

LAND REGISTRATION IN NIGERIA: ISSUES AND CHALLENGES

By

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1.0 Introduction

Real Estate is the expression most widely used in the USA and in the English Language generally to describe a form of ownership in land. Both words 'real' and 'estate' have their origins in English law developed in the Middle Ages. English law has no room for outright individual ownership. This was a privilege reserved to the crown (originally to William the conqueror, who acquired title to the nation in 1066 by Conquest- So often the method of acquisition in human history). The conquest was an instance for centralization, of control over lands that was by no means unique. Nor is it antiquated. The most populous country in the world, the people's republic of China is just one present- day example of a state in which outright ownership of urban land by individual Or corporation is not recognize. State ownership of urban land was made constitutional in 1982 as part of a process of economic reform, although private ownership had virtually ceased in 1953. Real estate is not therefore ownership, in the sense that goods and personal effects, money, shares and other things (known as personal property in English law) are owned. Land is inherently different from all other classes of property in that it is given not made, fixed, and Immovable. On the other hand, real property is a term which distinguishes land from personal property; it is land and- all that is permanently attached to it. English law it includes trees and natural growing things attached, everything under and above it, and improvements in the forms buildings and other construction. Land -registration generally describes systems by which matters concerning ownership, possession or other rights in land can be recorded (usually with a government agency or department) to provide evidence of title, facilitate transactions and to prevent unlawful disposal. The information recorded and the protection will vary by jurisdiction.

2.0 Global Land Registration Systems

Land registration systems, involve deeds recording, and title registration. A Deed recording is a system of giving publicity to land transactions and helping to prevent concealed dealings. The act of

recording a deed gives notice to the public of a claimed interest in land and establishes priority against other possible claimants to the same interest although there is usually no statutory compulsion for parties to a transaction to record their documents although it is prudent for them to do so while it is risky if they do not. An unrecorded document is legally ineffective against any subsequent bona fide purchaser or mortgagee who first records an interest in the same land. For example, suppose that a vendor fraudulently sells the same piece of land to two different purchasers at different times. The purchaser who first records his or her transaction has the better claim to the land, even if that transaction took place later than the first one, provided the purchaser has bought in good faith and is unaware of the first purchase. In such a situation the first purchaser has no claim against the deeds registry and would have to pursue a legal remedy against the vendor, who by that time might be bankrupt or have fled the jurisdiction.

Under a system of deeds recording, a document presented for entry is normally Accepted at face value and not subjected to detailed technical scrutiny by registry staff. Unless a survey plan accompanies document it may be very difficult to determine the size, shape and location of the land in question. Boundary descriptions that attempt to define parcel limits solely by citing the names of adjoining owners, who may have departed long ago, are among the possible sources of confusion in interpreting deeds, also are the frequent ambiguities in metes and bounds descriptions. A deeds recording system usually offers insufficient information seek to identify areas and extent of private and public lands. Not only does this deficiency affect the conveyance process; it leads uncertainties of ownership, boundary disputes, unlawful occupancy, and the lack of a national, regional or local land inventory for system. For an individual proprietor, the imperfection of a land title that is not fully documented may restrict the ability to obtain a mortgage or other credit financing from a lending institution. The insecurity of a flawed or uncertain title also impairs the marketability of land, inhibits its development, and may lead to its eventual decay or abandonment.

Despite its obvious shortcomings a deeds recording system is sometimes preferred by some parties to land transactions because documents can be recorded more quickly and at a lower cost than under a land titles registration system. Deeds registries may also be favored by some administrations because they are less costly to establish and operate than land title offices. Also, the fees payable yield substantial revenues to governments. ; lkj Title Registration is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transactions that confer, affect or terminate that ownership or interest and 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 type of title is often referred to as indefeasible

(or absolute), which means that it cannot be legally defeated, except in situations where a title was obtained by fraud.

The conclusiveness of title registration is upheld by the state, and land titles legislation offers the assurance, subject to certain exceptions that are specified by statute, that any person entitled to an interest in a registered parcel who suffers loss resulting from an error on the part of the Registrar or registry staff, may apply for monetary compensation from a government fund. The statutory exceptions usually known as overriding interests, may include such measures as the power of expropriation, municipal building restrictions and writs of execution against the parcel. This means that a wise purchaser or mortgagee, in addition to searching the register, should seek legal advice regarding the investigation of other appropriate sources to discover whether or not any overriding interests exist. A number that is unduplicated throughout the registration district identifies each parcel in a land titles registration system. This number remains unchanged despite any change of ownership, a separate number is issued for each new unit whenever a parcel is subdivided and also for any new parcel formed by the consolidation existing parcels. This unique method of parcel identification avoids the use of proprietors' names, a practice that may cause uncertainty if the same name is in common use.

