



Legal issues and challenges militating against seamless land registration in Nigeria

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Abstract

Land registration may refer to the registration of land title documents or the registration of title to land. It commences with obtaining traditional receipt of payment from the land vendor, preparation of Deed of Transfer by the Purchaser's Lawyer, payment of stamp duties to State Internal Revenue (if two parties are individuals) or Federal Internal Revenue (if one of the parties is a company), obtaining of Governor's consent and registration of the land at the Land Registry or on the Geographical information system portal. The traditional objectives of Land registration law includes to give certainty of title to the land; facilitate the proof of land title thereof; and render the dealings with land more simple and economical. Land registration helps government know who lives where and who owns what so that they can manage land resources optimally and for taxation purposes. Land registration also helps general public know with clarity who lives where and who owns which parcel of land so that they can be secured when buying, selling, leasing, mortgaging or otherwise dealing with real property transactions. Most purchasers of land used to save financial resources for many years before they are able to purchase land, but after the purchase and payment for the land, some may find it difficult to raise money to perfect title to the land. The Article found out that cost of preparing a Deed of Transfer, cost of stamp duty/capital gain tax, duration of registration has presented a huge challenge that has militated against land registration in Nigeria. To this end, the article recommended amongst other things the need for all the State Government in Nigeria to embrace the Geographical information system (GIS) and make it functional as GIS will reduce the cost of land registration, eradicate the high incidence of corruption, curb the reported cases of missing of land files in traditional land registries and will streamline the duration of land registration in Nigeria.

Keywords: Land-Registration, challenges, title, land-tax, GIS

Introduction

Land is nature's precious gift to Man. On it humans plough for food, explore its mineral resources, construct roads that provide linkages, build schools, hospitals, offices and shelter. Land is very important asset to capital formation. It is the basics of prosperity and economic well-being of the populace.

There are several varying interests and aspirations that exist with regard to land; the desire to buy land and to do so without buying a law suit; the desire to use one's land as security for advances or the essential needs for shelter^[1].

The land registration Act required all documents by which an interest in land is transferred or charged should be registered so as to facilitate search into the roots of any title to be alienated. In a similar vein, the Registration of title Act made provisions for the registration of title. The system operates to provide records of transactions in land to which recourse might be had whenever a transaction in land is contemplated. It serves as information bank and to this extent puts prospective purchasers on land on notice as to existing claims on land only if they conduct search in the registry as part of due diligence.

There are three systems for recording rights in land; namely by private conveyancing, registration of deeds and registration of title. In private conveyancing, land sale agreement is negotiated and drafted between the seller and purchaser according to the framework laid down by the state. The system of private conveyancing is generally regarded as inefficient and potentially dangerous since it can be subject to fraud as there is no easy proof that the seller is the true owner. Under the system of registration of deeds, a copy of the transfer document is deposited in a deeds

registry. An entry in the registry then provides evidence of the vendor's right to sell.

The deed registration in Nigeria is a land management system whereby all important instruments affecting title to parcels of land are registered on a government maintained register^[2]. That the law regulating registration of instruments in Nigeria is the Land Registration Act which is the Parent Act enacted for the whole country, which has been adopted and re-enacted in some states under different nomenclature. The law prescribes registration of any instrument executed before or after the commencement of this Law. To ensure swift execution, the Law establishes in every state, a Land Registry under the Land Registrar charged with the responsibilities for the registration of instruments and safe keeping of same.

1. Legal Issues Affecting Real Property Registration in Nigeria

Manual registration of land title is fraught with many legal issues. Prominent among which include the fact that manual land registration procedure is cumbersome; the cost very expensive; the duration for registration is protracted and it requires over 14 different steps.

a. Lack of Adequate Awareness of the General Public

Most purchasers of land do not know that they need to properly document and register the land they had bought, to this end, they stop at payment of the land to the vendor. Nearly all state registration laws are in support of land registration. Section 2 of the Lagos law states that registration is compulsory for all lands in Lagos^[3].

