THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

31 May 2012

STATUS: Immediate

South African Congo Oil Company (Pty) Ltd v Identiguard International 710/11

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

The Supreme Court of Appeal (the SCA) today upheld an appeal from the South Gauteng High Court, Johannesburg, setting aside the order of the high court authorising the issue of a garnishee notice in terms of rule 45(12) (*a*) of the Uniform Rules of Court

The respondent Identiguard International had obtained a judgment against the DRC Government (DRC). As it had only obtained partial satisfaction of the judgment it invoked garnishee proceedings against the appellant in terms of rule 45(12).to attach a debt owed to the DRC by the appellant It was common cause that no notice was given to the DRC and no endeavour was made by the Sheriff to effect an attachment of the debt. The appellant refused to pay the amount of the debt to the Sheriff. The respondent then approached the high court for an order in terms of rule 45 (12) (*b*) to show cause why it should not pay the debt owing to the DRC to the respondent.

The SCA held that it is a requirement of rule 45(12) (*a*) that the Sheriff attach the debt in accordance with rule 45(8). It further held that rule 45(12) did not dispense with the attachment requirement or create a discreet attachment procedure but

introduced the machinery necessary to oblige the garnishee to pay the attached debt to the judgment creditor. The SCA further held that such attachment coupled with service of the garnishee notice has the effect of prohibiting the person upon whom the garnishee notice is served from parting or dealing with the debt pending the outcome of the garnishee proceedings. The SCA also held that it is by virtue of the attachment that the garnishee becomes obliged to pay not the judgment debtor but the judgment creditor.

The appeal was consequently upheld.

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