



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 18 March 2010

Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

**KWIKSPACE MODULAR BUILDINGS LTD v SABODALA MINING COMPANY SARL  
& ANOTHER**

A South African company, Kwikspace Modular Buildings Ltd, entered into a building contract with a Senegalese company, Sabodala Mining Co SARL, for the erection of an accommodation village in Senegal. It was a term of the building contract that Kwikspace would provide Sabodala with an unconditional performance guarantee for the due performance of its obligations under the contract. The guarantee was provided by Nedbank. The building contract had to be interpreted according to Australian law.

Kwikspace sought to interdict Sabodala from presenting the guarantee. The court a quo refused the application. The appeal by Kwikspace was dismissed by the SCA which held that although in Australian law a building contract could contain conditions which would have to be fulfilled before the guarantee was presented, the conditions were fulfilled and Sabodala was entitled to present the guarantee to Nedbank..

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