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SALE AGREEMENT OF IMMOVABLE PROPERTY: ARE ELECTRONIC SIGNATURES VALID?

With technology evolving and becoming more useful in our everyday lives it is to be expected that it will also be used in the conclusion of legal contracts and agreements. The question as to whether a sale agreement of immovable property is rendered invalid due to electronic signature thereof, has been debated for a few years.

Section 4(4) of the Electronic Communications and Transactions Act 25 of 2002 read together with Schedule 2 of the Act, sets out some categories of agreements that cannot be signed electronically – these include agreements for the sale of immovable property, long-term lease of land exceeding a period of 20 years, a person's last will and testament as well as Bills of exchange.

Currently there are two contradictory court decisions on this subject:

In the matter of Borchards and Another v Duxbury and Others the Court had to decide whether a sale agreement of immovable property was valid although it was signed by the seller by means of an electronic signature. The seller received the offer to purchase from the agent via email and signed via an application (app) known as DocuSign. The Court upheld the validity of the signed agreement and stated that the intention of the seller was to be bound by the contract.

On the other hand in Aarifah Security Services CC v Jakoita Properties (Pty) Ltd, the Court on the same question found that the provisions of the act mentioned above is very clear on the exceptions of electronic signatures and therefore found that the agreement that was signed electronically was not valid.

Our legal stance at MC van der Berg Attorneys is that all agreements of sale for immovable property should be signed in wet ink. Agents must advise both the purchaser and seller that the sale agreement must be signed in wet ink to avoid any future disputes.