A person brought to the medical professional for an examination was entitled to a private and confidential examination. Each patient should be treated with respect and part of that lay in the confidence between the patient and the medical practitioner excluding any other interested person, unless it was with the authorization of the patient. There was no justification and no reason whatsoever for the law enforcement officers to be present in the examination room. When it came to the examination of persons who were detained, arrested or convicted, international and local law is that when a medical practitioner interacts with such person the medical practitioner had two responsibilities. The first and primary responsibility is to the patient and it is required that if they find that the detainee

needs medical care, they must report it to the officials, who need not be in the room. The further requirement is that the examination must be documented. The medical practitioner should keep their own records. Dr Molefe expressed concerns in the manner in which the medical practitioners who attended to the Imam executed their duties towards the Imam.

[69] On the 20th September 1969 Geldenhuys provided his own prescription tablets to the Imam. These were, probably Doloxene, which was in the same class as morphine. It worked perfectly for pain except that it had a propensity to depress one's central respiratory drive. In other words, it would be a detriment to give Doloxene to a person who had issues with respiration. The Doloxene given to the Imam, according to Dr Molefe, had the tendency to sedate. A person who was sedated may appear asleep and if you have a person who has something serious going on possibly in the head and possibly in the chest being given Doloxene, which would suppress one's respiratory drive, that person may appear asleep. The Imam was sedated and in severe pain. Doloxene is a scheduled drug. The absolute requirement in a hospital setting is that if it is prescribed, the doctor must instruct the nursing personnel to regularly check on the breathing of the patient and a resuscitation trolley should always be available nearby should that person go into a respiratory or breathing problem. You must be prepared to resuscitate the person otherwise you must incubate that person and connect them to a ventilator if you are not sure and cannot guarantee that a respiration will always be protected. The Imam still complained of the headache by 24 September.

[70] Dr Schwar subsequently wrote a book, *The Forensic ABC in Medical Practice – A Practical Guide*, in collaboration with two others, JD Loubscher and JA Olivier, 1988, wherein he said that the post-mortem of a detainee was unique in that at the subsequent inquest more importance was attached to certain observations than was generally the case. The authors devoted a chapter with three categories of what was deemed death in custody. A political detainee was the third category, following a prisoner awaiting trial and a sentenced prisoner. Dr Molefe compared what Dr Schwar did to the Imam with Dr Schwar's own standard as set out in the book and made

reference to what in the book Dr Schwar said special attention should be paid to, and these were:

- an examination of the body at the scene where the Imam was found, noting special features and also the immediate environment under which the body was found,
- determination of the death interval as it was important to know when exactly in the day did the person pass away,
- there must be a complete and meticulous post-mortem examination,
- there must be determination of the nature and age of the injuries,
- there must be a collection of suitable and adequate specimens for special laboratory examination. That must include testing the blood for alcohol, for drugs and also performing tests like histology
- what is also important is photo documentation.

[71] In his book Dr Schwar explained the reasons for these guidelines as being that the findings of the post-mortem examination will be determined by the circumstances in which the death occurred. In the words of Dr Molefe, the circumstances of the findings of the body cannot be ignored and cannot be divorced from the findings on the body. The evidence was that the Imam was given a prescription drug for the week 20 to 27 September. Dr Molefe said that under those circumstances the testing of the blood for the drugs present including any other prescription medication would be relevant. Whilst there was a photo of the deceased as allegedly found by the police dead in the cells, there was no photographs of the post-mortem injuries. Dr Molefe was critical of the dissection examination of the body of the Imam. According to her it could have been complete and meticulous. The report of Dr Schwar still left the question: How many other subcutaneous bruises were actually on the body and were not reported? Dr Molefe's view of the overall post-mortem examination on the Imam was that it was good in many respects, but unfortunately still lacking.

[72] There should have been the flaying of the skin both on the front and the back of the body to see the extent of the bruises. This would have helped determine whether the bruises he saw were superficial or haematomas. If they were haematomas then one

would have to consider whether the Imam died from the bruises alone as the cause of death. When the body suffered so much trauma there is blood that is released into the soft tissues and what happens is that there is a protein called myoglobin which then goes to the kidneys and blocks the kidneys. The reason that the report is deemed inadequate with reference to bruises actually connects to the histology report. In the histology report Dr Schwar made no attempt whatsoever to see if there was a link between the extent of the bruising and the health of the kidneys and whether or not the bruises caused the kidney injury which, by way of kidney failure, there would have been an increased potassium which would affect the heart which would then cause heart failure. The port-mortem report cannot be accepted as adequate because the bruises could very well have contributed directly to the cause of death. The bruises could be the underlying primary cause of death. Furthermore, Dr Schwar in his evidence concluded that the cause of death was myocardial ischaemia. However he made no mention of the histological or the microscopic appearance of the heart muscle. In other words, he saw narrowing of the left circumflex coronary artery and he simply inferred that there must have been myocardial ischaemia with no evidence whatsoever that indeed, there was myocardial ischaemia. The criticism of Dr Schwar's included the failure to attend the cells and cause adequate photographs of the scene to be taken and to ensure that photographs of the post-mortem examination that he conducted were taken. The reasons, if any, as to why Dr Schwar did not do what he could and should have done are unknown.

[73] Where there was an assault to the body and one had soft tissue injuries, there are two possible mechanisms of death. Mechanism here referred to the physiological abnormality that the body goes through that causes it to die. The two mechanisms in cases of soft tissue trauma like in this case are that there is blood loss. Blood loss in the form of bruises where, if there is a loss of more than at least depending on the health of the deceased, more than 20 percent of the blood volume would significantly debilitate the person that is suffering a soft tissue trauma. The common medical treatment of those people with soft tissue trauma is to make sure that their blood pressure is maintained. The second, which often even the best medical practitioners cannot help, is

the breakdown products of blood that, in the form of myoglobin, goes to the kidneys and they block the kidney tubules such that one has what is called renal failure, kidney failure.

[74] The danger of kidney failure in the setting of soft tissue as we have in the case of the Imam, with the extent that we have, is that the kidney tubules would be blocked. You cannot perfuse kidneys. You cannot eliminate or at least excrete abnormal chemicals from your body and one of the most dangerous ones is potassium. Now the kidneys function is to produce urine and in the urine you would have extra potassium, extra chemicals that the body does not need. If the kidneys stopped functioning the entire body suffers. One of the parts of the body that would suffer would be the heart. Dr Schwar performed the autopsy and released his cause of death as undetermined. He did not have a straight forward cause of death. He had the mechanism of death but it was not sufficient to understand why the Imam died. He correctly took tissue samples for histology and toxicology and went on to examine them. He examined the heart and commented on the presence of coronary atherosclerosis but omitted to specifically comment on the heart muscle itself. The next organ was the kidneys. There was soft tissue trauma and its non-medical explanation. When you have soft tissue trauma you are going to have higher levels of myoglobin. They do not go anywhere else. They go straight to the kidneys and that would cause kidney failure. And with the high potassium as a result of kidney failure your heart would then stop pumping. When Dr Schwar concluded that the mechanism of death was myocardial ischaemia, he ignored the possibility that the heart may have stopped due to a high potassium. Dr Molefe found this rather distasteful and lacking in terms of the quality of Dr Schwar's post-mortem report. This part of investigation is so important that in cases of community assault pathologists would make sure that they sample kidneys even if kidneys are the only organ that they sample, for that very reason. It is important to exclude kidney failure due to myoglobin tubular blockage as a result of soft tissue trauma. It would be deemed negligent for a forensic pathologist to ignore that as a mechanism that has to be proved. Dr Schwar mentioned that the kidneys were congested, but there was no mention of a

myoglobin stain being performed. The injuries on the Imam were significant and they contributed to the cause of death.

[75] Dr Molefe indicated that the colour of one's skin is one of the determining factors of whether one is going to see a bruise or not and that the injuries on the Imam must be understood in the context of what we were able to see. The other factor was sex. Generally females have more subcutaneous fat and bruised easily than men. The third factor is the health condition and medication taken if any. The other factor is the location of the impact on the body. She gave the classic example of the palm of the hand. There may have been points of impact that did not bruise and as such the bruises seen do not necessarily represent the only trauma that was suffered. There is more muscle on the front of the abdomen and it is not easy to bruise there, as well as the heel. It is in this context that the visible injuries on those areas, as well as the lower back, should be understood. There is hard tissue there that support the skin. There was no indication that any of the injuries indicated trauma that was inflicted somewhere else on the body. The bruises on the Imam represented direct trauma.

[76] Dr Molefe classified the injuries into three different colours. The colours of the bruises indicated that when you have, in the same person, bruises of different colours, those bruises cannot possibly have been sustained at the same time. Bruises heal differently in specific individuals and heal differently on different parts of the body, depending on the size of the bruise. Dr Molefe had her doubts on the correctness of the claim that the injury at the heel was as a result of the fall. The back of the heel is quite a tough area to bruise. You need significant falls to cause that bruise, that is, you need a force that is much more significant than a fall as described by the witnesses, to cause that bruise. The abdomen as well had the rectus muscle which require significant impact and force to bruise. Then you have to compare that bruise in respect of age with the other bruises, and they were not of the same age. You have a bruise on the side of the hip and one on the inner part of the thigh. The bruise at the lower back, the haematoma, which could have been caused by the front part of something like a baton. The bruise on the thigh, the tramline bruise could be caused by a rod-like object. When

the object strikes the body skin compresses because that is high energy and blood vessels on either side of that object ruptures and that is what causes the parallel lines. It is the patterns of bruises that are completely different to what would otherwise be caused by the stairs. The bruises cannot be explained by the same mechanism. The stairs do not account even for all the bruises with the same colour. The explanation for the injuries given by the SB was not possible, feasible or even plausible. The stairs were made of stone material. If the injuries were from the stairs, they would have been associated with abrasions, which means the skin would also have been scraped as the Imam slid down the stairs. There was no single abrasion on his body.

[77] Dr Molefe's evidence was that it was generally advisable that when the pathologists conducted a post-mortem examination, that the investigating officer of the case was present at the post-mortem. The reason was that it gave the investigating officer good insight of the case, just as the visit to the crime scene would. The investigating officer would have knowledge of the circumstances under which the deceased had died. Their presence at the autopsy gave them the privilege of understanding the injuries or disease or illnesses that are present and they are then able to direct their investigation with a better insight and understanding of the case. However, in the light of the involvement of Spyker, Genis and Pienaar in that Spyker arrested the Imam and the Imam had been in the SB's custody and they were the ones investigating their own case, Dr Molefe felt that the involvement of the three in the case made the post-mortem complex.

[78] Dr Segaran Ramalu Naidoo is a registered specialist forensic pathologist in independent practice. He qualified in MB ChB; Diploma in Forensic Medicine (CMSA); MMed Forensic Pathology (Natal) and Member of Faculty of Forensic and Legal Medicine (Royal College of Physicians of London). He has 40 years of experience in forensic pathology and nearly 30 of those as a specialist pathologist. For nearly 20 years he was with the Medical School of the University of Natal from Associate Professor to being Head of Department of Forensic Medicine. He was an independent consultant involved in consulting, training and teaching. His consultancy involved injury

analysis, death investigations as well as particularly sexual abuse cases. He was approached by the Imam's family lawyers to provide a medical opinion and analysis broadly of the circumstances and the injuries sustained by the Imam at the time of his death or just before his death. He has approximately 39 years of experience involving the analysis of trauma and injuries, death and reconstruction to context. Over the past year 10 years he has been involved in injury reconstruction analysis and correlation to context and have testified in many courts locally and abroad in relation to forensic pathology and clinical forensic experience. The day before Dr Naidoo's testimony he also visited and examined the staircase where the Imam allegedly fell. He ascended and descended the staircase.

[79] He received the 1970 inquest record, a photograph of the staircase and a photograph of the Imam as he lay when discovered dead in the cell. The record included testimonies of witnesses. He also received four scanned diagrams drawn in reconstruction of the Imam's injuries. Haron Gunn-Salie, who was named after the Imam, prepared life-sized models from cardboard cut outs in description of the injuries sustained by the Imam. The limitations on what he received included that there were no photographs of the injuries and on the body taken at the autopsy. The second was that the original diagrams of Dr Schwar were very faint, barely perceptible and required magnification to try and work out where these injuries actually were. He set about to recreate the images exactly as they were described and referred to in the post-mortem report and inquest. The third limitation was that the histology report of Dr Schwar was regrettably inadequate, of poor detail and it fell short of what should be expected. Histology referred to looking through a microscope at sections of tissue on a glass line taken from the body, and prepare them to a glass line and we look down the microscope to look at what is seen in between the cells, within the cells and in the tissues, in the muscles and in the skin in this case. The shortcoming was that the histology report should describe what is being seen to allow the court as an independent viewer with the expert, if necessary, to arrive at its own conclusion about its findings. In other words subject such a finding to an independent review by the court and its other experts. He had expected detailed descriptions of what was discovered

under the microscope. The histology report talk about things such as congestion and oedema but these are largely within the range of normality and what you will normally find in tissues. If you look at the lungs you generally see congestion and oedema of varying degrees. If you look at the kidneys you will find congestion. The histology report was largely non-contributing to this death investigation. It was unhelpful from a clinical point.

[80] According to Dr Naidoo there was a document missing, and a conflict of interest from Pienaar whose name appeared on the post-mortem report and who provided Dr Schwar with the history of what happened. The missing document is referred to as SAP 180. It is a document that accompanies the body from the scene to the mortuary. It is completed by the investigating officer or an officer providing a history as to what happened to the deceased. It sets out under what circumstances the person was found dead and it is given to the pathologist who uses it to approach the post-mortem enlightened. The context circumstances given to the pathologist guide the pathologist's enquiry into the exploration of the body and guides the testing that he need to do whether biochemical, histological, toxicological or DNA. The SAP 180 is crucial. Without it, it is almost like a person going to a doctor and saying I need you to treat me but did not give the symptoms or did not express what was wrong. The doctor won't know where to begin. You have to begin with a history. There was no record of an investigating officer in the documents. It is apparent that there was no investigating officer and no SAP 180. It was possibly Pienaar who provided DR Schwar with the history as to what happened to the Imam. Pienaar was the head of the security branch of the police. He should not have been the investigating officer. It was a conflict if he was appointed as an investigating officer because an investigating officer has to be an independent person investigating a happening. Especially in this context, a death whilst in custody of the police, should have had an investigating officer who is not from that particular unit or section. The Imam had been in the custody of the security branch. Although he was physically in the premises of the uniformed branch, it was the security branch that held him and was in control of him. It should be a detective that is independent.

[81] According to Dr Naidoo, where there is deprivation of liberty, and the ability to move freely is limited by injuries as the cause of that immobilization, piles are likely to occur. This was moreso if a person had limited and sparse diet and hydration. These together with decreased appetite, lack of mobility can lead to acute episodes of anal fissures from constipation. The prolonged incarceration and continual interrogation, together with constant tension, anxiety and depression of mood, lethargy, despair and distress, would have made grim the prospects of looking forward to movement of daily living activities. If this is considered against the unknown condition of the Imam's hydration, it is not surprising that the Imam would have developed acute haemorrhoids and anal fissures. Any of these conditions or together they frequently bleed. The symptom of bleeding haemorrhoids could be reconciled with the circumstances that the Imam was under.

