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DOES A DRAFT MORTGAGE BOND CONSTITUTE A SALE?

Can a partially signed bond document which refers to the sale agreement be used to create a sale agreement which has not been signed yet?

In the case of Elmo-York N.O v Van Dyk and Another (67219/2019), the seller passed away before he could sign the sale agreement. There was however a partially signed bond document which referred to the sale agreement. Was there a valid sale?

The purchase price was payable by way of instalments and the purchaser also had to pay occupational rental of R10 00 while he occupies the property. This appeared from a draft mortgage bond agreement relating to the property. The purchaser had in the meantime given instruction to his attorney to start drafting all the necessary legal documents that will be necessary for the parties to sign to give effect to their intention.

The purchaser argued that there was a valid agreement of sale secured in the draft mortgage bond. The executor of the estate disagreed and offered to sell the property to the purchaser for a higher price, otherwise the property will be sold on an auction. The purchaser did not accept the offer.

The question arose as to whether the mortgage bond constituted a deed of alienation. In the case of Legator McKenna v O'Shea a related question was addressed, and the court found that the execution of conveyancing documents does not meet the requirements of the Alienation of Land Act that are necessary to prove that a valid sale agreement was entered into. There are multiple clauses that are essential to a deed of sale that are absent from the covering mortgage bond.

The court concluded that the covering mortgage bond did not result in a valid deed of alienation. The court granted an eviction order against the purchaser.