

# Sale of immovable property - beware of double sales!

If you are purchasing immovable property, it is advisable to always establish whether there is a pre-existing sale agreement in place. More often than not, and especially in competitive markets, it may very well be that two or even more sale agreements for the same property exist.

This is what happened in the high court matter of *Mashazi v Mukuma and others* where an immovable property was sold in terms of a sale agreement (the First Sale) between a seller and purchaser (the First Purchaser).

The First Purchaser paid the purchase price in instalments and the last instalment was paid on 3 November 2011. The First Purchaser took occupation of the property on 5 December 2010, but transfer of the property never took place. The First Purchaser blamed the seller for not cooperating in the conveyancing process and the end result was that the property was never transferred to the First Purchaser.

On 24 January 2021, the First Purchaser was informed by a group of people (the Second Purchasers) that they had purchased the property from the seller on 13 December 2019 (the Second Sale) and that the property had been registered in their names.

The First Purchaser was obviously surprised by this and approached the court to have the Second Sale set aside and to obtain an order compelling the seller to give transfer of the property in terms of the First Sale.

The seller did not oppose the application. The Second Purchasers opposed the application and alleged that they acquired the property as *bona fide* purchasers and that they were unaware of the First Sale. The Second Purchasers also alleged that the claim to enforce the First Sale had prescribed and that the First Purchaser's application should be dismissed.

The court found that the First Purchaser could not prove that the Second Purchasers knew about the existence of the First Sale and dismissed the application, leaving the Second Purchasers as the owners of the property.

This would be a huge inconvenience to anyone thinking they are the owner of a property and the First Purchaser in this case would have to incur costly litigation expenses to reclaim the purchase price he paid to the seller and claim any further damages which he might have suffered.

If the Second Purchaser was aware of the First Sale, the court would have come to a different conclusion and ordered that the property be transferred to the First Purchaser.

This case confirms the importance of having an experienced, trusted conveyancer on your side to guide you through the transfer process and to advise you of possible issues that might arise in future.

Christoph Meyer, Van Velden-Duffey Inc.