[82] Dr Naidoo remarked on the 12 bruises with a distribution widely over the lower limbs and trunk, which also had a different colour to others. He noted that they were strikingly larger than the red lesions and they were found on the hip, calves and thighs, these being areas with much dense soft tissue substructure beneath. Dr Schwar's observations were that these bruises involved the subcutaneous tissue. Dr Naidoo said the impact would have transmitted its forces to deep subcutaneous tissue and underlying blood vessels, likely with endothelial injury promoting venous thrombosis. The 8 smaller bruises displaying red colour were on the shins only. They would be superficial lesions as there was a thin layer of tissue between the skin and tibial bones. They would have much less effect than the other bruises on underlying tissue aside from pain and tenderness. The 6 bruises of the lower chest on both sides but predominantly on the left side were fairly large bruises and would be particularly painful and important in their consequence as a result of their locations. The lower chest region had the greater expansion and stretch of the intercostal muscles at each inspiration of breath than the upper chest cage.

[83] The 12 green-yellow bruises together with the multiple bruises of the lower chest wall including the fractured rib were all of significant traumatic physical injury. They had

the foremost and chief damaging effect both upon the debilitation of the deceased as well as the development of venous thrombosis. Compared to the red bruises on the shins. The 12 green-yellow bruises were significant on the lower limbs and large in size. With the larger ones averaging 8-10 cm in maximal diameter and with one being 20cm in maximal diameter. They must be considered of significant size. The total surface area of the bruising was close to 573 square cm. Bodily bruising greater than 50 square centimetres was considered injury of moderate severity and required medical treatment. If 50 was accepted moderate, 573 was tenfold greater and has to be severe. Neglect of medical attention to the same may convert this into serious injury with systemic effects, moreso because there was subcutaneous tissue involvement. Where there was subcutaneous tissue involvement one had to look deeper to check if there was no muscle damage as well. Dr Naidoo did not agree with Dr Schwar that the bruises were not of such a serious nature. Blunt impacts will cause visibly-manifested injury only once the force of impact exceeds the wounding threshold of a particular soft tissue area of the body. Therefore, the 27 separate bruises are the only minimum number of individual impacts if each was caused separately. In usual situations the number of actual impacts of blunt force more often exceed the number of discrete wounds seen.

[84] A force applied to the shins is stopped by the bone. It is very tender, very painful but superficial. The green-yellow bruises are over areas of the body where there was thick and dense soft tissue. The wounds over the back of the calf, over the back of the Achilles heel and over the inside of the thigh and the calf are particularly prone to injure the underlying deep veins and that is particularly painful. When Dr Schwar looked inside the chest and deep beyond the ribs on the inside of the chest cage on the left side he saw the bruising. The bruises on the chest cage were not visible on the outside of the skin but once you lifted the skin you saw them and when you looked inside the chest cage you saw them as well. This is an indication of the severity of the bruises and the depth of their infliction. The inside of the right thigh, the inside of the right calf, the rear of the right thigh, the right knee and the ankle are very significant positions because they have deep soft tissue involvement. They are particularly painful to the point of being disabling. The injury over the ankle is eminently painful. It will immobilize one.

One only manifests injury when there is energy imparted to the tissue. The thighs, the calves and over the shoulders the tight skin is over padded with muscle which diffuses energy so the threshold of injury is higher. The strike or kick to exert and transfer enough energy and force to cause such a bruise, you would have caused the person to lose their balance and to fall. The injuries needed significant and repetitive force like tramping, kicking or stomped upon with booted feet whilst one lay on the ground or against a surface to provide resistance to movement against the limbs, to occur.

[85] The ribs are pliable at each inspiration and expiration. The multiple position of the bruises over the chest suggested that there was significant forces to inflict because the ribs are moveable. They do not transmit force internally. It is the same with the abdominal wall. They do not injure easily. A greater amount of impact force is needed to cause the injuries as that of the Imam on these areas. They are not only painful but also disabling because you can stop movement by lying down or not move your lower limbs but you cannot stop your breathing. All the time breathing, the excursions of the chest continue. The chest cage is the most mobile in its lower portion rather than the upper portion, therefore bruises and fractures are particularly painful because the chest has to expand. Even movement, walking, bending or turning causes pain. Movement caused one to breath at a faster rate so the greater the ventilate for excursion, much more pain you suffer. So one would inhibit oneself from walking, so you try and splint the chest which is difficult to do. The injuries on the ribs, considering their location on the body and the kind of distribution and extent, the highest on the list of potential causes would be blunt force by limbs like by blows from a fist, the knuckles; or also by an instrument. Kicks could also cause such injuries.

[86] The wound over the lower abdomen was in the midline slightly to the right, was small and not seen until dissection. In that particular area of the abdominal wall being a mobile or motile wall, it is a wall that is flexible. If you are sufficiently skinny, you can pull your abdomen in or you can stick your abdomen out. It is very mobile. Any forces that you apply to the abdominal wall do not typically cause bruises, unlike a bruise on the shoulder where it is firmly resistant. Over the abdominal wall it will transfer the force to

the internal organs. The force is defused out into the bowel. That is why you do not frequently sustain injury. If you sustain an injury on that area you may rupture the liver, the spleen the bladder or with a pregnant woman you can cause injury to the foetus. It is transmitted forces. It is not frequent that you get the abdominal wall itself, which is the curtain, to itself bruise unless you are splinting the abdomen and tightening it. It is more likely to bruise if the force is such that it is supplied by a fairly tapered, pointed structure to that area so that it indents the skin to stretch around the focus and bruise, something like a truncheon or police baton with a forward thrust.

[87] The double linear, parallel or tramline bruises over the front of the thigh and rear of the right thigh appear as two wounds that run parallel. They are typically caused by a single broad truncheon, a rod-shaped, unyielding stick. A single strike would cause the double linear. The skin indents and causes a bleeding on either side of the edge of the truncheon. The wound on the left thigh laterally upper front of the right thigh and over the upper back of the right thigh are truncheon possibilities. Any medically trained person would agree that the wounds on the ribs and the limbs would be considered severe in terms of pain intensity. The injury to the heel would have been severely painful and would have caused severe disability and limping. It would not be caused by an ankle caught in a trap or anchored. It would be caused by repetitive impacts of a kind of stomping, grinding, kicking, or tramping.

[88] The fact that the bruises on the chest were not externally visible to the naked eye on the skin may indicate that they were in a state of more advanced healing than the wounds on the lower limbs. According to Dr Naidoo, a yellow-brown bruising in the area of a fractured rib found by Dr Schwar could not be a couple of days or a week old. The yellow-brown tinge persist for weeks and sometimes for months after a fracture. It is more likely that the costochondral junction was much older than Dr Schwar indicated. The advanced healing was also the position with the lower back bruise. A yellow tinge on a bruise is because when blood in a bruise degrades after a while it becomes yellow because of haemosiderin. The red bruises are an indication of fresh or fairly recent bruises. The focused time sequence of the injuries points to separate one, two and

three distinct periods of infliction. The injuries to the Imam are commonly referred to as crush injuries and for instance the ones on the calves deserved to be dissected and take samples and one would have found deep muscular bruising. The injuries were not only severely disabling but were serious in terms of systemic effects.

[89] The injuries would have significant physiological systemic trauma effects particularly upon the kidneys. According to Dr Naidoo, Dr Schwar's histology report on the kidneys was expressed in a single word, congestion. This report was woefully inadequate for Dr Schwar's seniority and capacity as it does not exclude the presence or absence of the subtle manifestations of fine kidney tubular injury. The crushing of the subcutaneous tissue and muscle causes actual muscle fibres, myoglobin fibres, that is strips of muscle to get washed away into the bloodstream and they get filtered in the kidneys and when this happens it can clog up the individual kidney tubules (nephric tubules or nephrons). Kidneys clogged up with this myoglobin then get into renal failure. The kidney filter as well as the tubule go into renal failure. This is likely what happened to the Imam and cannot be excluded as the possible cause of death. This would have been resolved if there was a proper histology performed on the Imam.

[90] None of the injuries exhibited abrasions and that was very significant. With abrasions there would be surface scars days and weeks later and it is impossible for Dr Schwar not to have seen abrasions if they were there. The absence of abrasions was inconsistent with falling down a staircase. Abrasions are a result of frictional impact. There has to be impact but a local friction so their absence is invariable in particular in a fall down a staircase. Dr Naidoo expected abrasions on the shoulders, elbows, sides, sides of the knees and perhaps the hip. The absence of abrasions makes the fall scenario quite remote. The circumferential location of the injuries are entirely inconsistent with falling down the staircase. The spectrum, distribution, pattern, shapes, sizes and extent of the injuries cannot be reconciled with a fall down the staircase. There are no clear and unmistakable wounds to fit a fall down the staircase.

[91] The sole pathological cardiac finding was the narrowing of the circumflex coronary artery. The cardiac histology did not show any myocardial changes. Dr Naidoo said that sudden death from pulmonary embolism usually occurred from a massive embolus or cluster large emboli which occlude the pulmonary inflow sufficient to severely reduce or block lung perfusion and hence the transfer of blood to the heart, causing a sudden drastic reduction in cardiac output with a severe shock state and usually death. Such emboli are readily apparent at autopsy. This was not seen in the Imam's lungs. The pulmonary emboli were seen in the small lung arteries. It is questionable whether the venous thrombosis-pulmonary emboli contributed significantly to the death, if at all. There was usually a trigger event or process that precipitated an ischaemic cardiac event. Precipitating causes were states of increased myocardial demand for oxygenation where there was a rapid heart rate (tachycardia) such as with rigorous physical exertion or a state of great and intense emotional tension, where the demand may exceed the capacity of the reduced blood flow to provide oxygenation required, and ischaemia may occur. This could lead to angina, myocardial infarction or even sudden cardiac death. In the opinion of Dr Naidoo, the death was due to a combination of severe systemic physiological stresses, in particular of the crush injury syndrome precipitated by the complications of blunt tissue injury, with pre-existing coronary artery disease.

[92] Thivash Moodley (Moodley) graduated as an aeronautical engineer and also obtained an honours degree in aeronautical engineering. He has 22 years experience in aeronautical and mechanical engineering projects in the aerospace, defence, maritime, logistics and industrial sectors. The field of aeronautical engineering is around the combination of aerodynamics, inertia and mechanical dynamics that are all moulded together to determine how something would fly in the air. It is to see how you can aerodynamically, mechanically and inertially get bodies to move in the air at different altitudes. He worked predominantly in the modelling and simulation area. It was modelling different bodies travelling through the atmosphere at different speeds and altitudes. The objects differed in type, form, size, shape, material structure and material type. It would be rigid bodies, elastic bodies and morphing bodies around various

activities from both research, commercial and development perspective. It was from fighter jets to different mechanisms that moved that were not aerodynamic in shape, moving in atmosphere and on the ground.

[93] He was the director of TMI Simulation Solutions which was an engineering consultancy company that focused on mathematically modelling any form of movement. They were trajectory specialists for various objects that moved in space to enhance performance, improve the object's operational capabilities and developed strategies on how to effectively use it. He had been involved with other studies and simulations dealing with death in detention, including those involving falls and hangings by suspension. The Imam family lawyers gave him a transcript of the 1970 inquest and invited him to visit both the Maitland Police Station and the Caledon Police Station now called the Central Police Station to establish and get more information around the alleged fall of the Imam and how it took place. He measured up the stairs, use photograph evidence that was in the inquest report and figured out which stairs it was firstly and then drew up those stairs, measured the stairs, measured each step of the stairs, measured heights, measured the depth of the thread, the height of the stairs and used that as a basis with the evidence or the allegations made by Genis and Spyker and tried to figure out what actually transpired on that day. His essential brief was to test the version of the police as to what they claimed happened on that staircase.

[94] The allegations made by Genis and Spyker were used together with the information from the post-mortem and the data gleaned from his inspection at the scene of the alleged fall to perform a technical assessment. He considered Genis' version which was hearing a splashing sound, saw the deceased slid down the last few stairs, the Imam sitting on his buttocks. Genis assisted the Imam to stand and asked the Imam if he was fine and the Imam stating that he was not hurt but just got a fright. Genis stated that the Imam had no signs of physical injury. He also considered Spyker's version which was that the Imam slid down to the bottom stairs, half on his side and on his buttocks. It was the second set of stairs at the bend. The Imam stopped about two or three stairs from

the bottom. The Imam slid from the bend in the stairs when he lost his footing until the second or third step from the bottom.

[95] In his technical analysis of the alleged fall according to the police version, he considered three aspects and that is:

- that the Imam, in losing his footing, lost his balance and may have immediately or descended a step, before falling backwards onto his buttocks and side,
- given that the handrail was close by, he may have free fallen due to gravity in an uncontrolled manner from a standing position onto his side and buttocks and then slid down the stairs or in a controlled manner, while attempting to clutch on the handrail tried to regain his balance and engaged in a controlled fall down the stairs.

He identified two types of falls from desk research analyzing falls down the stairs when a person is descending stairs:

- Fall forward and tumble down the stairs, which is common when mis-stepping as one descends,
- Fall backwards when one slips on stairs and your feet go forward under you.

Falling on stairs was complicated as a person falls a small height from a standing position onto the stairs and then either tumbles or slides down until he/she comes to a standstill or collides with something before stopping.

[96] In most desk research related to people falling down the stairs, there are injuries on the back of the head, neck, shoulders, thoracic, buttocks, calves and the rear ankles. In one research paper by Wyatt JP, Beard D, Busuttil, *Fatal falls down stairs*, Injury, International Journal of the Care of the Aged, a study undertaken at falls between 1992-1997 in Scotland on 51 individuals comprising 27 men and 24 women with a combined age of 68.9 years, the injuries sustained in the following areas caused the death:

Brain/Brainstem injury 35 people, cervical spinal cord injury 8 people, rib fractures with a flail segment 6 people, rib fractures without flail segment or internal injury 3 people, liver injury 2 people and rib fracture with massive haemothorax 1 person. 47 people died from only one of the injuries and only four from a combination of the injuries. In another research 57 individuals who died from a fall involving stairs all had skeletal

trauma near their cranial base and if the fall was more than half the flight of stairs, fractures to their cervical vertebrae. The top three injuries caused by falling down the stairs are bruising as a result of impacting the step which is typically a hard surface, sprain and dislocations typically in the wrists as the instinctive reaction to breaking a fall is to put one's hands out and depending on what the body impacts, the shoulder can sustain dislocation and, head injuries because of the head hitting the stairs.