In one report, beneficiaries in Ekiti and Benue States were more likely to have better understanding of the land registration process than those in other States because there were land information guidelines in circulation ^[4]. Where there are no guidelines, seminars and training, some purchasers do not go through private conveyancing, stamp duty, obtaining of Governor's consent and registration. They do not know in the first place that such procedure exist or are necessary. The legal issue here is that failure to register land with the registry entails loss of priority and connotes that the instrument cannot be given in evidence to prove title ^[5].

For most Pre-Act land owners, land registration seems as an exercise in futility, they do not understand why they should apply for a certificate of occupancy that will limit their title to just 99 years ^[6]. They also query why they should pay annual customary or statutory fees to government for their family or communal land. Most people practically do not know the value attached to documentation of land transactions. Others believe that it is only when they want to sell or take loan from the bank that they need registration of land ^[7]. Overcoming these informational constraint is a key point in improving land registration service delivery in Nigeria.

b. High Cost of Land Registration Procedure

Affordability is another road block to land registration. The cost of land registration is too high relative to the income of the people, despite the cost reductions that the government has introduced in some states. For example in Kaduna, the government put a flat rate of N80,000 (Eighty Thousand naira only) yet some people are still poor and cannot afford. In Osun State, the cost of registration is between N100,000 and N150,000 (One Hundred Thousand and One Hundred and Fifty Thousand naira), but this amount is still very exorbitant for the inhabitants especially in villages where the cost of land is still very cheap ^[8]. This reinforces the outcome of previous studies that cost of land title registration in developing countries is too high, often beyond the reach of the poor ^[9].

It must be borne in mind that land registration processes starts from the negotiation, investigation of title, private conveyancing, payment for stamp duties, application of Governor's consent and registration at last. The sum total of entire land registration procedure is on the high side and is not affordable for most Nigerian citizens. More so, where a lawyer's services is retained for perfection of title the title holder will have to pay for legal services and this also add up to the high cost of land registration. This exorbitant trajectory has contributed to the reason why most land owners have not keyed into the real property registration in Nigeria.

c. Duration of Land Registration Procedure

In Lagos, where land registration procedure is digitalised, it takes from one to three months to register a title in land. In other states that combine manual and digital land registration processes, land registration takes up to six months. The manual land registration processes include obtaining a form; submission of filled form; opening of file and issuance of file number; advertisement in national newspaper; payment of outstanding ground rent; payment of calculated proposed ground rent; inspection; payment of 10% of approved value as consent fee; capital gain tax;

payment of stamp duty fees for stamping; deed registration fees; endorsement of land title by Governor, Commissioner and Deed Registrar and registration of title by registrar ^[10]. These series are over 14 different stages and spans over a protracted period of time. Where land management procedure are carefully planned, some procedures can be merged or completed online to economize time. Land registration takes a very long time as the dominant means of access to land registration institutions is direct contact. In many states in Nigeria, while online means of communication appears to be limited.

The duration of land registration can be effectively managed, curtailed and reduced with the application of digital registration. Digital registration through GIS has been used successfully in few states in Nigeria. In Abuja, Abuja Geographical Information System (AGIS) is used for registration of lands. The functions of AGIS include to computerise the cadastral and land registry for Federal Capital City, the Area Councils and the Satellite Towns of the Federal Capital Territory, to prepare and issue certificates of occupancy and other certificates evidencing titles, production and printing of Title Deed Plan, textual and graphic data on FCT, including land record, aerial photographs, satellite images, engineering drawing, and scanned pictures of building, to conduct property search and verification of land record. AGIS has office of the Director, Legal unit, Document Management System and Record unit, Geographic information systems unit Audit unit, Consultant unit and Administration unit amongst others.

To apply for land in AGIS, applicant or any owner of land in Abuja who wish to obtain the original land title of that land must complete the application form and pay processing fee of one hundred thousand naira for commercial land and fifty thousand naira for residential land at designated banks. Applicant will furnish evidence of payment to the AGIS to obtain a receipt. Thereafter applicant submit completed application form with the following documents to AGIS for processing: applicant's proof of identity, land registration proof, site clearance document, plan of survey, payment slips of necessary payments and any supporting documents. For land that are to be developed for commercial purposes: a schematic design of the proposed building, an environmental and technical capacity. Where the applicant is a company, incorporation certificate and corporate tax certificate are required ^[11].

