



BUYER BEWARES: EXAMINATION OF ESTATE SURVEYORS' PRUDENCE IN REAL ESTATE SALE TRANSACTION IN IBADAN

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Abstract

In transaction in business including real estate the well-known slogan is let the buyer beware. To avoid the probable risk the intending buyers do appoint agent(s) to act for them and on their behalves. Sometimes, however, the agents deliberately or inattentively do commit breach of contract that might harm or cause loss to the principals. This paper examined practical problems and prudence of estate survivors in overcoming negligence and hidden and apparent snares in real estate sale transactions in Ibadan. Administration of structured questionnaire was adopted to collect data from 60 estate survivors who had earlier prudently escaped some kinds of snare to willingly share their nasty experiences and how they handled it to reach favourable conclusion. Firstly, the respondents were asked to explain the facts of their cases, action(s) taken as duty of care to prevent it, and gains recorded. Data analysis was carried out by sorting and sieving 20 responses to pick 11 that have cohesion or are meaningful and the result was presented in tabular form with 3 columns. The study found that: agents acted prudently and with experience, patience and doggedness to serve their clients; cooperation of sellers, buyers and their lawyers with agents is germane to successful real estate sale transaction in Nigeria among others. It recommends that Estate Surveyors and Valuers should continue to discharge their duty with utmost good faith and to the best of their knowledge within the ambit of the law.

Keywords: *Estate Surveyors and Valuers, Ibadan, Pitfall, Prudence, Real Estate Sale Transaction.*

Introduction

In this paper, the word *agent*, though, a generic term is used to mean the estate surveyor and valuer, who is trained to act for buyer-principal in real estate transaction.

Real estate is somehow unique and different from other property as both physical property and clustered of rights subsisting in it. So there is high intricacy of real estate that warrants special expertise of man to handle it successfully and necessity for government to establish a system to operate, manage and administer land related information. This involves, on the part of government, surveying and mapping, capturing, recording and updating of information about both natural and artificial features on and within the earth crust. Useful equipment has been developed to carry out the above enumerated tasks seamlessly. Government, organization and individual make use of the so acquired information to carryout analysis, forecast, make decision and perform action from time to time.

One of the focuses of the uses is real estate sale transaction as both physical property and clustered of rights subsisting in it are sold and purchased on daily basis globally. Man has fashioned out profession of real estate management to impart and train man the special expertise in the field to be able to solve myriad of difficulties and challenges in the global economy, the world of man has transformed into (Gustafsson and Lundstrom, 2008 and Ashaolu & Olaniran, 2017a). The training accommodates and aggregates many other fields of knowledge into one. Such bodies of knowledge include economics and finance, law, land surveying and planning, building and project design, estimation, development, construction and services, management and maintenance, facility management, valuation, sociology, psychology and philosophy, agriculture, environment, government, marketing, valuation, etc. (Olaniran and Ashaolu, 2018).



Thus, Estate Surveyors and Valuers with their multifarious training in respect of real estate are professionals in practice who have been serving the good people of cosmopolitan Ibadan before 1970, and specifically for this study, as agents in real estate sale transaction (Olaniran, 2012 and NIESV, 2023).

Honesty and fairness must not be missing in business transaction especially from the side of sellers who have upper hand in property transaction as most buyers are most time at their mercy. They are encouraged to declare defects, debt, lien of all kinds like mortgage, easement or severance and injurious affection, restrictions, etc. and avoid charging of outrageous price.

Honesty and fairness must not be missing in business transaction especially from the side of sellers who have upper hand in property transaction as most buyers are most time at their mercy. They are encouraged to declare defects, debt, lien of all kinds like mortgage, easement or severance and injurious affection, restrictions, etc. and avoid charging of outrageous price whenever they offer property for sale. And emphatically, all countries have tradition and culture, laws and regulations of equity and ethic, inheritance, conveyance, property taxation, penal code and judicial system to moderate citizens in all their business activities. It is crucial for estate Surveyors and Valuers acting as agent of buyers to understand culture and law of inheritance of the society where he is operating to avoid risk such as litigation, defeat, fraud and loss of reputation during and after the transaction.

Furthermore, Nigerian Institution of Estate Surveyors and Valuers (NIESV) as a professional body was established in 1969. The Federal Government of Nigeria accorded recognition to the profession by promulgating Estate Surveyors and Valuers Registration Board of Nigeria Decree 24 of 1975 (now NFL, 2007) (ESVARBON, 2015 and NIESV, 2023). Both bodies collaborate to uphold the standard of the profession in the country with NIESV's code of conduct and ESVARBON's measures against erring members.