[97] The Imam weighed 140lb which was 64.4kg and his height was 5ft 5 inch which was 1.7m. The stairs were visited by Moodley alone and also during an inspection in loco. The height and length of each step was the same, with a riser of 145mm and a thread of 280mm. There were 10 steps from the ground floor to the first landing, that is from where the lower level started from which the Imam allegedly slipped and fell. The height of that part from the first landing to the ground floor is 1745mm whilst the length is 2520mm. The step construction incorporates a 2.5 degree inclination to ensure that there is a run-off from the steps where the leading or front edge is slightly lower than the internal corner. To determine the mass of the body segments that allegedly impacted the stairs it is important to determine the mass and length distribution of the different parts of the body. Studies (<https://www.exrx.net/kinesiology/segments>) provide the mass of the body segments as a percentage of a person's overall mass, and similarly the length of the body segment as a percentage of the overall height of a person. The Imam's mass of the body segments was determined using the table as provided in the studies. The determinations were that the head was 8% of the total body mass and weighed 5.152kg, the torso was 47% and weighed 30.268kg, the two arms were 10% and weighed 6.44kg and the two legs were 35% and weighed 22.54kg. This constituted the 100% which was 64.4 kg.

[98] In that way one could estimate the impact velocity or force on the body segments and the mass distribution of the body segments. The length and width proportions of a typical male was considered (Ghasem Karimi, G and Jahanian, O, *Genetic Algorithm Application in Swing Phase Optimization of AK Prosthesis and Passive Dynamics and Biomechanics Considerations*, in Genetic Algorithms in Applications, 2012). The length

of body segments was presented as a percentage of height and the length of the body segments of the Imam were determined. For the head 12% of total height and the length was 0.204m, the torso 39% at 0.663m, the arm 42% at 0.714m, the leg 49% at 0.833m, the bi-acromial (shoulder width) 25% at 0.425m and Bi-iliac (Pelvis width) 19% at 0.323m.

[99] Moodley considered the two possible scenarios on the police version. If the Imam fell backwards the potential energy stored in his different body segments would have converted into a kinetic energy and his buttocks, back and shoulders and neck and head would have hit the edge of the stairs at different impact velocities. The impact velocity at which the buttocks, back and neck or head segments would have impacted the stone stairs could have resulted in injuries like bruising, bone/rib fractures, cervical vertebrae skeletal fractures at point of impact with the stone edges. The first scenario is where the Imam may have attempted to control his fall and landed mostly on his buttocks on the stairs. In a scenario where the Imam landed on his buttocks on the same step where he slipped, it implied that the torso remained vertical and that he fell vertically when impacting the step. This scenario assumes that the buttocks impacted the step before the legs hit the stairs, meaning that the full initial impact velocity and force was located on the buttocks. In order to assess the impact on the buttocks both the potential and kinetic energy of the body must be calculated. Kinetic energy is the energy which a body possesses by virtue of being in motion. Potential energy is stored energy or the energy possessed by a body by virtue of its displacement from another body. The potential energy was calculated with the Imam's upper body mass, that is the total of the mass of the torso plus head plus arms falling from the height of the buttocks, that is the length of the Imam's legs plus one step height. The initial slip, based on the centre of gravity falling 1.1m onto the stair was 401.783 J potential energy. The total potential energy of the Imam's torso, head and arms was converted into kinetic energy in the Imam's buttocks at the point of impact with the step. The buttocks contact with step was 401.783 J kinetic energy. From the kinetic energy, impact velocity could be determined, and this was 3.5m/s or 12km/h. At these speeds there can be injuries sustained to the buttocks.

[100] The second scenario would be that the Imam had no control of his fall and he would have fallen backwards, landing with his buttocks, upper back and shoulders and his neck and/or head all contacting the edge of the stairs. In this scenario, his torso would likely rotate backwards resulting in his back and head impacting on 3 steps edges. This scenario assumes that the back of his torso and head impacted the edge of 3 steps before his legs hit the stairs, meaning that the potential and kinetic energy in all three body segments would differ and the impact velocity of each segment would be different. In this case the buttocks, torso and head are assessed separately as they fell different distances vertically. The centre of gravity for both the torso and the head are assessed at 50% the length of each body part. The potential energy of the buttocks was calculated using half the leg mass and half the torso mass. The potential energy of the torso was calculated using half the torso and arm masses, while the potential energy of the head was assessed using the head mass. The inputs to determine the impact force and the impulse were buttocks with 26.40 kg at step 5 of impact at a height of 15.11mm above step of impact, the torso at 21.57 kg at step 6 of impact at a height of 308.34 mm above step of impact and head at 5.15kg at step 7 of impact at the height of 465.56 above step of impact. The potential energy per segment would be the buttocks at 176.63 J resulting in the impact velocity of 3.658m/s, the torso at 181.29J with impact velocity at 4.099m/s and the head at 57.24J with an impact velocity at 4.714m/s.

[101] Stephanie Kemp (Kemp) was 81 years old when she testified in the re-opened inquest. She passed on before arguments were heard. It was whilst she was a student at the University of Cape Town from 1960 that she was recruited into the African Resistance Movement (ARM). On 11 July 1964 she was arrested on connection with ARM activities. Spyker was the main SB officer responsible for her interrogation. She spent three months in solitary confinement. She was initially held at Caledon for a fairly long time. She was later moved to Worcester Women's prison. Although it was racially segregated, she was kept separate from other white women held for non-political charges. Thereafter she was taken to Maitland. She believed that while several white women had been detained before her, she was the first to be physically tortured whilst

in detention. She was interrogated by Spyker and a Captain Rossouw to whom Spyker reported. One morning at around 2am she was taken by Spyker and Rossouw to a storeroom. It was whilst she was at Caledon. It was only the three of them. They asked her many questions and passed glances between them whose meaning she did not understand. At some point Spyker asked Rossouw to leave the room so that he could be alone with her. Rossouw left the room. Spyker asked her if she knew why he wanted to be alone with her. Because of Spyker's aggressive and brusque manner, she feared for some sort of assault. She could not remember if she responded to his question. She could not remember if he continued to ask further questions, but she remembers that he slapped her face with an open hand. She had long hair. At some stage he grabbed her by her hair and pounded her head on the floor until she lost consciousness. It was an uncarpeted wooden floor. She was unconscious for a sufficiently long period for Spyker to call other officers into the storeroom. When she came to, she was lying with her head and the top of her torso was under a table.

[102] From under the table, she saw about 8 pairs of male shoes in the room. It seemed the officers were called to see her. Rossouw and Spyker brought some paper and a pen and wanted to take a statement from her. The ferocity of the assault was such that at that point in time she was prepared to make a statement about her activities. However her mind was so muddled that she was incoherent and it was not possible for them to get a clear statement. They took her back to her cell and threatened to fetch her again at 5am. She was fearful that the assault would continue that morning, but they only fetched her later. Criminal charges of sabotage were laid against her and during the six weeks in detention she entered into a plea bargain, pleading guilty to being a member of an illegal organization. She was convicted on that plea rather than sabotage and was sentenced to five years imprisonment three of which were suspended. Whilst in prison she filed a civil suit against the Minister of Justice and Spyker for the assault. The case was settled out of court and the State paid a settlement amount without admitting liability. She also testified at the Truth and Reconciliation Commission.

[103] Robert Wilcox (Wilcox) was 85 years old when he testified. He was a qualified bookkeeper and worked as a company consultant until his detention in 1971. He joined the African People's Democratic Union of Southern Africa (APDUSA) which was a national political organization established in 1961 by the Unity Movement of South Africa (UMSA). Its key task was to build the foundations for a revolutionary socialist workers' party which could lead the working class and the landless peasantry in the struggle for socialist democracy. He knew Spyker and his brother as SB members who would patrol the area where he lived with his siblings who were also APDUSA activists. He and his siblings would be stopped on the streets by the two Wyk brothers, searched, questioned and had their home raided a few times. On one occasion the Van Wyk brothers detained a group of APDUSA activists doing pamphlets in Athlone. Andries was older than Spyker but Spyker was superior to Andries in many respects although Andries was cruder and more violent than Spyker. Because Spyker was of a higher rank and more intellectual, Andries acted following Spyker's instructions.

[104] At around 5am on 10 February 1971 the Van Wyk brothers fetched Wilcox from his home which he shared with his wife, a three year old son and a three month old daughter, and took him first to Caledon and at about 11am took him to Pollsmoor Prison (Pollsmoor). He did not know it at the time but he was one of the 14 people detained under the Terrorism Act for APDUSA activities. Other detainees were elsewhere in South Africa. One of the other APDUSA detainees was the late Paranjothie Anthony Pillay (Pillay) who was detained in Natal. Pillay was a candidate attorney in the law firm of his wife, Nathavethem Pillay (Navi Pillay) who subsequently became a High Court Judge and served as the United Nations High Commissioner for Human Rights from 2008 to 2014. On 12 August 1971 Navi Pillay brought an urgent interdict in the Natal Provincial Division to restrain the SB from torturing her husband. Affidavits of ten other political detainees were tendered in support of that application, one of which was by Wilcox wherein he attested to the torture he experienced at the hands of the Spyker and Andries. The police gave an undertaking as a result of which the application was not proceeded with. Wilcox was accused 10 of the 14 and the case went on trial for eight

months in Pietermaritzburg until April 1972 when they were convicted under the Terrorism Act. He was imprisoned on Robben Island for almost eight years. On his release he was banned for three years, during which time he was prohibited from most of social contact. Thereafter he started working in the relatively new field of IT system analysis.

[105] Wilcox submitted his 1971 affidavit and confirmed that it was a reflection of what he experienced. At the time of his arrest, he was not told the reasons for his arrest and detention. He was kept in Pollsmoor until Monday 15 February 1971 when he was taken in the morning to Maitland where he was detained. At about 1pm he was taken to Caledon for interrogation. He was taken to the interrogation room at around 2:30pm. The room was paneled with soundproof tiles. There were at least 6 members of the SB in the room. He recognized five and knew three by name. The three were Spyker, Andries and Grief. Spyker addressed him and told him that the SB were investigating acts of terrorism and that he (Spyker) wanted a full statement from Wilcox of all Wilcox's activities. Spyker warned Wilcox that if he did not co-operate he could be kept in detention for 15 years. Spyker told Wilcox that he should not try to conceal any information as Spyker would certainly make it his business to get everything out of him and it would be useless for Wilcox to refuse as he would only be causing himself hardship. Andries may have interjected then or later using abusive language telling Wilcox that he should talk or else he would be assaulted. Andries told Wilcox "Jy sal kak". Andries threatened to kick him and said by the time he would be released from their custody Wilcox's daughter would be married. He made other threats and used abusive language.

[106] Wilcox made a verbal statement which was transcribed by Spyker. After he had completed his statement, Spyker jumped up and said he had spoken rubbish: "Jy het sommer n' klomp kak gepraat." He told Wilcox that he wanted the truth and the truth he would get. Practically all the SB members present started shouting at Wilcox, calling him a terrorist. He told Spyker that he had a right not to make a statement. Spyker told him that he (Spyker) was not interestd in how Wilcox felt and that Wilcox should talk. He

threatened to detain Wilcox's wife as well. He told Wilcox that he had plenty of time and could keep Wilcox standing for days on end. He told Wilcox that he once kept a communist girl standing on her feet in the same office for seven days and nights and he could do the same. The other SB members were shouting accusations and threatening to assault him. Wilcox maintained his refusal to say anything more. Spyker ordered him to get up from the chair he was sitting on and made him haunch with his back against the wall, his arms folded and held up and not resting on his knees, as if he was sitting on an imaginary chair. Haunching in that position caused extreme physical discomfort and caused muscular pain in the thighs and legs after a short while. Spyker and others shouted at him to talk and he refused. After a while he could not maintain the sitting position and slipped to the floor. He was made to get up and resume the position. He slipped many times and was made to sit again. At one time one of the SB placed his foot in front of his feet to prevent him from slipping. Andries placed his foot forcibly on his legs and held it. He eventually collapsed to the floor. Andries lifted him by the lapels of his jacket and dropped him from an upright standing position to the floor. This was repeated many times. Lifting him by his lapels, Andries also bashed his back against the wall several times. All the time he was told to talk and he refused. Spyker told him it was useless to refuse to talk as they knew all about him as others who had been detained told the SB. Wilcox told asked them why they wanted him to talk if they knew everything.

[107] He was made to stand on two slanting bricks placed at an angle on a third brick flat on the floor. His toes were on the bricks and his ankles in the air. He was already physically exhausted and standing on this position aggravated the muscular pains to the legs. When he could not maintain the position and slipped off he was made to resume. Later he was made to stand on his toes on two bricks one on top of the other. This was a great strain on his neck and also his legs. He still refused to talk and made to hold a brick in each hand with his arms held straight above his head. He was made to run on the spot holding the bricks in that position. When his arms sagged they were pushed up by the SB. He was also made to walk up and down the room still holding the bricks in that position. The SB were crowding around, shouting and swearing at him. It was

impossible to walk without bumping into one of them, which he was accused to do it deliberately and made to apologise. Still with bricks in his hands he was made to step across a chair several times. He was made to run on one spot with the bricks in his hands, to stand on the slanting bricks as well as two on his toes several times. Later he was made to sit on the imaginary chair again. At about 5pm about three young SB members came into the office and watched. One of them buttoned Wilcox shirt and twisted his collar with his hand at the back of Wilcox's head causing him to choke. The various forms of torture as described continued until about 6:30 or 7pm. Wilcox was physically exhausted at the time especially his legs were wracked with pain. Wilcox made a verbal statement to Spyker. Spyker told him that he was not quite satisfied and that Wilcox would be brought back for further interrogation. He also told Wilcox that he would be in detention until around November-December and he was taken back to Maitland.

[108] On Friday 19 March 1971 he was taken to Caledon for further interrogation. Again there were about five or six SB members including the two Van Wyk brothers. He was told that the SB wanted more information from him as well as confirmation of other information the SB had obtained. He was told to talk and veiled threats of assault were made. He made a further statement. That interrogation lasted for about two hours and was in the afternoon. On Tuesday 2 March in the morning Spyker came to Maitland with a coloured member of the SB also a Van Wyk. There was also a White policeman present from Maitland. Spyker was angry and swore at Wilcox that he had lied and withheld information. He threatened to break and finish Wilcox as well as other members of his family. He used abusive language against Wilcox and told Wilcox that Wilcox was far too hard a case. He told Wilcox that he should agree to make a signed statement. He threatened to come and fetch him in a few days to Caledon and told Wilcox "You know what that means". Although Spyker told him that he had detained his wife and that she was making a statement, this turned out to be false. On Friday 12 March Wilcox was taken from Maitland to Caledon. He was placed in a small cell. The following Tuesday he made a statement which was written by Spyker. Later during three or four session a final statement was taken from him which was signed on 24th or 25th

March. He made this statement for fear of further assaults. Although he saw a magistrate every fortnight he did not report the assaults for fear of further assaults. He also did not complain to the police for the same reason. He did not receive food on time whilst detained at Caledon. The police would leave the food standing on the open passage floor for hours and claim to have forgotten the keys to his cell. On a few occasions he did not receive the food at all. He complained regularly about this and this would cease only to re-occur a few days later. Often he would not be allowed to go out for his daily exercise or to have a chance to wash. It once happened for more than a week that he was without exercise and washing at Caledon. The situation improved when he complained to a magistrate. The police would ignore his requests and responded when the magistrate was due to visit him.