The original of the titled document is required at the AGIS for sighting. Thereafter a search of the property will be carried out by AGIS staff. They conduct search and develop a report stating whether the information provided in the application letter matches that of the document with them or any land registered there in the land registry. The report shall also state the rates payable and provide information on any encumbrance on the land ^[12]. Thus GIS can curb the challenge of duration of land registration in Nigeria.

d. Corruption Issues

A new survey released revealed that land registries have remained a cesspit for bribery among other public offices in Nigeria ^[13]. The survey stated that public officials who are entrusted with some core functions of the state, not least those involved in land administration, account for the highest prevalence in direct bribe requests from 21 percent in 2016 to 26 percent in 2019. In the case of *Abba v Abaiji* ^[14] the respondent was a civil servant who was allocated a

government quarter in Borno State since 1983 and was paying rents until 2002 when the 3rd respondent (Borno State Government) asked that every occupier should apply to buy the flat they occupied under the policy known as owner-occupier. The respondent applied in May 2002, whereas the appellant (Secretary to the State Government) applied in September 2002. The appellant misrepresented facts to the Governor and on the strength of the facts that the flat was empty, he was issued a Certificate of occupancy.

The 1st respondent petitioned the 3rd respondent and a committee was set to investigate the complaint and discovered that the complaint was genuine. As a result, the certificate of appellant was revoked. The appellant brought an action at High court to challenge the revocation, while the 1st respondent counter claimed. The trial court gave judgment in favour of the appellant. The 1st respondent appealed to the Court of Appeal which allowed the appeal and set aside the judgment of the trial court and granted the 1st respondent's counter claim. The appellant thus appealed to Supreme Court and the Court held *inter alia* as follows:

In the exercise of the statutory powers of the Governor to grant and issue a certificate of occupancy, occasions may arise where the Governor is misled into granting the right of occupancy and issuing a certificate to a wrong person or the Governor may discover that the issuance of the certificate of occupancy was carried out irregularly through inducement, fraud, concealment or misrepresentation, in such situations, the Governor cannot fold his arms and allow those vitiating vices to be perpetrated over the land he holds in trust and for the benefit of all Nigerians and allow the certificate to stand. Even though there is no specific provision in the Land Use Act for such, the Governor has inherent power to revisit the grant and issuance of certificate of occupancy with a view to correcting the anomaly.

It is submitted that the inherent power of the Governor in correction of anomaly in issuance of certificate of occupancy shall include revocation or cancellation of a wrongly issued certificate of occupancy.

Applicants complained about how some staff of the land registry made the process of registration difficult by demanding gratification before performing their statutory work of land registration and applicants who were not able to offer bribe abandon the registration process without completing same as the said officials refuse to process their application^[15].

Land registries are one of the three stages of perfecting title to land to enhance the property rights enjoyed by the assignee. Corruption in land administration has remained a challenge in the real estate sector with many stakeholders calling for digitalisation of the process. There are anecdotal experiences of property files that magically disappear in order to solicit for facilitation to ensure their reappearance, besides, cases abound of multiple ownership of land in Nigeria, which has caused many disputes. The reports say a digitised registry would in some measure provide incorruptibility, clarity and transparency in the system^[16].

There are also reports about attorneys who had charged their client as high as 20 percent of the purchase price inclusive of the registration of the titled Deed but who only stopped at preparation, sealing and attestation of the Deed at court without any further steps^[17].

There is also the problem of insufficient land laws and measures, excessive or unpublished fees for land services,

uneven practices in the assemblage of land taxes, lack of active compliant, grievance and oversight mechanisms. The existence of corruption in land governance can create stunt growth in the land sector which could affect future land sustainability^[18].

