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CAN THE REQUIREMENT TO BUILD ON LAND BE A VALID REASON FOR CANCELLATION OF A SALE AGREEMENT IF NOT MET?

If there is a requirement in a sale agreement that the purchaser must build on the land within a certain time period, the question is often asked from when does the time start running? Will it be from date of transfer or from the date the sale agreement was signed?

In the case of *City of Johannesburg Metropolitan Municipality and Another v Pitse N.O. and others* (2022), there was a public tender out for the purchase of a piece of land and Mr Pitse submitted a tender for the land. The tender was accepted by the City of Johannesburg and Mr Pitse took possession of the property in October 2001.

According to a clause in the agreement, the purchasers had to start building on the land within one year from signature of the agreement by the COUNCIL. Transfer never took place by the City of Johannesburg. The purchaser passed away in 2006 while the land was kept in the possession of his estate. In 2015, fourteen years after the agreement was concluded and still nothing happened, the City of Johannesburg send a notice to Pitse's executor setting out that they are in breach of the clause stipulating that they must build within a certain period of time and that the estate has fourteen days to remedy the breach.

The executor argued that they where not in breach of the agreement as the City of Johannesburg failed to effect transfer of the land within a reasonable time to the deceased.

The court held that there was nothing in the agreement that gave the idea that the purchaser has to build on the land before the transfer of ownership can take place. The only requirement that was necessary for the purchaser to start building, was possession of the property which they were given.

It was therefore concluded that the obligation to build arose when the agreement was signed, not when ownership would transfer. The City of Johannesburg could therefore demand performance which they did with the letter to the executor. The appeal therefore succeeded.