[109] Jeremy Patrick Cronin (Cronin) was intellectually drawn to Marxism whilst a student at the University of Cape Town in 1968. He was recruited to do ideological work for the then banned South African Communist Party (SACP). After completing a Master's degree in Philosophy at the Sorbonne in Paris during 1972 and 1973 he returned to Cape Town and continued his underground work in a unit responsible for propaganda work. They produced pamphlets and newsletters for both the SACP and the African National Congress (ANC) which was also a banned organization. The unit also distributed pamphlets and materials through mail and through bucket or pamphlet bombs which were detonated in public spaces and resulted in wide and anonymous distribution. The SACP unit had three members. All three, himself, David Rabkin and Sue Rabkin were detained in July 1976. He was held in solitary confinement at different places and often did not know where he was, but he thought such places included Maitland and Sea Point Police Stations. Every day he was transported to Caledon.

[110] His main interrogators were Spyker and another SB member whose name he could not remember. This other member may have had a fair complexion with blond-red hair and his accent with a German ring to it. Before his detention he had heard of the vicious and cruel ways in which Spyker dealt with political detainees since the 1960s. He considered himself lucky, as his torture by Spyker was primarily psychological. The

SB adopted bad cop/ good cop roles with Spyker always being the bad cop. Spyker was the lead interrogator and interrogated Cronin for many hours at a time. Spyker would make threats against Cronin's late wife, family and friends. When Spyker took breaks, the other man would give Cronin advice as the good cop by suggesting that Cronin cooperate with Spyker in order to avoid what happened to the Imam. He would say things like "You know what happened to Haron", not directly saying that the SB killed the Imam, but strongly implying it. There was a lot of innuendo in Spyker's demeanour. Sometimes he wore what looked like a butcher's coat, made of white fabric with splotches of dark red on it. Cronin did not know whether it was blood, paint or colouring. Other times he would play with an electrode, clearly signaling that Cronin may be tortured with electric shocks.

[111] About a week or so into Cronin's detention he was taken by car to be interrogated at Compol, the SB head office in Pretoria. Spyker was the driver and he drove quite fast and recklessly. The other SB member was the front passenger and Cronin was in the back in leg irons with a third SB member sitting next to him. In between boasting, for Cronin's edification, about how they had dealt with the Imam who was killed whilst in custody in 1969, there was a memorable discussion amongst themselves about Marxism and Leninism. Cronin gathered that the other two were preparing for the security police exam on communism. Spyker, who had just written and scored six out of ten was their coach. They again strongly implied that they had killed the Imam and that Cronin was lucky not to have met the same fate. There was a bit of pushing and shoving with members of the SB, but Cronin was not physically assaulted during his interrogation. Later in 1976 Cronin was convicted under the Terrorism Act on 17 counts of terrorism for each of the 17 acts of production and circulation of 17 illegal editions of underground publications. He spent 7 years in the Pretoria Maximum Security Prison. On his release in 1983, he continued his work towards South Africa's transformation to a democracy, which variously included being part of the establishment of the United Democratic Front (UDF). He participated in the CODESA negotiation process, served as the Deputy General Secretary of the SACP, a member of Parliament, a member of

the National Executive Committee of the ANC and as Deputy Minister of Transport and Public Works respectively.

[112] Yousuf Gabru was a teacher at Salt river High in 1976. The learners at the school were involved in anti-apartheid activities and some of the teachers including himself were also involved and supported the students. He raised funds to pay the bail of learners arrested on criminal charges such as illegal gatherings. On 10 November 1976 he was arrested by Spyker who was accompanied by two other policemen. He was detained under section 6 of the Terrorism Act and held and interrogated at Caledon Square. He was not yet formally a member of the ANC. He was interrogated by Spyker, Andries and two other policemen. Of particular interest for them were two handwritten lists found in his possession. It was a list of Marxist literature and a list of names. The literature list was an inventory of his books which he had left behind in the UK. The list of names were those in detention who needed help with bail and/or other assistance. He was among a group of teachers who assisted arrested learners by providing their names and details to Mr Dullah Omar, who was in legal practice and who would then find attorneys for the learners. This particular list was of adults in detention who needed help with legal representation.

[113] Within a week of his detention he was taken up a staircase to have his photo taken. Spyker and another policeman took him and whilst walking up they spoke about slippery staircases and suicides. At some point the other policeman who was bigger than Gabru pushed Gabru's head over the rail to intimidate and threaten him. It was at that stage that Spyker said "This is where we killed Imam Haron." The SB took turns in interrogating Gabru and the most intensive interrogation took place during the early part of his detention. There was a time when he gave them information but made sure that he spoke about people who were out of the country and out of reach of the police. He was held in solitary confinement. Some days he was interrogated every day and other times there would be a day or two in between. During most of the interrogation there would be more than one policeman present. Usually Spyker sat behind a desk and watched other SB members beat Gabru with fists and knuckles. He was regularly forced

to sit on his knees for hours on end. As a result his knees were swollen and he walked with great difficulty. On one occasion it went on for almost the whole day.

[114] The SB used the good cop/bad cop technique. When they believed that he was co-operating and providing information, there would be one policeman present. The policeman who was the good cop spoke in a reasonable and re-assuring tone and he did not torture Gabru. He claimed to be from South West Africa and spoke with a German accent. After two weeks he was told that he was being released. His belongings were returned to him and an SB member offered him a lift home. He declined the lift. When he was ready to leave, he was taken into a different room where his belongings were removed from him and after a severe beating was further detained. That was the most devastating moment of his detention. Other methods of abuse included trying to force a pork sandwich into his mouth. As a Muslim pork was forbidden foodstuff. Using his Muslim faith against him, he was told that some detainees would be released in time for Christmas but not him. A physical torture was easier to bear than the psychological torture. At the time a number of pamphlet bombs were activated and Spyker and other SB members thought that he was involved. When a pamphlet bomb went off whilst he was in detention they finally realized that he was not responsible for the bombs. Despite their threats not to release him in time for Christmas, he was released on 23 December 1976 and no charges were brought against him. After his release he continued working in the broad field of education as a teacher, a lecturer, and as MEC for Education in the Western Cape Provincial Government.

[115] Shirley Rene Gunn was recruited into Umkhonto we Sizwe (MK), a military wing of the ANC in 1985 and together with her husband formed a unit of MK. She was held in solitary confinement in terms of the Terrorism Act for 112 days from 28 August 1985. She was detained again in mid-1990. She was held in solitary confinement with her baby, named after the Imam. She was interrogated for the whole day by SB members at a building in the Foreshore. The SB members threatened her that Spyker would be called in, in an attempt to force her to divulge information. Political detainees had experienced Spyker's cruelty and he was believed to have driven metal nails under the

nails of those he interrogated and was also associated with the killing of political detainees including the Imam. Whilst making the threats, the SB would say “You know what he did to Imam Haron” or “He killed the Imam” or “he took out the Imam”, insinuating that Spyker would do the same to her. For eight days she was separated from her child, and it was during that time that Spyker, then an old man came. He commanded her to co-operate with the police. After the child was returned, sickly, she was detained in a hospital cell which had no access to medical care. She was released after 64 days without any charges. She thereafter suffered post-traumatic stress disorder and deep depression.

[116] Zainal Makda (nee Hendricks) (Makda) was the Imam’s sister’s daughter and stayed with the Imam’s family over weekends and with her other maternal aunt during the week, until she was married. The Imam travelled a lot both around Cape Town and overseas but she did not know to where. The Imam did a lot of community work. From the age of 13 she worked for Dr Kotwal and saw the Imam bring sick people to the surgery and was aware that Dr. Kotwal did not charge those people, including for circumcision for young boys. The Imam was a healthy person and not sickly. She recalled the Imam’s wife attending surgery for her own medical care but not the Imam. The Imam was involved in politics, which he discussed with Dr Kotwal and she knew because Dr Kotwal would remark to her that the Imam had to put his politics aside. The Imam’s home was busy as meetings were attended there by different people, including Sheikhs and Imams. One day she saw a black man leave the home after the Imam had given him something, and that person was almost immediately arrested near the Imam’s house. The imam’s wife used to wash his clothes that was sent back from the police cells but then at some point his clothes were not returned for washing and ironing. She could not remember how long into his detention that happened.

[117] The Imam’s three children also testified. Fatiema Haron-Masoet was going to turn 7 on 30 September 1969. Her father died three days before her birthday. As a result of her tender age then, she had no sense of the events that unfolded. She gave a good account of what happened to her and especially her mother as well as the rest of her

family after 27 September 1969. As it is to be expected, there is little that she could contribute in relation to what happened to the Imam whilst in detention. In his testimony, the Imam's son, Muhammed Haron, who was 14 years old at the time of the Imam's death, acknowledged that the family had no knowledge of what transpired whilst the Imam was in detention and that they could only imagine what he had undergone based on the reports of others. Of importance in his contribution was that whilst others remained at a distance from the family, Mrs Amina Flowers husband, as well as Yusuf Abdullatief also known as Yusie or Boetie who was the husband to their cousin Kulthum, took the responsibility to deliver the Imam's food prepared at home, whilst the Imam was in detention. He often went along with the hope of seeing his father although he never saw him. He was also present at the ritual cleansing of the body of the Imam on 29 September 1969 and saw the Imam's injuries on his chest, arms and legs which were spread all over.

[118] Shamela Shamis was the Imam's eldest daughter and was 19 in 1969. She knew her father as a person in good health and did not recall him going to hospital or even complaining about any health-related issues. She did not know that her father was involved in anti-apartheid activities. The Imam arranged for her to pursue her studies in London and she travelled through Cairo, Beirut, Mecca, Jeddah and then London. She last saw her father when they met in Mecca. Although she came to know Barney Desai (Desai) in London, she was not aware of his political affiliations or his anti-apartheid activities and only came to know about them when he read them in a book that Desai and Cardiff Marney wrote on the killing of her father. She referred to correspondence between herself and the Imam related to her education funding, between the Imam and Desai related to politics and their involvement in the anti-apartheid struggle for freedom and between the Imam and her mother.

[119] Burger was the only surviving member of the police who testified in the re-opened inquest. He was in retirement at the time of his testimony in the re-opened inquest. He began to work for the police at Maitland in 1963. When he saw the Imam walk out of the cell in 1969, after he had unlocked the padlock, he observed that there was no

enthusiasm in the Imam's walk. He could not remember the dates. He asked the Imam what was wrong and the Imam said that he was tired and wanted to return to the cells. The Imam was rubbing his waist and when he asked the Imam what was wrong the Imam said his stomach was not well. He asked the Imam if the Imam wanted to be taken to the doctor and the Imam said he just wanted the pills previously given to him. Burger sent a student constable to fetch the tablets. He reported this to Rademeyer as the senior and also recorded it in his pocket book as it were the instructions. He had to record everything that the Imam said. The Imam went back to the cell and Burger locked it and went back to the charge office. These were the events of the last day. He then went back on patrol.

[120] About half an hour later he came back and had to come and open the padlock for Malan and Rademeyer. Rademeyer kept the cell door key and Rademeyer opened the door. Burger saw the Imam lying half-stretched. The Imam had passed on. The Imam's death was then reported. When the station commander, who was Malan, the detectives and members of the SB arrived he made way and went back to his duties, which were patrol duties. When he met the Imam, the Imam walked around normally, his posture was fine but he appeared over tired. After a few days Burger was called to the offices of the SB at Caledon to meet Colonel Pienaar and to give a statement. Burger was shown a picture of a bruise of the Imam which was bluish. It was around where the Imam said to Burger that he had pain, on the left more or less where the ribs and the stomach meet. There were no other injuries that Burger was shown. Burger asked Pienaar where the Imam sustained injuries and Pienaar insisted that the injuries were sustained by the Imam whilst the Imam was held in Maitland. The Imam did not fall in Maitland, Maitland only had low four steps going to the cells. If the Imam fell in Maitland at the cells, the Imam would have fallen on his knees as he would have fallen forward. The alleged fall at Caledon was never mentioned when Burger made his statement in 1969. The fall was alleged at Maitland at that time,

[121] No one, even during the first inquest, asked Burger about the mental health of the Imam according to his observation. According to Burger, as time went by, the Imam was

not the same person as he first met him as regards his mood. The days leading up to the Imam's death, the Imam looked tired, his mood and his movements had changed. He never saw who took the Imam away but he knew the Imam was taken away from the cells. He worked a 2 to 10 evening shift and he wanted to know to whom he should hand over the key to the Imam's cell and learned, at around 8 or 9 in the evening that the Imam was taken away. All that he heard as the reason for the Imam's detention was that the Imam collected or raised money for terrorist training. Burger became emotional and was crying when he indicated that for years he had been walking around with what he had to say. He had in the meantime met the Imam's family and also visited their home. He had also showed the Imam's grandson around where the Imam had been, including the Caledon, the alleged stairs, Maitland and the cells including the stairs at Maitland. The grandson made a video of that experience. Burger was shown the post-mortem report of the Imam by the new investigating officer for the re-opened inquest, and in their conversation, Burger told the investigating officer, Colonel Peterson, the injuries that he saw on the Imam. Burger told Peterson that the Imam was tortured. He told the court that in those times, it was better to keep quiet. If he had an intimate discussion with the Imam, Spyker would have confronted both him and the Imam about what they discussed. Burger told the court that the context of the period was that he was a young man in the police and there was what they called terrorism. Limped mines were going off, there were riots at the schools and at the University of Cape Town and at the church, tyres were being burned.

[122] High ranking officers visited the Imam in the cells. None of them made any entry that the Imam could not walk or that the Imam was injured, in the occurrence book. Burger had made that entry in his pocket book. He had been unable to find his pocket book, which was handed back to the State once it was full. Who was he as Burger supposed to tell? He as Burger fought against the anti-apartheid revolution not only internally but also at the borders, including in Namibia and Angola. One of the things he had to do to protect the State from the threats at the time, was to be silent. He came into the police and came to know that there were things that you never spoke about. One of them was that you did not speak to or about the SB. It was taboo. He stood by

the instructions to him. The SB did their job and he also did his. He attended to criminal activities, not with politics. He did not speak to SB members. It was dangerous. His feelings later caused him to make contact and interact with the Imam's family to help them establish the truth of what happened to the Imam. He was not directly involved to cause the injuries to the Imam.

[123] Burger respected the Imam as a spiritual leader. As a result he organized labourers to clean the Imam's cell and did not allow that the Imam, like other detainees, should clean his own cell. He saw the injuries of the Imam, according to him only in 2022 and realized that the SB acted in such a way that the lesser the number of people knowing about the Imam's injuries, the better it was for the SB. If the Imam was not well, it was best according to them to keep him away from other people. The SB was independent. They took a person away when they wanted to, and returned that person back to the cells when they wanted to. He saw that the Imam walked slowly and dragged his feet, and the posture was like the Imam was stooping. He did not see the injuries as the Imam had clothes on. He understood that the Imam was injured because of whatever was done to him. At the time Maitland police took those in custody who needed medical attention to Woodstock Hospital. The Imam was not taken to Hospital to his knowledge. In his experience, a man who was as calm as the Imam would not make it necessary for him as a police officer to be inside the consulting room when the doctor saw the patient. It would be with unruly detainees that the doctor would ask for the police to be present in the room. Otherwise the police would sometimes be present if the person was deemed a flight risk. He was present when the body of the Imam was handed over to Erasmus and it was on a stretcher and covered in clothes. Some of the bruises he saw on the post-mortem report and on the diagram depicting the Imam, looked like those he suffered when he played rugby as a result of being kicked, stamped on, punched and in also when he was in a motor collision or when he was involved in fighting. The bruises were a result of violence. The position in the police at the time was that the lesser you knew about others the better for your soul and your person.