Although, the rule in the market is that the seller is supposed to declare an implied assurance (warranty or guarantee) that the real estate has genuine title and that it is marketable (Microsoft Encarta, 2009). In reality, the sellers and their agents most times do fail to or deliberately act dubiously in an unacceptable market manner. There are many impostors in the society who capitalise on gullibility of buyers to have their ways and so every buyer and his agent must be wary of them. They beguile or charm the buyers and hold their attentions and interests till they collect money from them.

This is why the phrase; *let the buyer beware*, is apt as the sellers may not act according to acceptable terms by intending harm or transgression on the other unsuspecting party – the prospective buyers. No wonder one Yoruba adage says; *iro de oja odi otito, otito de oja o di eke*. Interpretation; falsehood reigns supreme in the market while truth or fact is cunningly suppressed and dejected. Incontrovertibly, real estate market is itself full of secrecy and imperfection for there is no free flow of information nor organized market. Thus, it fuses together with the above – stated adage to aggravate the risk facing real estate buyers and agents.

Accordingly, in the market of real estate, the agent of and intending buyer have a duty of responsibility and care to perform. This is to observe very well and ascertain that the title of the subject landed property is in order and confirm that they keeps within the market limits, i. e. the generally acceptable standard or term before purchasing the land and landed property. That is to ensure the title is genuine to all extent and purposes and transferable. With this, buyer and his agent take responsibility for any untoward problem that might ensue thereafter.

On this basis, the stakeholders in the real estate market, especial buyers must be very knowledgeable and wise to identify truth and make informed decisions before acting. In a nutshell, the imperfection of real estate market does not permit most buyers to have adequate information at their disposal; hence, they could not act prudently as they might want to be. To then forestall the obvious pitfall, the buyers always engage the services of agents - professional real estate surveyor and valuer to act on their behalves in securing their demands. Iroham, Oloyede, Ajibola, and Durodola, 2014 and Ogwo, 2023) buttressed this point by submitting that real estate buyers rely on the expert knowledge of estate surveyor and valuer and in addition legal skill of lawyer to engage them in their search for and purchase of suitable land and/or building.

The agent of the buyer-principal has therefore a duty of responsibility or care to his client and to discharge his assignment towards maximum protection and satisfaction of the buyer-principal. To achieve this maximum protection and satisfaction of the buyer-principal which is the final end or goal for engaging the services of the estate surveyor and valuer in the first instance, knowledgeability and prudence of the real estate surveyor and valuer in discharging



his assignment are pertinent. Absolute care is required of him in order to avoid the snare that buyer-principal initially ran away from to engage his service. Breach of care and resulting harm could bring upon the affected estate surveyor and valuer case of negligence, damages, loss of money, certificate, reputation and life (Olaniran, 2009).

However, as implicit as it is, many estate Surveyors and Valuers always count themselves as being very lucky and fortunate whenever they secure a brief from an intending real estate buyers asking them to render their professional service with an accompany fee for him on the property he intends to purchase. Many agents allow the opportunity of making money to becloud them from engaging in thorough thinking and performance of the duty of care in exercising the assignment. They run around aggressively to close the deal as soon as possible without necessarily straighten odds of the transaction even when they perceive danger, assuming sheepishly things would sort themselves out naturally and inch on to conclude the deal until he later realises his undoing.

This paper, therefore, examined practical problems and prudence of estate survivors in overcoming negligence and hidden and apparent snares in real estate sale transactions in Ibadan to create awareness for and warn buyers of impending dangers and by extension estate surveyors who act for them and on their behalves.

Real estate transaction is part of human activities in urban areas including Ibadan city in south western Nigeria where in 1903 Dugbe, the Central Business District (CBD), Jericho, Onireke and Agodi Government Reservation Areas were created and allocated to expatriates (Olaniran, 2012 and Lawal, Oladokun and Ayodele, 2019). Also important is the fact that Ibadan is one of the three biggest cities in the whole of Africa and in 1970 played host to the first annual national conference of Nigerian Institution of Estate Surveyors and Valuers (NIESV) (Dabara, Gambo, Asa, Omotehinse and Soladoye, 2020, and NIESV, 2023). More so, in Nigeria including Ibadan, many properties have no registered titles and land sale transactions are still done informally in parallel to formal land transaction (Olaniran and Ashaolu, 2017b).

