

Arresting a person for civil jurisdiction found unconstitutional by Supreme Court of Appeal of South Africa

In *Bid Industrial Holdings (Pty) Ltd v Strang and another* [2007] SCA 144 (RSA) the Supreme Court of Appeal of South Africa has ruled on 23 November 2007 that arresting a person in order to found or confirm (civil) jurisdiction is unconstitutional. Under South African law, when a person not domiciled in South Africa is sued in a South African court, the court's jurisdiction had to be confirmed either by attachment of property or arrest of the person, unless the foreign defendant submitted to the jurisdiction of the court. The part of this rule permitting the arrest of a person has now been found to infringe the rights to freedom and security of the person, equality, human dignity, freedom of movement, and possibly also the right to a fair civil trial. It could not be said that the rule provided a justifiable limitation to these fundamental rights. The Court stated that arresting a defendant was a profound infringement and had the effect of coercing him or her to submit to the jurisdiction of the court, to make prompt payment, or to provide security.

The Supreme Court of Appeal abolished the rule and adopted a replacement rule to the effect that where attachment was not possible to found or confirm jurisdiction, the South African courts will have jurisdiction if summons is served on the defendant while he or she is in South Africa and there is sufficient connection between the suit and the area of the court.