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CAN AN EXECUTOR ACT PRIOR TO BEING APPOINTED BY THE MASTER?

During a property transaction, it is not uncommon that a date of sale precedes the date of appointment of the executor by the master. This has become a subject of debate between those who believe that, if a sale is urgent, an agreement of sale can be ratified by the executor after the master has appointed him to act and those who believe that an executor cannot act until the power to act has vested.

The legal position is, however, clear. According to section 13(1) of the Administration of Estates Act 66 of 1965 (The act), no person shall liquidate an estate without being granted letters of executorship or being appointed by the master. This position is further reinforced by regulation 44A of the Deeds Registries Act, which sets out exactly the responsibilities of the conveyancer, which includes that the conveyancer must be satisfied that the executor is acting within the powers granted to him by the master.

With the above in mind, it becomes clear that an agreement of sale entered into before the appointment of the executor is null and void as it is impossible to comply with the requirements of both the Administration of Estates Act and the Deeds Registries Act. It is, therefore, important that agents are aware of the real possibility that the transaction may be declared invalid if the executor has yet to be vested with authority to act by the master.