Many professional estate surveyors and valuers, real estate agents, nominal estate agents and lawyers have been active participants in sale aspect of real estate agency in the city of Ibadan. The city therefore attracted the attention of these researchers to conduct the research on *buyer beware: examination of estate surveyors' prudence in real estate sale transaction in Ibadan* in order to understand the kinds of problem the real estate buyers and their professional estate surveyors and valuers - agents do encounter and how they have been navigating the murky water of real estate market to avoid consequent troubles. The professional estate surveyors and valuers are the focus of this study because they are trained to act prudently.

Reasch Methodology

Administration of structured questionnaire was adopted to collect data from 60 estate survivors who had earlier prudently escaped some kinds of snare to willingly share their nasty experiences and how they handled it to reach conclusion. Firstly, the respondents were asked to explain the facts of their cases, action(s) taken as duty of care to prevent it, and gains recorded. Data analysis was carried out by reading, sorting and sieving the reported cases to pick cases that have cohesion or are meaningful and the result was presented in tabular form with relevant columns.

Case study

Although, some Estate Surveyors and Valuers had been operating earlier, Real Estate Agency was formally recognized in Ibadan, a city in south western Nigeria where in 1970 the first annual national conference of Nigerian Institution of Estate Surveyors and Valuers (NIESV) took place n(Onifade and Olajide, 2007). There are active branches of both NIESV and ESVABON in Ibadan with many members into real estate (sale) agency. Ibadan is therefore an appropriate city for this study.

Results

Only 20 respondents reported averted cases. All the reported cases were read, sorted and sieved to select those having cohesion or meaningful. Eleven cases were eventually selected because they were in detail and included their preventive actions as well as resultant gains. Those selected are presented in tabular form in the table I below with relevant columns. Purported

Table 1: Pitfall, Prevention and Gain recorded in Land Sale Transaction in Ibadan



S/N	FACTS OF THE CASE	ACTION TAKEN AS DUTY OF CARE	GAINS RECORDED
1	A flaw was spotted by an agent in the deed of assignment prepared by a renowned lawyer. Historical facts on ownership of the subject land were flagrantly omitted in the deed.	Agent was very assiduous in his duty and warned the intending buyer not to go ahead with the transaction. The deal was cancelled. The purported seller went back to his lawyer who admitted and apologized for the error.	Prevention of likely future litigation and loss of property
2	A house that had been marked for and served with demolition notice was offered for sale. The seller cleverly hid the information from the interested and eager buyer.	The agent was inquisitive and conducted search at Survey Section of Ministry of Lands, Survey and Physical Development. It revealed that the house had been marked for and served with demolition notice The buyer refrained from the transaction after discovering the fact.	Prevention of apparent loss of property or money
3	A house that was subservient to another within the same curtilage through a clause in the will was offered to an intending magistrate-buyer to purchase.	Agent drew the attention of the magistrate-principal to the inhibiting clause and advised him not to buy the house.	Prevention of likely litigation and loss of property and/or money. The client praised the doggedness of and rewarded the agent.
4.	An industrialist-woman offered to sell her late husband's plot of land. She claimed to be the only wife of her deceased husband who had no child outside their wedlock.	She admitted the existence of a child when she was later reminded of a boy child after the fact was uncovered through diligent investigation. The child's representative was brought in to be a co-seller and party to the deed of assignment.	Prevention of likely litigation and loss of property and/or money
5.	A woman negotiated with estate survivor to undercut the price of a plot of family land and keep the balance to only herself without the knowledge of other members of the family.	Estate survivor subtly rejected the covert move by informing through writing and copying principal members of the family of the actual exchange price.	Stoppage of corrupt practice and probable litigation against the estate surveyor-agent.
6.	The property is situated within unregistered layout and had no registered title though with a red copy of survey plan.	Confirmation of the land information at the office of Surveyor General of Oyo State Ministry of Land, Housing and Survey revealed that there was an encroachment on the subject land. Furthermore, the encroached part had already been developed. A new survey of the remaining part that was not encroached on was conducted and purchased.	The encroached part was excised and not purchased. It saved money. It avoided litigation.
7.	Impostors connived to sell a block of four flats.	Thorough investigation carried out on the ownership took the agent to a purported owner in another town far away from Ibadan. Findings are: The man looked younger than the history of the property. The man called other impostors his	It saved money. It avoided litigation.