3.0 Requirements for Land Title

A number of issues are expected for appropriate title registration, these are legislation, cadastral survey, and adjudication. In respect of legislation, a comparative analysis of land titles legislation in other jurisdictions can assist a country in enacting its own laws for that purpose, and the object should be to find solutions that are based entirely on local needs and circumstances. The uncritical adoption of legislation that appears to apply satisfactory under different conditions elsewhere may lead to a forced conformity that proves unworkable in the country of its reception. Following the initial registration of the title to a parcel, the registration of all future transactions affecting that parcel should be compulsory by legislation. If this is not done the register will no longer reflect the true state of the title. This is because it can be readily appreciated that unless there is a legal obligation to register all such transactions the registry itself will lose its integrity. In the course of time, the recorded information will become incomplete and unreliable, thus destroying the very purpose for which the registry was originally created.

In terms of cadastral survey, a legal cadastre provides the geographic underpinning of a land title registration system. Cadastral index maps show all the parcels in a registration district in their correct relationship to each other. Parcel boundary dimensions and superficial area can be shown numerically on the map or derived from scaling. The map will not normally portray contours or other topographic information, except where a natural feature, such as a stream, forms a parcel boundary. Each individual parcel is represented on a large-scale cadastral plan; which, in addition to numerical boundary and area data, usually shows buildings, fences and other enclosures, and boundary markers.

The composition of a legal cadastre may rely on a number of surveying and mapping techniques that can be employed independently of, or in conjunction with, each other. The choice of air photography will depend upon such factors as flying conditions, cloud coverage, the existence of boundaries that are marked by physical features, and the presence of vegetation that may obscure the visibility of those boundaries from the air. The object of a legal cadastre should be to ensure that parcels are shown in their correct topological relationship and that their boundaries and areas can be determined to a degree of accuracy that is sufficient for land title registration purposes.

Land adjudication (or land settlement as it is sometimes called) enables the state to determine and confirm the ownership of, and the legal interests in, individual parcels of land. It also provides for the physical demarcation of parcels boundaries. The need for adjudication may arise from dispute or simply from uncertainty. Even where land is unoccupied and is apparently owned by the state. Adjudication provides a convenient method of cleansing the title by making sure that no adverse claims exist or if they do exist, they are properly dealt with. Adjudication is concerned with existing rights to land. But it can also be the prelude to subsequent distribution to private persons. Adjudication can be carried out systematically, area by area, or sporadically for isolated parcels. Systematic adjudication is more efficient and less costly than sporadic adjudication, but the political, social or economic pressures of local circumstances may compel the simultaneous adoption of both methods. It is often advisable to undertake adjudication in a pilot area of manageable size that contains different types of property, to allow some experimentation with procedures and to gain valuable experience for the extension of adjudication to other regions.

Procedures for adjudication require special legislation under which a team led by an adjudication officer is empowered to visit a designated site to hear and settle claims, and to demarcate and survey parcel boundaries. The date and time of the visit must be well publicized in advance by a written or other appropriate notice. The notice should state that every claimant to ownership of, or interest in, any of the land referred to in the notice must appear in person or by authorized agent before the adjudication officer. It should also require every such claimant to present all documentary and other evidence to support the claim, including the oral testimony of witnesses. If the claimant and the owners of adjoining land accept in writing the adjudication, the parcel boundaries are demarcated and surveyed. Demarcation and survey should be carried out simultaneously and as soon as possible after the decision. If the time interval between demarcation and survey is too long there is a risk that unscrupulous persons might surreptitiously remove boundary marks. The methods of surveying and demarcation may vary according to local needs and practices, but each adjudicated parcel should be given a unique number that can then form the legal description of the parcel for land title registration purposes.

Decisions of the adjudication Officer that are disputed by any party can be appealed to a statutory body, such as a land tribunal, subject to a further right of appeal to a high court for ruling.

