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INCLUSION OF MATERIAL TERMS IN AGREEMENT OF SALE

In *Cooper N O and Another v Curro Heights Properties (Pty) Ltd* (1300/2022) [2023] ZASCA 66 (16 May 2023) the sellers (the liquidators of Nomic 151 (Pty) Ltd) and purchasers agreed to the sale of an unimproved erf to Curro. When an erf description had to be rectified from 19555 to 19565, the purchasers found that the 'correct' erf extended into an adjacent development, and they wanted the erf to be subdivided to avoid becoming owners of the other development's portion as well.

After many failed attempts by the liquidators to comply with these requirements, they let the purchasers know that they will not be entertaining such further requests and demanded signature of the transfer documents, which the purchasers refused. After giving the purchasers an opportunity to remedy their breach, the agreement was cancelled.

The liquidators then approached the High Court for a declaratory order confirming the agreement was void ab initio. The Court found that there wasn't consensus as the sellers wanted to sell the whole of Erf 19565 whereas the purchases only wanted a part thereof; the SCA also held that all material terms agreed upon must be reduced to writing which was not done in this instance as the subdivision was not mentioned in the agreement. The Court held that a material term is determined by examining the rights and obligations of the parties – in this matter the subdivision of the ringroad erf affected the rights and obligations of the parties and therefore could be deemed a material term.

This considered, the SCA found the agreement and the addendum to be null and void as it didn't comply with section 2(1) of the Alienation of Land Act. It is therefore imperative to always include all material terms to the written sale agreement.