		biological children while they called him their uncle. They were dumbfounded when asked to explain the two contradictions. Though, the owners were later contacted, the transaction was aborted.	
8.	A building under construction with no survey and building plans was offered for sale by some members of a land owning family as property of one them that was sick then.	Investigation revealed that the said plot was sold the developer who was not a member of the said family. The transaction was aborted. The true owner appeared few days later and affirmed that he had not died and was not willing to sell the property.	It saved money. It avoided litigation.
9.	A certified true copy of deed of assignment was presented as title document of a block of 6 flats offered for sale. The owner explained that he was robbed and original deed was stolen.	Investigation revealed that though the title was genuine, marketable and transferable, it was pledged for fiducial mortgage that was not registered at Lands Registry but only kept with the mortgagee – a commercial bank. There was mortgage lien by the bank on the property.	Mortgage lien was discovered. Arrangement was made with the mortgagor (seller) and mortgagee (bank) for loan repayment. The transaction was concluded. The loan was repaid. Deed of release was processed, granted and delivered.
10.	A property of a deceased person who died intestate was offered for sale by all his heirs – wives and children, but without letter of administration or administrator of the estate.	The sellers' agent and lawyer met the buyer's agent and lawyer. It was resolved that: all members of the family meet and record the minutes to be signed by all; keep a copy of the minutes with their lawyer; appoint an administrator for deceased person's estate; ask their lawyer to process letter of administration; pledge to sell the said property to the intending buyer at the agreed price. The buyer was asked to make deposit of the purchase price. The buyer made advanced payment. A contract was made between the sellers' representatives and buyer. The contract was witnessed by the two agents and lawyers. The sellers' agent and buyer's agent and lawyer were asked to monitor the processing of the letter.	The letter of administration was issued without delay. The transaction was concluded without hitch. All stakeholders were satisfied.
11.	A house, with major defects but in a suitable location for intending buyer, was offered for sale to him as it stood.	The agent prepared a comprehensive schedule of dilapidation with a bill of quantity for the buyer with advice that the buyer would spend additional amount submitted upon purchase of the said property for its improvement.	The buyer raised additional fund. He purchased and renovated the house.



		The buyer heeded the advice and augmented his fund for the purchase and renovation of it.	
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Discussion

The results in column 2 in Table I show that in Ibadan, real estate sale transaction was fraught with a lot of risk. Risk in the sense that property owners who wanted to sell their properties always play smart by withholding inhibiting information in order to hoodwink buyers and their agents. In addition, there is risk of impostors of different kind who prowl around to dupe unsuspecting buyers and their agents. Column 3 shows the know-how of estate surveyors and valuers in detecting the risks ahead and taking preventive actions against them. In summary, column 4 shows that there are three kinds of gain; avoidance of likely litigation, loss of property and/or loss of money, that accrued to the various buyers as result of prudence of the agents who identified the risks ahead and employed prevention-is-better-than-cure attitude on them. Implications that could be inferred from the results for estate survivors and valuers are ability and opportunity to satisfy, retain and attract more clients, enlarge ones practice and make more profit while buyers enjoy value for their investments, the law courts and judicial system are relieved of avoidable cases and government increases its revenues through processing of change of title, governor’s consent and charging of capital gains tax.

Conclusion and Recommendations

This study revealed that real estate is shrouded in secrecy and deficiencies of man. It doused anxiety by showing that the agents who acted for and on behalf buyers of landed property have requisite education, training, knowledge, skill, qualification, experience, patience and doggedness to serve their clients. It also assured stakeholders that cooperation of sellers, buyers and their lawyers with agents is germane to successful real estate sale transaction in Nigeria and other countries with similar circumstances. It placed emphasis on the importance of proper documentation and retrieval of landed property related information such as survey and building plans, title (Certificate of Occupancy in Nigeria) and mortgage in the appropriate ministry and prompt processing of required documents like letter of administration, governor’s consent (in Nigeria). By practical implication, authors’ view is that ethical real estate sale transaction is achievable in Ibadan and elsewhere in Nigeria.

It hereby recommends that openness is an essential part of any business transaction including real estate, thus, intending sellers are urged to declare encumbrances, claims, demands and others pertinent information about the property to be disposed.

Buyers and sellers are encouraged to always engage the services of Estate Surveyors and Valuers for real estate investment and transaction to avoid needless pitfall.

Estate Surveyors and Valuers are implored to continue to discharge their duty with utmost good faith and to the best of their knowledge within the ambit of the law.

Government will improve documentation, preservation and retrieval of landed property related information by acquiring new equipment especially ICT gadgets and recruiting and training of qualified workforce.

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