[124] In her research co-authored by Don Foster and Dennis Davis, reported in the book titled *Detention and Torture in South Africa*, published by David Phillip Publisher in 1987, Diane Sandler, who also testified in the re-opened inquest, reported on her findings. She was a university student from 1979 to 1981 and many of her friends were active in the anti-apartheid movement. Many of them when arrested, were detained in solitary confinement often for long periods of time without any charges brought against them. They were detained as political detainees as they were detained for their political activism against the apartheid state. In 1981 she did a research paper on the effects of solitary confinement with reference to South African political detainees. From the research interviews, discussions she had with friends after their release from detention and from the reports that Detainees' Parents Support Committee (DPSC) received nationally post their detention, a picture emerged of systematic torture of political detainees that time. In 1982 she conducted further research involving 158 former political detainees who collectively had been detained 176 times between the period 1974 and 1984.

[125] The study concluded that in relation to general conditions of detention, torture was widely and systematically used throughout South Africa by the members of the security police and that the activities of the security police were veiled in secrecy. The majority of respondents were subjected to harassment in one form or another even before the detention itself. The process of detention from arrest, confinement to interrogation were harsh. It included isolation from support groups, the threatening attitude of authorities, the unpredictability and uncertainty of the situation. Fears and anxieties about possible serious political charges, prolonged detention, physical abuse and being coerced to turn state witness compounded the mental fragility of the detainees. The findings included physical torture which included beatings, forced standing, maintaining abnormal body positions, forced gym exercise, bag over head, electric shocks, food deprivation, strangulation, suspension, cold water, water deprivation, application of cigarettes/chemicals, bright lights, excess cold, excess heat, walking barefoot over glass/stones and other. Psychological torture found included false accusations, solitary confinement, verbal abuse, threatened violence, good/bad interrogators, given

misleading information, witness or knowledge of others' torture, threatened with execution of self or family, offering rewards, forced to undress, constant interrogation, blindfolded, sleep deprivation, threatened with prolonged detention, sham executions, administration of drugs, excrement abuse, use of animals and other. The overall conclusion was that torture was quite a widespread and common practice in South African detention. 11 of the 31 Cape Town based political detainees who had been interviewed, mentioned that Spyker had a hand in their torture.

THE LAW

[126] Section 17A of the IA reads as follows:

“17A Re-opening of inquest

(1) 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 to designate any judge of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.

(2) An inquest referred to in subsection (1) shall, subject to the provisions of this Act, as far as possible be continued and disposed of by the judge so designated on the existing record of the proceedings, and the provisions of section 17 (2) shall, in so far as they are not contrary to the provisions of this section, apply mutatis mutandis to such an inquest.

(3) A judge holding an inquest that has been re-opened in terms of this section-

(a) may cause any person who has already given evidence at the inquest to be subpoenaed to give further evidence;

(b) shall record any finding that differs from a finding referred to in section 16 (2), as well as the respect in which it differs; and

(c) shall cause the record of the proceedings to be submitted to the attorney-general concerned.

[S. 17A inserted by s. 1 of Act 145 of 1992.]”

Section 16 (2) of the IA reads as follows:

“16 Finding

(2) The judicial officer holding an inquest shall record a finding upon the inquest-

(a) as to the identity of the deceased person;

- (b) as to the cause or likely cause of death;
- (c) as to the date of death;
- (d) as to 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.”

Section 17 of the IA provides:

“17 Submission of record to attorney-general

(1) Upon the determination of an inquest the judicial officer who held the inquest shall-

(b) if he has in terms of section 16 (2) (d) recorded a finding upon the inquest that the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person; or

(c) ...

cause the record of the proceedings to be submitted to such attorney-general.”

ANALYSIS

[127] The Imam had the left chest cage pain from the last half of June 1969 and had to be taken to Dr Viviers. The Imam told the doctor that he was injured. The doctor did not ask him how he sustained the injury. Dr Molefe had issues with the ethical conduct of Dr Viviers hereon. Doctors ask targeted questions and their further examination is guided by the answers that the patient gives. The doctor’s personal policy is irrelevant. The objective of seeing a doctor is to get medication for pain. A doctor’s role is to probe and investigate complaints to find the cause behind it and appropriate questions have to be asked. A systematic enquiry is done as to the source and the nature and background of the pain to determine if it correlated with the incidence that had occurred, if any, so that appropriate feedback can be prescribed in the form of medical care and medicine to be administered. History-taking and exploration of symptoms is a crucial and integral part of examination and eliciting findings and arriving at a conclusion. From a medical point of view, Dr Viviers was negligent. Dr Viviers confirmed that the nature of the injury was such that it was possible that the Imam was assaulted. This was the pain on the left rib cage more towards the middle. Dr Viviers prescribed Analgen SA tablets as pain killers. Dr Viviers excluded heart problems as the source of the pain as there were no such symptoms. The injuries to the ribs, at least those on the left of the rib cage were

sustained before, on or about the last half of the month of June 1969. These injuries were the reason the Imam complained to the SB and had to be taken to Dr Viviers around the last half of the month of June 1969.

[128] It is worrisome that Dr Viviers prescribed other medication to the Imam without seeing the Imam, on a different occasion. The medication was given to Geldenhuys. The evidence of Dr. Viviers demonstrated a troubling relationship between the police and the office of the district surgeon. On the advice of the SB, the district surgeon could issue prescriptions for a political prisoner or even give out such medication within the district surgeon's own available stock, without an examination of that prisoner and without even seeing the prisoner. From the evidence of Dr. Viviers and the alleged conduct of Geldenhuys, it is clear that the chest pain did not heal and caused Geldenhys to seek further issue of the medication for the chest pains. The chest pain did not go away because the Imam complained to the Chief Magistrate about it on 7 July 1969. When the Imam was moved from Caledon to Maitland, he already suffered from chest pains, which according to Dr Viviers, were possibly caused by an assault.

[129] It is the chest pains that made it impossible for the Imam to exercise, and instead to walk about the courtyard during exercise time. It is difficult to allow oneself to be guided by the totality of the evidence of Dr Viviers, who did not keep notes. One of the pointers of the necessary caution is his description of the Imam. The evidence in total makes out the description of the Imam as a light, slender but of normal weight with regard to the ratio between weight and height, which was average. Dr Viviers saw the Imam twice but described him as dark, short and overweight. Clearly Dr Viviers gurned from his imagination in certain aspects of his evidence. His recollection was not accurate.

[130] The Imam had complained of chest pains since around the last part of June 1969. The medical attention to him was simply recycled instead of being escalated. The Imam complained to Dr Gosling about the general discomfort and specifically a chest pain. The police were aware of these complaints since the last part of June. The suggestion

by Dr Gosling that these were general pains and aches on the Imam's joints and muscles, attributable to a flu-like illness, by 10 July 1969, is rejected. Dr Gosling himself acknowledged that he did not ask the Imam what the possible cause of the pain was, as he did not deem it important. This conduct of a medical practitioner, in not asking the patient the necessary questions, was negligent. The evidence by Dr Gosling that the Imam had the general discomfort and chest pains for a day or two was simply untruthful. The continued complaint of the Imam about chest pains caused the police to take him to a district surgeon towards the end of June, when he attended to Dr Viviers and on 7 July 1969, when he again attended to Dr Viviers. The same complaint caused the police to take the Imam to a different district surgeon three days thereafter, on 10 July 1969, to Dr Gosling. The pain described by Dr Viviers on the left side from around the 5th to the 8th rib and by Dr Gosling which were general pains and aches, were in keeping with the chest bruising. The chest pain affected breathing and free mobilization. Breathing could not be ceased and the chest was particularly painful, disturbing and inhibiting normal function, it was not surprising that the chest pain was the Imam's overarching complaint.

[131] Spyker interrogated the Imam, writing a statement, from 2 July. As he interrogated the Imam, he wrote down a statement attributed to the Imam. On Spyker's version he did not interrogate the Imam on the weekend of 5-7 July. It was after the interrogation by Spyker on 2 to 4 July every day, that on the CM's next visit on Monday 7 July, the Imam reported to the Chief Magistrate for the first time the chest pain, on 7 July 1969. The Chief Magistrate told Genis to call the district surgeon to attend to the Imam. SB members had been aware of the Imam's chest pain at least since the last half of June 1969. The visit of Van Greunin, the Acting Chief Magistrate to the Imam was between the first chest pain of the last part of June 1969 and the chest pain reported to the CM on 7 July 1969. The Imam did not report a chest pain to Acting CM Van Greunin on 23 June 1969. Between 23 June 1969 and 7 July 1969, the interrogation of the Imam by Spyker, whilst also writing down a statement, happened, and immediately after its first part the Imam reported pain to the CM. Spyker, during the interrogation, continued to assault the Imam. It is not for this court to speculate whether the existing injuries were brought to life by being agitated or new injuries were added by the assault. It suffices

that they brought such pain to the chest that it was necessary for the Imam to report the pains to the Chief Magistrate. It was as a result of the assault, that the Imam experienced general malaise, a painful chest and that Dr Gosling discovered localized tenderness over the Imam's lower ribs when he examined the Imam on 10 July 1969. It is unfortunate that Dr Gosling only provided some routine treatment for influenza-like illness to the Imam at the time.

[132] Dr Schwar found a fracture at the costochondral junction of the 7th rib with no fresh bleeding during the post-mortem. Dr Molefe explained that costo meant cartilage and chondral meant rib in explaining that this fracture was at the junction between the cartilage and the rib. This cartilage is the one that connects the rib to the sternum or breastbone which is in the middle of the chest. Dr Molefe's literature search established that these kinds of fractures were quite uncommon. They were typically caused by what was described as high energy impact. They were typically painful fractures just like a fracture of the rib. These fractures were unique in that they were easy to miss on normal radiology. They were not visible on normal X-ray chest. A rib fracture could be missed on x-ray but if a patient pointed exactly at a place where there was pain, then the doctor or radiologist was able to zoom in that area and double check for the fracture.

[133] Costochondral fractures were different in that they were not visible because cartilage was not visible on x-ray. They were typically picked up by ultrasound or a CT scan. They were also not well studied and therefore no one really knows how well they heal, how soon they heal or if they even heal. Although Dr Molefe tried to search to understand if the fracture could have been caused in July or September, there was no literature guidance. She concluded that this fracture could have happened at any point, that is, from before mid-June to September 1969. In understanding the Imam's pain, the cartilage is what offered the chest cover of breastbone and rib bones the flexibility in the movement associated with a breath in and out, by allowing the ribs and the breastbone to move inwards and outwards. The cartilage is at the small little joints that allow the expansion and collapsing of the rib cage in breathing. No doubt the Imam had been in immense pain since around June 1969.

[134] The Imam was in a worse condition than the police and Dr Gosling gave the position out to be, as at 14 September 1969. Two reasons underpin this conclusion. First, ordinarily a prisoner or a patient is taken to the consulting rooms of the district surgeon. This is the general default position of consulting any doctor. It is generally under extra-ordinary conditions that a doctor would waive the operational convenience and personal security provided by the consulting rooms or their home or any other place such place, to attend to a patient where the patient resides. Moreover, according to Dr Gosling there were four district surgeons for the district of Cape Town, some of whom were on call over weekends, if required. It was on 24 hour call. This was so that at any time an emergency arose there was a district surgeon available for the police. Dr Gosling's own testimony was that he was the doctor on call on the weekend which included the 14th September. In other words, Dr Gosling was called to an emergency which arose at Maitland Police cells and attended to the cells on that Sunday, 14 September 1969. The emergency which arose was the medical condition of the Imam. Gosling's own testimony was that the police did not call a district surgeon on 24 hour weekend call for little complaints but for serious ones, or when the police were not happy and asked the district surgeon for help the district surgeon would go and see the patient. The medical condition of the Imam was an emergency that called for the help of the district surgeon on call as at Sunday 14 July 1969.

[135] Secondly, once medication is prescribed, it seems that it is generally from 3 days or so that the response to treatment would and is allowed to show, and that on average it would take at least 7 days for a doctor to want to see the patient again. The fact that Dr Gosling went back to see the Imam the next day after prescribing him medication means that Dr Gosling saw the Imam as an active case, which required medical assessment and if needs be further medical examination and attention within 24 hours of the first visit, between 14 and 15 September 1969. Piles are not a life threatening condition to warrant such attention from Dr Gosling. According to Dr Molefe a medical practitioner would want a patient suffering from piles to come back for a check-up if they know that there is a bigger problem than just piles. It was perplexing that Dr Gosling

would give more attention to piles than the chest pain. According to Dr Molefe chest pain is a cause for concern and in the very least a medical practitioner will make sure that it is not anything serious. The only way was to perform a full, thorough examination to exclude that it is not related to the heart or to the lungs. If there is a diseased of the lungs eventually it will affect the heart and one needs the heart as the most important organ, to function for the rest of the body.

[136] Dr Gosling's report on the true condition of the Imam when he saw him on 14 and 15 September 1969 was simply a lie. Dr Gosling's conclusion that the Imam had improved considerably so that further investigation of the Imam's medical condition was not considered necessary is rejected. Dr Gosling was untruthful to the 1970 inquest on the true medical condition of the Imam as at 14 and 15 September 1969. It must be remembered that both Dr Vivers and Dr Golsing were district surgeons. The two district surgeons, individually when they saw the Imam on separate occasions, failed in their primary responsibilities to properly examine the Imam on the days that they saw him and did not report specific examination or findings of the chest trauma nor did they offer a specific diagnosis of the Imam's symptoms including his stomach ailment. The record keeping of what was noted during a medical examination was good practice that was handed down for years as guidelines in the health profession. It was necessary to make a good and complete comprehensive record of the findings especially of a person who was in custody and in particular a person who was a political detainee. Not only did the doctors fail to keep a proper record of their medical examination of the Imam. They also failed to communicate truthfully what their medical determinations were and what care the Imam needed, and they did not refer the Imam for any further examination when everything indicated that it was what the Imam needed at the time that they saw him.