1. Challenges of Real Property Registration in Nigeria

Land title registration is germane to providing proof of individual, family and communal ownership of land. In recognition of its importance in enhancing property rights efforts at improving land title has significantly. But there are still challenges militating against land registration including lack of manpower, irregularities in documentation and bureaucratic bottlenecks. The sub-headings below shall elucidate in simple clear terms how this challenge plays out.

a. Lack of Adequate Manpower

Manpower are considered as the the most essential function of the human resource management of the organization. Lack of manpower connotes an insufficiency, shortage or absence of qualified registry staff. Manpower basically helps to efficiently manage the maintenance of the registry goodwill by enabling value to their parastatal, registry functions, revenue generated and other important resources. Lack of adequate manpower in land registry prevents the completion and perfection of title registration tasks. The lack of productivity translates into a reduction in revenue and profit.

Most of the staff working in the land registry lack the professional competence to understand the technicalities and intricacies of land registration, record keeping, working within time and the need for title security^[19]. It is the competent staff of the land registry that ought to detect inadequacies of title documents, it is the registry staff that ought to thoroughly investigate title document at the point of submission and properly direct applicants to regularize their title documents.

In the age of technological advancement, adequate manpower requires recruitment of graduate staff with expertise in the field of geographical information management, real estate management, surveying, Law and business administration amongst other field. The staff also require on the job training to sharpen skills and work effectively.

b. Irregularities in Documentation

Title registration is authentication of the ownership of a legal interest in a parcel of land. Once the registration process is completed, no search behind the register is needed to establish a chain of title to the property for the register itself is conclusive proof of title. This system calls for accurate documentation. In most Geographical information systems and land registries, online forms and manual forms are given to applicants to fill with respect to personal, tax, financial, technical and land information details^[20].

Most applicants are not well informed or legally minded to fill land documentation papers correctly. And when such irregular documentation are recorded publicly and stored, it can be misleading to the public. Innocent purchasers can buy land on the strength of the false charting or search result arising from improper documentation and will run into loss of money. There will be dire need for assistant to be

rendered to applicant with limited legal knowledge on how to fill land registration forms correctly.

During conveyancing, majority of persons refrain from employing competent hands that would assist them with the process, they often engage the services of estate agents or do it themselves by using a precedent to copy and paste land information history that is not compatible with theirs resulting in defective land titles registration in Nigeria. It appears that even the elites in Nigeria exhibit this wrong attitude, unknown to purchasers, the defective title is conveyed in subsequent land transactions which end in bitter litigation. Estate agents have increased in number, most of whom are touts carrying out questionable land transactions. They attract members of the public with their cheap yet unprofessional services, having undergone no significant training on the law of property and conveyancing^[21].

c. Non Compliance of Registration Rules by Applicants

For an organization to function properly, there must be a set of rules to be complied with. The registration laws have provided time frame within which certain acts must be done by the applicants. For example the Stamp duty act require that document conferring interest in land ought to be stamped within 30 days of its execution. The Land instrument registration laws of various states also provide for registration of land instrument within 30 days. Registration benefits applicant as it provides evidence of ownership, higher property value, security of title and ease of transaction for future disposals, the more reason why the applicants must abide by registration rules and procedures.

The registry also have similar rules with respect to procedure and duration for registration of Deeds, title, caution, searches, lost of land instrument, Deed of Assent, vesting Deeds, registration of Certificate of Occupancy^[22]. It behooves on the applicant to make adequate enquiry of the procedure to follow, documents to submit, amount to pay and return date from registry officials. Where the rules are ignored, the registration process cannot run smoothly. So many land registrations processes by applicants were dumped for non compliance with registration rule.

d. Bureaucratic Bottleneck

Bureaucracy is an element of administration so interlocked that government parastatal especially complex organizations which have hierarchy of workers with responsibilities moving from row to another. Bureaucratic bottleneck then is a complicated official system which caused delay in one stage of process to the other and makes the whole process take longer to accomplish. The manual registry is a good example thereof as it stack silos of information, they have redundant data, manual entry errors which become a clog in the wheel of work flow process^[23].

Furthermore the time frame to obtain Governor's consent, certificate of occupancy is annoyingly slow as many application need to pass through so many desks and sometime go back and fourth. Application may stay long in a particular desk untreated. In many cases some application files had got missing. Applicants for land registration are required to present the purchase agreement for their plot of land, record copy of survey plan, tax clearance, passport photographs, pay prescribe fees depending on the type of land title registration they applied for. Files are opened for

applicants for easy identification, applicant obtain survey clearance from the office of the Surveyor General, the land would be slated for advertisement in national newspaper, title would be presented to the Governor or his representative for endorsement, the applicant will proceed to pay stamp duty and ground rent. At this stage, the title document would be registered at the Deed Registry by the registrar of Deed in the Lands Department of the Ministry after which the document would be ready for collection by the applicant.

A meticulous perusal reveals the title will be endorsed by Governor, Land Commissioner and the Deed Registrar and thereafter returned to Deed Registrar for registration. The land registration process involves many ministries including: Office of the Surveyor General, Deed Registry, GIS office, Lands Department, Town Planning and Land Use Allocation Committee and that is what caused the delay^[24].

In Kaduna, it is reported that respondents say the registration process is lengthy and cumbersome and involves many delays. The respondents continued to identify other problems that dovetailed from bureaucracy to include inefficiency in record keeping. It is put forward that because many departments handle the registration process as a result there is delay.

It is apposite to state that a change to a paperless land registration system can be a panacea for bureaucratic bottleneck presently experienced in the manual land registry^[25]. In this system once title document are scanned into electronic form on land registry platform, it can be sent in electronic format to ministries concerned for their official comments and signature.

Conclusion

The Article examined challenges bedeviling land registration in Nigeria. The real property contemplated include land, building and anything firmly affixed to the land. Registration is the process of recording rights in land either in the form of Deed or Title registration.

The Article established that registration of land provides safe foundation for acquisition, occupation and disposal of rights in land. Registration also guarantees security of title for everyone including land owner, national and international investors, moneylenders, traders and Government as well. Revenue from land registration supports economic development of the nation. Even the court benefit from land registration as registered land helps facilitate proof of land ownership in land title litigation cases.

This Article however capitulated that despite the beautiful advantages of registration of land, in Nigeria land registration has been fraught with issues and challenges to wit: the registration procedure is bulky; inefficient and cumbersome; the cost of registration is exorbitant; the duration is protracted as over fourteen different steps are followed and there are also high incidence of corruption in manual registry and cases of land files missing.

The Article proposed three abatement techniques to modify and modernize land registration in Nigeria which include thorough investigation of land title before registration, the use of cadastral mapping of all lands in the state and nation and the implementation of geographical information system in all the state registries in Nigeria.

Recommendations

1. It is suggested that state lands yet to be surveyed and divided into clearly identifiable plots in consonance with cadastral mapping should as a matter of urgency be mapped.
2. The geographical information system should be introduced in all the states in Nigeria and should be made functional. This system will enable the land information of titleholders to be linked to their plot, such information will be stored permanently on database and easily accessible for search.
3. Land registry officials should conduct thorough investigation of title and due diligence should be made a condition precedent before presentation of land title documents for Governor's consent and subsequent registration as this will go a long way in remedying the status and validity of registered title including the Certificate of Occupancy.
4. The cost of registration should be streamlined and reduced by the Government to enable all land holders register their lands. Competent staff with requisite knowledge of computer, geographical information system and land title registration and investigation should be recruited in all state and national land registries to reduce the issues and challenges affecting land registration in Nigeria.
5. It is recommended that solicitors preparing title document need to insert column for Governor's consent to show the intention to comply with sections 22 and 26 of the Act. Title Deeds should be couched and prepared by lawyers who are property experts.
6. The implementation of these recommendations will be a cure to the legal issues and challenges bedeviling our land registries and will positively impact on the land title registration in Nigeria and lead to security of title for registered land owners and reduction of land title litigation in courts.

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