[137] The period 2 July to 7 July 1969, on Spyker's version, was the period when the police were interrogating the Imam daily, to extract a statement from him, which statement was supposed to be to the SB's satisfaction. On the 7th and 10th July the Imam complained of chest pains and tenderness of the left rib cage. Together with the period 14-19 and 20-27 September 1969, the periods represent the "high water mark

point” which was the maximum rise of the desperation and reflected the all-time high in respect of the division of time and brutality of the SB towards the Imam. Whilst the Imam was a medical emergency as at 14 September, and was denied the proper medical care, he was removed from the police cells in Maitland from 17-19 September 1969. The further interrogation from 17 September, according to the SB, was about the “lies” in the affidavit that the Imam had made during his interrogation from 2 July. The SB refused to tell the 1970 inquest where the Imam was taken during 17-19 September 1969 and what happened to him. What the 1970 inquest was told was that the Imam was taken out of the Cape Peninsula. He was taken out for investigation by SB members, including Spyker

[138] What the evidence showed was that the SB confronted the Imam about certain aspects, the discrepancies between the affidavit which the Imam had made, in contrast to what the SB believed their investigation revealed. The SB had the affidavit with them as they interrogated the Imam. The very next day after the Imam was returned from an undisclosed destination, that is, on 20 September 1969, the Imam made the first of 5 complaints of ill-health made thereafter in that week. It is the complaint which included the headache that caused Geldenhuys to be involved on the 20th, it was the chest pain complaint to Malan on the 20th and 21st, it was the complaint to Genis which caused him to get tablets from Dr Viviers on the 22nd, it was the complaint of chest pain to Malan on the 26th and the complaint of stomach pains on the 27th to Burger. The interrogation, on the SB’s own version, continued even when the Imam was ‘bedridden’ in the week 20 to 27 September.

[139] When Visser and Malan next saw him on the 20th, the Imam complained of chest pains and looked very sick to Malan, such that Malan reported this to the SB, in particular Geldenhuys. Yet, the SB denied the Imam medical care which he needed. These three seven day periods, that is, the seven days in July and the two seven day periods in September was when the desperation and brutality of the SB on the Imam rose to and reached its highest peak. What is more disturbing, is the support and enabling environment provided by two medical doctors, Dr Viviers and Dr Gosling, who

both dismally failed to provide the necessary medical assessment and attention that the Imam so desperately needed at the time. The failure is worse because they were two of the four district surgeons of Cape Town. It is amongst others failures like these which deepened public distrust and loss of confidence, which the medical profession must acknowledge, were clear symptoms of things having gone wrong in a profession that was supposed to be noble and saved lives. It was easy for the SB to get medication from a district surgeon for use on a political prisoner. It should not be surprising that the SB got medication, Doloxene, to sedate the Imam for over a week, without taking the Imam to the doctor.

[140] If the totality of the evidence is considered, it is not a quantum leap to conclude that a district surgeon, probably Dr Viviers or Dr Gosling, gave Geldenhuys the Doloxene that was used to sedate the Imam in the week 20- 27 September 1969, when such district surgeon did not properly examine the Imam or to ensure that the Doloxene was administered under medical supervision and intensive care as was expected. Geldenhuys lied when he suggested that Doloxene, which is what he gave to the Imam, was medication prescribed for his personal use at home. There was an under appreciation of the severity of the pain, an under documenting and oftentimes a deliberate non-investigation and non-documenting of the causes of the pain, not only by members of the SB, but also by Dr Viviers and Dr Gosling. This was the manifestation of a partisan attention to the recipient, related to the medical care, of the Imam. The Imam was a victim of torture by the SB as a political prisoner who opposed apartheid. This excludes the narratives of Dr Viviers and Dr Gosling as being a significant and reliable source of a truthful and straightforward record of the Imam's medical condition.

[141] According to Geldenhuys, the Imam told Dr. Viviers where he had the pain. Dr. Viviers did not have any privacy with his patient. Members of the SB were present during the medical examination. It was very strange that the Imam would complain of ill-health and not ask to be taken to the doctor but to ask Geldenhuys to give him something. Geldenhuys lied when he said that the Imam asked for medicine from him instead of requesting to be taken to the doctor. To quench a thirst, naturally one would

ask for water, and not cool drink and ice cream. It is common knowledge that there is a belief that frozen or cold items could ease pain. Cool drink and ice cream's cold state is generally believed to numb sore areas and that the cold temperature from both, may reduce inflammation by constricting blood flow to the injured area. It seems to me that the provision of cool drink and ice cream by Geldenhuys to the Imam was what Geldenhuys saw as useful tools for the Imam's pain management. We now know that the escalation from cool drink and ice cream, by the SB as pain management for the Imam, went directly to the administration of Doloxene.

[142] Geldenhuys provided the Imam with cool drink and ice cream, in Geldenhuys's view, to make the Imam feel better with the hope that the cold beverages would have some effect on the Imam's pain levels. It was not a benevolent gesture, but a desperate manoeuvre, especially because the SB did not want the Imam to be seen by the doctor from 20 September 1969. It must be remembered that Dr Molefe's evidence was that a headache, which the Imam also complained of from the 20th of September was something that needed to be examined carefully because any disease or injury to the head may deem fatal and therefore it would require a thorough examination to exclude trauma, stroke and meningitis, which made a headache a serious complaint that warrants a thorough examination. It would be negligent to just issue a pain tablet without knowing the underlying cause of the pain. In my view, the evidence showed that one cannot exclude that the Imam had other types of injuries and pains that were not documented, either deliberately or through negligence. The visible injuries on the Imam's body discovered at post-mortem do not tell a full story of what the SB did to him.

[143] Dr Kossew was a district surgeon who was on duty on Saturday 27 September 1969 and who was called to Maitland and came to certify the Imam dead. This simple truth, together with the evidence of Dr Gosling that there was a district surgeon on 24 hour call available to the police for any emergency over weekends, is a guarantee that Geldenhuys's version that district surgeon surgeries were closed on Saturdays was a deliberate lie. Geldenhuys responded to the complaint of chest pain on 20 September, and went to fetch pills to kill the pain. The SB seemed to suggest that they paid much

attention to piles over a weekend, but did not pay any attention to complaint of chest pains in the morning and severe headache later on the same day over that weekend. It was a headache so severe that Geldenhuys did not think it would be met by an over the counter headache tablet but went home to fetch prescribed painkillers. He lied to Malan that it was a prescription. It was the pain killers which the Imam drank from the 20th until his death.

[144] Geldenhuys and other members of the SB did not take the Imam for medical attention. The SB lied about pain pills given to Imam on 20th. On Monday the 22nd September 1969, when according to Geldenhuys the district surgeon in Bellville was available, the Imam was not taken to the district surgeon. Geldenhuys was aware that the Imam was in such pain that Maitland police had to inform the commanding officers of the SB. Geldenhuys had experienced the Imam in such pain that according to him he had to provide pills prescribed for his own personal use to the Imam. Yet on that Monday or on any day thereafter, he did not take the Imam to the doctor or at least arrange that he be taken to the doctor. Instead Geldenhuys asked for the doctor to prescribe pills for the Imam when the doctor had not medically examined the Imam. The provision of prescribed medication by the district surgeon to Geldenhuys, Doloxene, for the use of the Imam without a medical examination of the Imam, is confirmation of the close and seemingly long term arrangements which evolved between the SB and the State medical personnel in particular some district surgeons. If the Imam only suffered a headache on Saturday 20 September 1969, it would not make sense for Geldenhuys, on Monday the 22nd, when he had not seen or heard from the Imam, to still take the steps to seek medicine for the Imam. The inescapable conclusion is that Geldenhuys was aware that the Imam was in pain that would transcend the Saturday, and that explains why Geldenhuys still had to attend to the pain on Monday and beyond. Geldenhuys could have simply called the district surgeon or arranged for the Imam to be taken to hospital. The nature of the medicine given to the Imam, Doloxene, not only indicate the severity of the pain, but also the reluctance of the SB to have the Imam receive proper and adequate medical care. The nature of the injuries, the extent of the pain and the medical response required necessitated the hospitalization of the Imam.

[145] Rademeyer gave the names of the pills for the piles by name and could also give the date on which this happened. However, he could not give the dates on which the Imam complained to him of stomach and chest pains. He also did not disclose the name of the pills which he found in the office, which the instruction was to give to the Imam upon request. Whilst he could indicate that the pile pills were prescribed by Dr. Gosling, he did not say from whom the stomach and chest pains were received. The Imam was under sedation, through the provision of Doloxene, at the instance of one of the district surgeons between Viviers and Gosling and the security branch and was held at Maitland from 20 September 1969. Neither the police nor the district surgeons, throughout this period, sought to cause the proper medical examination to trace the primary explanation of what the underlying cause was of the different types of pain that the Imam complained about. The Imam had been denied proper medical attention for his chest pains since July 1969, stomach pains from 14 September and severe headaches from 20 September 1969 until his death in police detention on 27 September 1969. It is unknown as to how often these tablets to sedate him were given to him and how many of these tablets were given during the period 20 to 27 September 1969. From 20 September 1969 whilst the Imam suffered these multiple pains, he was never properly, adequately and truthfully medically examined by a medical practitioner. I accept the view of Dr Helman and find that the injuries found by Dr Schwar on the Imam caused a great deal of pain suffering and immobility. For chest pains, stomach pains and severe headaches, suppositories for piles could not have been the appropriate and sufficient treatment.

[146] From the evidence of Genis, Spyker, Pienaar and Malan's evidence, the SB members saw the Imam many times and also removed him from Maitland without keeping any records of such visits and removals. If it was not for the cross-examination of Cooper SC, the SB would not have revealed that the Imam was removed from Maitland from 17-19 September 1969 and taken to an unknown destination where what happened to him remained a mystery. What the evidence show, is that the Imam returned with serious injuries to Maitland. Since arrival on 11 August the Imam did not

exercise but sat in the sun. Most of the time, the Imam would be lying or sitting when Rademeyer visited the cell. The Imam arrived at Maitland already having a broken rib. This explained why he could not do physical exercises, but elected to rather walk around the courtyard, in the early days of his detention.

[147] On 26 September the Imam complained to Malan about a painful chest. Malan informed Genis of the Imam's complaint. This version of Malan stands in direct contradiction to the version of Genis that on that day the Imam appeared completely normal and healthy and had no complaints, and that on the contrary, the Imam asked Genis and Spyker to come and fetch him on Monday 29 September 1969 so that he could tell them something. Genis, Spyker, Geldenhuys Pienaar, Rademeyer and Burger lied to the 1970 inquest about what happened to the Imam. Of all the police officers who testified at the 1970 inquest, Malan was the only one who did not deliberately fabricate evidence and when confronted, told the inquest the truth, more specifically about the removal of the Imam from the police cells in Maitland by the SB from 17 to 19 September 1969. Malan was, however, like the rest of the police and SB members who testified, true to the texture of their history. That history manifested itself in violence and violations. It deliberately deleted what happened and had a tendency to misremember if not use and abuse the truth. At its foreground was an agenda and ability to tell what happened, skewed in their own interests, and an unwillingness to admit things that were done. In its individual and collective thinking it mastered the art of short term thinking to look good for that season only.

[148] The evidence of Burger at the 1970 inquest that the scrubbing and cleaning as well as the movement of the Imam to the Whites only cell was routine procedure done at least twice a week was not corroborated by anyone, and was clearly a fabrication and stood to be rejected. Between the 26th and 27th September 1969, the cell in which the Imam was ordinarily detained was not innocently scrubbed and cleaned. The cell was scrubbed and cleaned after the SB and the Maitland police realized that the Imam died. The scrubbing and cleaning of the cell in which the Imam died was a deliberate act calculated to destroy any evidence that could help any honest medical doctor or

observant investigator who would attend to the cell, as part of the collection of the evidence to help determine the cause of death of the Imam. It was intended to cover up evidence that could point to the true cause of death of the Imam. The scrubbing of the cell is not the only pointer to an attempt to cover-up. Spyker seemed to suggest that he only saw the corpse of the Imam at the Salt River mortuary at around 8 at night. He said the deceased was naked and lay under two other corpses. The body was not covered in a sheet. The naked uncovered body was not only demeaning the Imam in death, but was against the standard protocols. There is no explanation from the police, in whose custody the Imam was, to state who removed the Imam's clothing and for what purpose was it removed. Furthermore, whilst the Imam had received clean clothes from his family, and the family received back used clothes from the Imam throughout the period of his detention, this was not done from 17 September 1969. In my view, this was also to cover up any form of adverse evidence that the clothes that the Imam used would tell about his state of health. Any possibility of any evidence which may help establish the truth about the condition of the Imam being established was suppressed, if not obliterated.

[149] Burger was called to testify in the re-opened inquest. It was noted that he was the last remaining police officer from that period and was just under 25 years and a junior in terms of rank in 1969. In his own words he was now in an age where he forgot things but if reminded they probably came back. His qualities of mind and character had somewhat changed, but not completely. Out of his own accord, he told the court that what he was about to say was what he carried with him for all these years. He broke down and had to be served with a glass of water, thereafter he told the court about what he saw, to wit, that the Imam was tortured. He had not only expressed this to the investigating officer, but he had met the Imam's family and even visited them, and also took their grandson who came from London, to both Caledon and Maitland, and showed him the cells and the stairs at both stations. Although he could only explain how to access those in Caledon, he took the grandson to Maitland and showed him the stairs there as well as the cell where the Imam was detained. He also allowed the son to record this on a video camera as he showed him what he experienced of the Imam.

What is worrying, is when Burger attempted to suggest that he only became aware of the extent of the injuries of the Imam when Peterson showed him the pictures in 2020.

[150] Burger was untruthful on this point. He could not have discussed, on his own version, his burden with his wife and children throughout the years, according to him because of the absence of a platform to freely open up to speak to a court or the Imam's family through the court, if he only came to know the truth about the Imam's torture in 2020. Burger found it curious and unusual, with the benefit of hindsight, that the Imam's case was investigated by the SB members involved in his detention and interrogation, and not by Maitland detectives. It appeared to him that the SB wanted to control the investigation. The SB also decided what should and should not go into Burger's statement which he made for the 1970 inquest. When Pienaar told Burger that the Imam fell at Maitland police station, when he was taking Burger's statement, Pienaar was surely fishing out a possible fabricated version to explain the Imam's death. The response of Burger, that the stairs in Maitland were only four, small and would have caused someone to fall forward and only probably injure their knees, if injured at all, clearly caused Pienaar to abandon that explanation as the cause of the Imam's injuries. Burger had no reason to fabricate that kind of discussion between himself and Pienaar at the time that he made the statement in December 1969, to wit, that he was shown a diagram and pointed at an injury and told that it was sustained at Maitland when the Imam fell on the stairs in Maitland. Burger had personally fallen on those stairs in Maitland three or four times before December 1969 and that is how he knew that when you slipped there you fell forward and landed on the stairs with your knees. He always stood up and was fine. Burger was adamant that in the interview where his statement was taken in 1969, the stairs in Caledon, where it was alleged in the 1970 inquest was the scene of the Imam's alleged fall, was never mentioned.

[151] It may be so that Burger did not physically see the Imam's injuries in 1969, if the Imam was at all times clothed when Burger saw him. If his relationship with the Imam was what he suggested, this is highly unlikely. Burger saw the Imam including in the week 20 to 27 September. He saw, in 1969, that the Imam was not walking in the

courtyard during exercise time, especially in the last two weeks before the Imam's death. He must have seen that the Imam was not only immobile, but was sedated, bedridden and in pain, in the period 20 to 27 September. Burger tried to create the impression that the Imam moved on his own and carried his clothes, pillow and food from the Whites-only cells back to the cells where he was ordinarily kept, on the morning the Imam died. Burger's version that the Imam was that morning seemingly healthy, and walked without any difficulty and that at exercise time the Imam just stood in front of the cell door is rejected. Burger's version that the Imam had no complaints that morning is false. On Burger's own version, the Imam complained of stomach pain. It is sad that Burger tried to shift the responsibility for the failure to provide the Imam with medical attention to the Imam himself, by suggesting that it was the Imam who did not want to see a doctor in his obvious hour of need, but only needed pain killers and toilet paper. The evidence that during that time of pain, the Imam would have had time to change from sleeping clothes to normal clothes, and back to sleeping clothes the same morning showed how low Burger was prepared to stoop to create the impression of a healthy Imam, when the true facts, which were known to him, showed otherwise.

[152] Dr Kossew did not do the procedural work of medical personnel arriving on the scene. There was no record of his observations and findings. There was no record of any special features that he noted, or that there were no special features. There is no record of the immediate environment under which he found the Imam's body. There is no record of his determination of when exactly in the day the Imam passed away. Against the background of the obvious interference by the police with the body of the Imam, in that they removed his clothes, and their interference with the scene, in that they scrubbed and cleaned the cell in which the Imam was detained, the death interval of the Imam as provided by the police remains suspect. The significance of the circumstances of the finding of the body is important in that Dr Schwar, Dr Molefe and Dr Naidoo are agreed that those circumstances cannot be ignored and cannot be divorced from the findings on the body. According to Dr Molefe, both local and international practice was that it was the pathologist on call, and not the district surgeon as it was the case with the Imam, who would go to the scene and carry out an

examination on the scene. This was because of the complexity of the death of a detainee in custody. In the Imam's case not only was there no pathologist who carried out the examination on the scene, there is also no record of the crime scene report by a medical practitioner. In a death in custody, there ought to be a determination of the death interval, which refers to the estimated time of death. The 1970 inquest was told by the SB that the Imam was found dead at a specific time and day. It is significant that it was Pienaar who commissioned Dr. Kossew's affidavit. For all intents and purposes, it seems Dr Kossew's role was simply to give medical credibility to a statement by the SB.

[153] According to Dr Schwar, if the Imam had slipped on the stairs and came down on his buttocks, and even if he moved slightly to his side as he tried to get erect, that description of the fall would not account for all the bruises found on the Imam. This was because there was no evidence of any injury to the Imam's buttocks. The injury was on the posterior surface of the right leg and on the anterior surface there were multiple bruises. It is possible that the injuries on the right leg could have been caused by the fall as described. But the person must not only have slid down on his buttocks, but also turned to a certain extent, approximately 180 degrees, in order to obtain the injuries on the anterior surface of the right leg for that portion of the leg to make contact. The bruise over the anterior lateral inferior part of the rib cage and the three bruises on the left side of the rib cage cannot be accounted for by the fall on his buttocks. Dr. Schwar said if there was a railing and the Imam fell against it, he could have sustained such injuries. The fall would have included falling on to his chest a little on to the one side and then in the fall also on to the other side only then could the fall explain for the injuries. But according to the evidence the Imam did not fall against the railing or in any way suggested by Dr Schwar to account for the injuries.

[154] Dr Schwar indicated that not all injuries could be accounted for by the alleged fall also as regards their age, as some were fresher than others. Dr Schwar indicated that the injury over the lateral part of the left thigh and the injury over the posterior part of the right knee were extensive bruises which would have resulted in such pain that normally the reaction to be expected would be to complain of the pain unless there were other

reasons not to complain. Dr Schwar and Slobedman established histologically that the pulmonary emboli was antemortem. Dr Schwar could not exclude the possibility that the pulmonary emboli were a contributory factor. The pulmonary emboli per se was not the sole cause. They were small and they did not obstruct any big vessel so on their own they could not have caused the death. With the presence of emboli in the vessels there could be a spasm and this may cause pain. There was a possible interaction between the emboli and the diseased artery. The clotting could have occurred over a period of a week or ten days. The site of the clotting was in both the left and right calves of the Imam. Dr Schwar said that if the stasis was due to the trauma, then the trauma was indirectly related to the death of the Imam. The source of the pulmonary emboli was the venous thrombosis in the calves. Stasis predisposes to the formation of thrombi. Pulmonary emboli usually occurred about 8 to 10 days after the trauma. Many of the injuries and bruises of the Imam, according to Dr Schwar, were received round about the 17th to the 19th September, according to their age appearance.

[155] The injuries found on the Imam were consistent with trauma, that is an assault, inflicted upon the Imam. According to the three Doctors, Dr Schwar, Dr Molefe and Dr Naidoo the bruise on the anterior of the right thigh, with two parallel running bruises, is found when trauma has been applied when the body comes into contact with a long object with a particular width, like an assault with a stick or something similar. The bruising on the front of the right thigh and over the lower leg were small bruises and according to the Doctors one can presume that they resulted from trauma inflicted on those specific areas. The three Doctors are also agreed that the bruising on the limbs and the chest cage on the body of the Imam were consistent with the result of the assault on the Imam. They also agree that the pulmonary emboli in the small veins of the lungs of the Imam had their origin in the injury on his calves.

[156] In my view, it would not be a quantum leap to attribute the subpleural petechial bleeding found spread in the right lung of the Imam also to the assault. As regards the site, the pleura refers to a serous membrane that enfolds the lung, that is, a lining of the lung. Its duty is to protect the lungs and helps them to slide back and forth as they

expand and contract during breathing. This spread of subpleural petechial bleeding and its relationship to the assault is fortified by the injury discovered after the dissection of the body of the Imam. This injury on the tissue over the anterior lateral inferior part of the right rib cage was not visible with a naked eye. This is also one of the injuries which explained the difficulty of mobility for the Imam and answers why he could not freely walk about or exercise. If regard is had to the age of the injury, it was one of the oldest, which means it was one inflicted earlier than the other two groups as explained by their colouring. Simply put, it was an injury inflicted before the week of 17 September 1969.

[157] The 7th rib was broken at the connecting cartilage and there was no fresh bleeding in that area. This was the same area of the bleeding lining of the lung, the right side of the Imam's chest. The foremost post-mortem findings of Dr Schwar in relation to the body of the Imam was coronary atherosclerosis, pulmonary emboli, subplural petechial bleeding and bruises on limbs and chest cage. Of these four, three are directly related to and find their origin in or are consistent with an assault. It is only the coronary atherosclerosis that does not directly relate to the assault. It is important to bear in mind that Dr Schwar did not find that the cause of death was coronary thrombosis. In an answer to the prosecutor at the inquest, Dr Schwar was adamant that coronary thrombosis was not the cause of death. There was no fresh clots found in the blood vessel and therefore there was no heart attack. There was no myocardial infarction.

[158] Nowhere did Dr Schwar, during his post-mortem or after further investigation including toxicology and histology, say his primary finding was myocardial ischemia. He mentioned myocardial ischaemia for the first time in the witness box in his evidence in chief. According to Dr Molefe, Dr Schwar did not prove myocardial ischaemia on histology. This was because there was nowhere where Dr Schwar said that the myocytes showed contraction band necrosis that was in keeping with ischaemia. Dr Schwar himself compiled the histology report and there was no indication of myocardial ischaemia in as far as he had performed the post-mortem. Dr Schwar did not determine the cause of death at the post-mortem as due to myocardial ischaemia. He recommended further investigations like toxicology and performed some special

investigations like histology after the post-mortem report. After the investigations Dr Schwar concluded that in view of the fact that it was established that the pulmonary emboli was ante-mortem, the presence of pulmonary emboli became a contributing factor but not per se the sole or only cause of death. According to Dr Naidoo, in the condition of the heart found on the Imam, there must have been something that accelerated the heart rate so that it exceeded the demand for the Imam to die of ischaemia. According to Dr Naidoo myocardial ischaemia did not occur in a resting state. It needed some sort of physical exertion or state of great emotional tension where the heart rate was very high and the demand exceeded the supply through the narrow coronary artery. The Imam had been immobile for at least a week, from 20 to 27 September 1969. Dr Molefe and Dr Naidoo were clear that under the circumstances, myocardial ischaemia was not the cause of death of the Imam. In the light of the fact that the introduction of myocardial ischaemia by Dr Schwar was not based on any of his own clinical findings, its introduction in his evidence in chief in the witness box, without any medical basis, cannot be supported. Dr Schwar in cross-examination conceded that he could not attribute the death of the Imam to myocardial ischaemia.

[159] Whilst Dr Schwar collected the blood specimen from the Imam, not all the results of the special laboratory examination of that blood was disclosed to the magistrate, if those other examinations were ever done at all. The results would have assisted in the type of drugs which was given to the Imam. Considering the totality of the evidence, three specimens were taken for specific further investigation according to Dr Schwar's post-mortem report. It was the blood sample; the liver, kidneys and stomach as well as various tissue. I understand the nature of the envisaged investigation, according to Dr Schwar, to have been a toxicology routine investigation to exclude any poisoning, and a histological investigation. It is against that background that I understood van Riet's toxicology report. Van Riet's examination of the stomach, liver and kidney samples showed no adverse substances, in other words, no traces of any poisoning of the Imam. I am unable to read into Van Riet's report that which he did not investigate and report on, to wit, that the toxicological examination of the Imam's blood excluded any traces of drugs, like Doloxene. Dr Schwar's request was specifically targeted to trace noxious

substances, that is, substances that were physically harmful or destructive to living beings. I do not understand Dr Schwar's report to mention an intended investigation of the presence of any drugs or chemical substances that caused a change in the organism's psychology or physiology when consumed. It is against this background that I do not understand Van Riet's report to be saying that there were no such drugs or traces thereof found in the specimens taken from the body of the Imam.

[160] When the Imam was moved from Caledon to Maitland in August, he had already sustained some injury if one were to relate to the symptoms that he expressed to Dr Viviers, including the lower band of the chest cage. From around mid-June including around the 7th and 10th July the Imam was already complaining about the chest pain. That was before he was moved to Maitland. The evidence showed that the Imam was interrogated daily whilst at Caledon and that he was also interrogated almost daily whilst detained at Maitland. Other times he was brought from Maitland to Caledon and sometimes he was visited at the Maitland cells. The Imam was subjected to substantial and intensive interrogation almost daily until shortly before his death. A statement was written from what he said during interrogation from 2 to 7 July, that is, the statement spread over days. After being moved to Maitland, the police attempted to deliberately put a blanket of silence about what happened to the Imam. What is however clear, is that it was after the period of three days, 17-19 September of unknown and happenings, that the Imam manifested a spike of chest, abdominal pain, headache, immobility and the prostration to lay in the cell,

[161] The Imam spent 123 days in detention, 75 nights in Caledon and 45 in Maitland except for the two nights between 17 and 19 September where his whereabouts were unknown. It was about four months in solitary confinement. It was in conditions of desperation and despair, the overwhelming thought of the lack of prospects of freedom and its consequences to physical health, depression, lack of motivation, loss of appetite and loss of spirit. Dr Naidoo's particular concern was diet and dehydration. It is not certain whether the Imam's hydration was good enough particularly suffering injuries and the systematic complication as according to Dr Naidoo hydration was very

important. Nutrition and the state of hydration of the Imam was unknown. The Imam was found in a foetal-like position. This indicated a state of despair and desperation. It is a posture that is not relaxed. A posture that is attempting to get relief. This may relate to the Imam's mental state at the time. This was an indication of the mental health consequences. It may also be indicative of the severity of the pain.

[162] The 12 green-yellow bruises were 7 to 10 days or older and the red bruises were more recent ones between 2 to 4 days old. The wounds, in their respective age categories, were inflicted together at around the same time or alternatively over several days. The injuries established when the skin was flapped open during the post-mortem examination were older. The age of the green-yellow injuries put their age in the region of 17 to 19 September. The red injuries were in the week when the Imam was immobile, between 20 and 27 September 1969. If the Imam fell and landed on his buttocks, it would be understandable for him to have injured the area around his tail bone and the hip bone. In fact a fracture in that area, the sacroiliac joint, the tailbone or the pelvic bone, would have been most probable. The probability would include a cervical spinal cord injury or even a muscle strain or spasm. The Imam had none of these injuries. He only had localized bleeding outside the blood vessels on the lower back, which was older in age to the injuries attributed to the period of around 10 days or contemporaneous with the alleged fall. This injury was not sustained on or after the 17th of September 1969, but earlier. The Imam had no injuries on his head, neck and buttocks. His injuries to the thorax were also older than 10 days in age and were not sustained on or after the 17th September 1969.

[163] The injury pattern on the body of the Imam do not reflect those typically seen in falls down stairs. This was clear not only from the evidence of the medical doctors, but also from the evidence of Mr Moodley as well. The Imam's body reveal no injuries to the hands, exposed areas of the back, shoulders, neck and head. Where a person slips, that is when they lost their footing while descending stairs, it is common for the feet to come forward from under his body and for the person to then fall backwards and land on one or more of the following body parts, his hands, buttocks, back, shoulder, neck

and head. If the Imam fell backwards as alleged, it is difficult to understand how there were several injuries on his anterior legs and chest. There were no injuries to the buttocks, where one would expect to see more bruising if there had been a direct impact of the buttocks on the steps. The absence of injuries to the buttocks, the back aside from the old bruise on the lower back, neck and head, when considered against the magnitude of the impact velocities that the Imam's body parts would have struck the stairs, the version of the police that the Imam's injuries were sustained during a fall down a staircase is not credible. There are significant injuries on the Imam's chest, inner right thigh and calf, both shins and left hamstring which cannot be connected to the alleged fall. If there had been impact with the upper right outer thigh and the step, Moodley, whose opinion I accept, said he would have expected to see a longitudinal or rectangular shaped bruise as opposed to large general bruising. Spyker said the Imam slid down one side. There is no evidence that the Imam rolled over, yet there were injuries on both outer sides of his thighs and on the left upper arm.

[164] Dr Viviers, when he examined the Imam in June, excluded heart problems as the source of the pain as there were no such symptoms. When the Imam was examined by Dr Gosling later in July, Dr Gosling found that the Imam's pulse was fast but had no particular irregularity. I accept the evidence of Dr Sternberg, Dr Helman, Dr Naidoo and Dr Molefe that the Imam had an uncomplicated coronary artery disease. According to all the Doctors who testified at both the 1970 and re-opened inquest, there had to be another factor, over the coronary artery disease that Dr Schwar found, to cause death. The Imam would definitely not have died at the time that he did and would have survived for years with the coronary artery disease, according to medical evidence. According to Dr Naidoo and Dr Molefe, many people who appear healthy and continue to live longer live with coronary artery disease, most without even knowing about it.

[165] According to Knight's Forensic Pathology, at page 341, tissue trauma increased the coagulability of blood for several weeks the peak being one to two weeks. The injuries to the tissue especially the legs of the Imam caused local venous thrombosis including in the contused muscles. The injuries, especially with their severity

collectively, restricted the Imam's movement and confined him to the 'bed'. It is the injuries, resulting from the assault that caused the blood clots. The injuries would have caused the Imam to have been quite immobile and static. It will not be surprising that he would have been lying down, not wanting to move and perhaps curled into that foetal position. There was evidence of over 560 square metres of the body with severe bruises. Repeated impact damaged the inner linings of the delicate veins of the calves. The blood became thicker as a result of the trauma and immobilisation increased the stickiness and thickness of the blood. An assault of a deliberate nature was the cause of the injuries to the Imam. The injuries and coronary disease were the only organic conditions that could account for the possible cause of death. These injuries were the primary contributor and primary route to the death of the Imam. The main factor in the cause of the death of the Imam was the wounding. The coronary artery disease was a contributory pre-existing condition. The injuries of the Imam did not cause immediate death, however they had significant physiological effects. The injuries sustained by the Imam were the underlying primary cause of his death.

[166] Whilst detained as a political prisoner in Caledon in 1964, and being interrogated by the SB, Kemp was slapped on her face by Spyker. He also grabbed her by her hair and pounded her head on the floor until she lost consciousness. This assault was so severe that it caused Kemp to be prepared to make a statement about her political activities. When she came to, the SB took a statement from her. It was because of her muddled mind that she was incoherent and unclear. What happened to Kemp was five years before the Imam was detained. Kemp did not testify at the 1970 inquest. Her evidence is similar fact evidence. Generally it is not admitted, unless its probative value is so strong that it should be received in the interests of justice, and its admission would not operate unfairly to other parties. It is admitted if it is logically relevant in determining the matter in issue. Its admission depends upon its relevance. The primary requirement for the admission of similar fact evidence is its cogency. The evidence must be able to assist the trier of facts to draw reasonable inferences. In other words, having regard to the other available evidence, similar fact evidence must provide reasonable material from which to draw inferences which will materially assist in deciding the issue before

the court. Once this is established, questions of prejudice, justice and other relevant factors are considered. It is useful if it has sufficient probative force. I found the previous conduct of Spyker and other members of the SB to be admissible (*Valkin & Another v Daggafontein Mines Ltd & Others* 1960 (2) SA 507 (W) at 520; *S v Lebogang* 1980 (4) SA 236 (O); *Rex v Maharaj* 1947 (2) SA 65 (A); *S v Sheehama* 1991 (2) SA 860 (A) 871; *S v Vaas* 1993 (2) SACR 78 (C); *Phillips* 1982 (1) PH H94 (C); *S v Gokool* 1965 (3) SA 461 (N); *Rex v Katz and Another* 1946 AD 71; *Jones v S* 1970 (2) PH H129 and *S v Green* 1962 (3) SA 886 (A) at 893H -894G].

[167] The evidence of the experiences of other political detainees long after the death of the Imam, like that of Wilcox in 1971, Cronin and Gabru in 1976 and Gunn in 1985 and 1990 could not be led at the 1970 inquest primarily because their experiences of the SB were after the inquest. The evidence however, was relevant to the extent that it revealed the reputation and disposition of the SB during the struggle for the liberation of the Black majority of South Africa [*S v Dabula* 1992 (1) SACR 404 (E); *Loggenberg and Others v Robberts and Others* 1992 (1) SA 393 (C) 406E]. Evidence of bad character is generally inadmissible, however, once a party established a basis for relevance other than merely a lack of credibility, such evidence is admissible. The evidence of these anti-apartheid activists who opposed apartheid South Africa is not being allowed only to show a tendency of the SB to torture political detainees, but also to show a motive for the SB to torture the Imam [*Rex v Rorke* 1915 AD 145; *R v Matthews and Others* 1960 (1) SA 752 (A); *S v Sithole* 1980 (4) SA 148 (D); *Rex v Lee* 1949 (1) SA 1134 (A)].

[168] Wilcox was detained some 17 months after the Imam died in detention. He was the one political detainee, amongst those who testified, who was in detention almost contemporaneous with the Imam. Wilcox was tortured whilst in detention. Spyker made him to haunch with his back against the wall, his arms folded and held up and not resting on his knees, as if he was sitting on an imaginary chair. Haunching in that position caused extreme physical discomfort and caused muscular pain in the thighs and legs after a short while. When he could not maintain the sitting position he slipped to the floor but was made to get up and resume the position. He slipped many times and

was made to sit again. Andries placed his foot forcibly on his legs and held it. He eventually collapsed to the floor. Andries lifted him by the lapels of his jacket and dropped him from an upright standing position to the floor. This was repeated many times. Lifting him by his lapels, Andries also bashed his back against the wall several times. All the time he was told to talk and he refused. Wilcox was made to stand on two slanting bricks placed at an angle on a third brick flat on the floor with his toes on the bricks and his ankles in the air. He was already physically exhausted and standing on this position aggravated the muscular pains to the legs. When he could not maintain the position and slipped off he was made to resume.

[169] Later he was made to stand on his toes on two bricks one on top of the other. This was a great strain on his neck and also his legs. He was made to hold a brick in each hand with his arms held straight above his head. He was made to run on the spot holding the bricks in that position. When his arms sagged they were pushed up by the SB. He was also made to walk up and down the room still holding the bricks in that position. Still with bricks in his hands he was made to step across a chair several times. He was made to run on one spot with the bricks in his hands, to stand on the slanting bricks as well as two on his toes several times. Later he was made to sit on the imaginary chair again. The SB member had Wilcox's shirt buttoned and twisted Wilcox's collar with his hand at the back of Wilcox's head causing him to choke. Wilcox was physically exhausted and especially his legs were wracked with pain. Wilcox was tortured in such a way that he suffered no visible injuries to the naked eye. All this torture was calculated to have him talk, and when he did, it was done to let him talk what was to the satisfaction of the SB. It was to extract information which the SB would consider useful.

[170] Cronin was detained in Maitland and Sea Point Police Stations and was every day transported to Caledon. His main interrogators included Spyker. Cronin's torture by Spyker was primarily psychological. The SB adopted bad cop/ good cop roles with Spyker always being the bad cop. Spyker was the lead interrogator and interrogated Cronin for many hours at a time. Spyker would make threats against Cronin's late wife,

family and friends. When Spyker took breaks, the other man would give Cronin advise as the good cop by suggesting that Cronin co-operate with Spyker in order to avoid what happened to the Imam. He would say things like “You know what happened to Haron”, not directly saying that the SB killed the Imam, but strongly implying it. There was a lot of innuendo in Spyker’s demeanour. Sometimes he wore what looked like a butcher’s coat, made of white fabric with splotches of dark red on it. Cronin did not know whether it was blood, paint or colouring. Other times he would play with an electrode, clearly signaling that Cronin may be tortured with electric shocks. On a trip to Pretoria where Cronin was to be further interrogated, Spyker and other two SB members boasted about how they had dealt with the Imam. The SB members strongly implied that they had killed the Imam and that Cronin was lucky not to have met the same fate.

[171] In Gabru’s presence, Spyker and another policeman spoke about slippery staircases and suicides whilst they were walking with him up a flight of stairs. The other policeman who was bigger than Gabru pushed Gabru’s head over the rail to intimidate and threaten him. It was at that stage that Spyker said “This is where we killed Imam Haron.” The inspection in loco revealed that that was not the staircase where the SB alleged that the Imam had slipped, but a different one. The statement by Spyker was intended to instill fear in Gabru. During most of the interrogation there would be more than one policeman present. Usually Spyker sat behind a desk and watched other SB members beat Gabru with fists and knuckles. He was regularly forced to sit on his knees for hours on end. As a result his knees were swollen and he walked with great difficulty. On one occasion he sat on his knees for almost the whole day. The promise of release and returning him back to the cells was emotional and psychological torture. His religion was also used against him, like trying to force a pork sandwich into his mouth when they knew that as a Muslim pork was forbidden foodstuff. Using his Muslim faith against him again, he was told that some detainees would be released in time for Christmas but not him.

[172] The SB members threatened Gunn that Spyker would be called in, in an attempt to force her to divulge information. The SB was aware that political detainees had

experienced Spyker's cruelty and that he was also associated with the killing of political detainees including the Imam. Whilst making the threats, the SB would say "You know what he did to Imam Haron" or "He killed the Imam" or "he took out the Imam", insinuating that Spyker would do the same to her. She was subjected to emotional torture, including having her baby removed from her and placed at a children's home, and when the child was sick, placing her in a hospital cell with no medical care.

[173] The SB in Cape Town subjected the Imam to torture. The psychological torture of the Imam included false accusations, solitary confinement, verbal abuse, threatened violence, given misleading information, threatened with execution of self or family, constant interrogation, threatened with and actual prolonged detention. The physical torture of the Imam included beatings. From the expert opinions of two pathologists who gave evidence in the 1970 inquest, Dr Schwar and Dr Helman and another two pathologists who gave evidence in the re-opened inquest, Dr Molefe and Dr Naidoo, against the background of the totality of the evidence, the Imam's injuries speak out loud for him on the nature and extent of the torture. The torture included:

- being repeatedly punched with fists and kicked with booted feet on his chest cage;
- being repeatedly prodded or pressed either with the knuckles, with the point of a truncheon or similar object, whilst standing against and facing the wall or lying on his stomach, on his lower back and whilst lying on his back or whilst standing with his back against the wall, on his stomach,
- being repeatedly given vicious strokes with a truncheon or similar object on his thighs from the front, back and sides;
- being repeatedly kicked and thomped upon or stamped on, either whilst standing against the wall or lying on the ground, including on his inner thigh, calf and on his legs,
- being repeatedly kicked, or struck or thomped with a truncheon or similar object on his tendon and on his shoulders.
- the strokes with a truncheon or similar object on his calves is also probable and
- being kicked or punched on his thighs and his ankles.

[174] Pienaar, Genis, Kotze, Geldenhuys, Spyker and Andries were involved in the interrogation of the Imam and all of them, individually and collectively, subjected him to the psychological and physical torture. They individually and collectively caused him the injuries sustained under torture. This also explains why they individually and collectively participated in attempts to cover up the torture and the true cause of death. Kotze and Andries did not testify at the 1970 inquest and did not at any time contradict the version of those who testified. The Imam experienced a steady decline in his health, whilst in detention, which correlated with the increasing intensity of his interrogations, until he was immobile, and subsequently died. It started with a pain in his left chest in June and towards the end of his lifetime in September he suffered considerable head, chest and stomach pain. Especially from 20 September 1969, the Imam clearly suffered from the effects of a severe force applied to his person. It is the trauma that the Imam suffered between 17 and 19 September 1969 that worsened his condition. This worsened condition was known to the SB members and the SAP at Maitland. This worsened condition explained why the SB and the SAP at Maitland had the Special Matron, Mrs Kruger, at Maitland SAP and being responsible for the administration of Doloxene to the Imam in the last week of his lifetime. The six members of the SB, individually or collectively, continued to kick and hit the Imam on his legs even in the week when he lay helplessly, sedated and in pain, in that last few days of his lifetime. The search for their “truth” knew no boundaries and had no conscience.

[175] Magistrate Kuhn had no real desire to establish and reach the truth. The version of the police was contradicted by the findings of the forensic pathologist, Dr Schwar, who examined the body of the Imam, and an independent specialist surgeon knowledgeable in pathology, Dr Helman, who were clear that all the bruises found on the body of the Imam could not have been caused by the falling down the stairs. Dr Helman could not fit the bruises on the Imam’s body in front, behind, the sides, including chest in falling down the stairs. Maybe individual bruises, but not a combination. Dr Helman found the alleged complaint of the deceased about stomach pain, and not chest pain, very odd. He would have expected the deceased to complain of chest pain if he died from his chest or heart. Having regard to the Imam’s height and the width of the staircase, Dr

Helman could not see how the Imam could roll down all those stairs, unless he banged himself all the way down. The site of the injuries, their circumferential nature, made it difficult to have been sustained in a fall down the stairs. There was no basis for the magistrate to ignore this evidence in favour of the SB version.

[176] The uncritical acceptance of the improbable version of the SB cannot be supported. The police failed to explain, on their own version, the trauma which could not be explained by the fall, and the magistrate simply said he was unable to determine how that balance of the trauma was caused. This was so even though the Imam suffered those injuries whilst he was in police custody, and no other explanation was provided by the SB for those injuries. It seems that Kuhn saw it as his duty to protect the SB and this explained why he did not interrogate the SB version. The magistrate accepted without question the mere say so of the SB; he paid no heed to the cause, nature and extent of the Imam's injuries; he did not apply his mind to the evidence of the medical experts and by implication found that even though the Imam suffered injuries whilst in police custody, those injuries were not connected to the actions of the police. He paid no regard whatsoever to the standard of even-handed justice, his decision was not backed by the reasons and logic from the evidence and he approached the evidence predisposed to the exoneration of the SB from wrongdoing. The magistrate's finding, frankly and candidly reduced to that the Imam fell on his bum and had a heart attack, must count as a joke of the past 53 years. It deserved to be laughed out loud if it did not cause such severe pain and heartache for those who sought the truth and closure.

FINDINGS AND ORDER

[177] For these reasons the following order is made:

(a) The findings of Magistrate Kuhn recorded in the 1970 inquest, No. 50/70 dated 9 March 1970 as envisaged in section 16 (2) (b) as to the cause or likely cause of death; and section 16 (2) (d) as to 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, are set aside.

(b) In terms of section 17A the court records the following finding that differs from a finding made by the magistrate as well as the respect in which it differs:

1. Section 16(2)(b) finding as to the cause or likely cause of death:

The cause of death of Imam Abdullah Haron is attributable to the cumulative effect of injuries under torture, in particular a combination of severe systemic physiological stresses, including crush injury syndrome precipitated by complications of blunt soft tissue injury, with the possibility of a pre-existing coronary artery disease as a contributing factor.

2. Section 16(2)(d) finding as to 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:

The Security Branch of the South African Police are held responsible for the acts and omissions leading directly to the death of Imam Abdullah Haron. The officers primarily responsible for brutally torturing the Imam to death are:

2.1 Luitenant Colonel Carel Johannes Freysen Pienaar who was the Officer in charge of the Security Branch, SAP, Cape Town since August 1969. He died in 05 July 1990.

2.2 Major Dirk Kotze Genis, who was in charge of the Imam's investigation and to whom Spyker reported. He died on 01 February 2003.

2.3 Major Kotze, a member of the Security Branch who interrogated the Imam. His date of death is unknown.

2.4 Captain Ebanis Jogiemus Johannes Geldenhuys, who was a superior to Spyker. He died on 24 December 2012.

2.5 Sergeant Johannes Petrus Francois "Spyker" van Wyk, who was the lead interrogator and investigator. He died on 12 November 1990.

2.6 Sergeant Andries van Wyk, who participated in the interrogation. His date of death is unknown.

3. The Registrar shall forthwith prepare the record of the proceedings and submit it to the Director of Public Prosecutions, Western Cape (the DPP), without any undue delay.

4. As regards the roles of Johannes Hendrik Hanekom Burger, Sergeant Petrus Jacobus Rademeyer who died on 27 September 2015, Captain Pieter Louis Malan who died on 01 July 1982 and Sergeant Smit whose date of death is unknown, and the Prosecutor, JS Van Graan, the matters are referred to the DPP for her decision.

5. The conduct of Dr Viviers, Dr Gosling, Dr Kosseaw and Dr Schwar deserve serious rebuke from the court and is referred to the South African Medical and Dental Council for its attention.

DM THULARE
JUDGE OF THE HIGH COURT

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