4.0 Lagos State Land Registry Case Study

There are four main legislations subsisting in Lagos State: Land Instrument Registration Law Cap L58, with commencement date as 1st January, 1925; Registration of Title Law CapR.4, with commencement date as 4th April 1935; Registered Land Law- Cap R1 with commencement date as 10th November 1965; A Law to Establish the Lagos State Land Registry Electronic Document Management System (EDMS) 2007, with commencement date as 21st July 2008. The main function of the Lagos State land registry is to keep proper records of all land transactions in Lagos state. The land registry in Lagos is currently the most developed land registry in Nigeria. The registration of instruments affecting land in Lagos dates back to 1863 when Lagos was then administered together with the Gold Coast now known as Ghana. The first type of Land Instruments that came into operation was known as Crown Grants. At the Lagos State Registry there is a document registered as No 3 Page 1 in Volume 1 Crown Grant dated 12 June, 1863 and signed by Lt General John Hawley 'of the Island and Territories of Lagos.' Bearing in mind that documents at the registry go back as far as 1863, one can imagine the volume of paperwork at the Registry. It therefore became essential to begin a paper elimination exercise so as to reduce the inefficiency often associated with a paper based system, but the nature of the system gave rise to rampant corruption, and space was at a premium and there was massive shortage of storage facilities.

The situation could not be allowed to continue and past administration since 1999 Lagos State Government under the leadership of His Excellency Governor Asiwaju Bola Ahmed Tinubu had a vision for a more viable, modern, efficient and workable Land Management System. Thus it was decided embark on a comprehensive project whereby all title documents kept at the Land Registry were to be archived onto a data base to enable easier access for users of the Registry. This led to the development of the Electronic Document Management Solution (EDMS) now in use at the land registry.

4.1 Benefits of Efficient Land Registration System in Lagos

The improvement in land registry service delivery has a number of consequences for the population of Lagos State. Firstly, proper registration of land is essential for all land proprietors. Land has great economic value and proper registration will give the proprietor a state guaranteed title which can be used to access bank loans for small business development. This will encourage business and commerce to flourish which may contribute to the alleviation of poverty in the state. Secondly, it will improve the revenue generated for the state budget. This will have a direct impact on various sectors of state service delivery such as health, education and environmental protection. This is in line with the Lagos State Economic Empowerment and Development Strategy (SEEDS) which is the

major strategy to sustainable economic growth in the state. Thirdly, registration of documents means

There is an up to date official record of the Landowner and this makes conveyance work much simpler in the event of a sale by the landowner. Buyers can make an official search on-line before completing a purchase. Finally, registration procedures are straight forward and efficiently carried out. A simple and easy to read Registration Procedures booklet which explains all registration procedures and informs applicants of the requirements for our various processes was produced. The booklet is obtainable free of charge at the registry and is a viable method of disseminating information to the public. In Lagos State land registry this process of reform, refurbishment and transformation has been an intensive and demanding process but has led to a situation where Lagos is a pioneer in land registry development in Nigeria.

The Table below illustrates the growth in both workload and revenue experienced by the Lagos State Land Registry in 2004 (it's produced as index numbers in order to preserve confidentiality).

Option	End 1st Quarter	End 2nd Quarter	End 3rd Quarter
Assignment	100	243	461
Mortgage	100	183	294
Sublease	100	224	506
searches	100	225	583
CTCs	100	239	344
CofOs	100	213	277
Revenue	100	123	198

5.0 Challenges of Land Title Registration

The following are the challenges facing land registration in Nigeria:

- (i) Noticeable discrepancies on the drafted law especially arose, based on non-consultation with stakeholders and are listed here under. There were emphases on ownership of land, rather than ownership of interest in landed property. This emphasizes on ownership is in conflict with the Land Use Act 1978, which recognizes leasehold interest only in land;

- (ii) The objective of title registration should not only be universal, but should be compulsory and certain deemed grand title and village excision should be accommodated in the land registry;
- (iii) Non recognition of title registration, indeed emphasis is placed on deed registration;
- (iv) Reservation of the registrar of title position to legal practitioners only as against professionals who are knowledgeable in land administration;
- (v) Non anticipation of technological advancement that makes EDMS less reliable in this modern world;
- (vi) Non-capturing of all parcels of land in the state through proper and efficient cadastral surveys;
- (vii) Non recognition of land administration experts such as Estate Surveyors and Valuers as Registrars of Titles;
- (viii) Haphazard storage of land documents at the registry;
- (ix) Non-cooperation of land owners especially "omo oniles" in ensuring proper land titling registration;
- (x) Inadequate funding of the land registry; and
- (xi) Propensity to commit fraud by stakeholders in land registration.

The land registry; setting up Tele Kiosks in strategic locations to enable users to have easy access to information on land registration; computerization of the land registry court; continuous training of staff to include in-house training; increase in revenue generation; plugging all revenue leakages and zero tolerance for corruption; carrying out global cadastral survey of lands and capturing same i.e. Data in the land registry; ensuring adequate enlightenment of the people on land registration system; ensuring that professionals estate surveyors and valuer are made registrar of title; Decentralization of the land registry; the deployment of modern technological system such as geographical information system (G.I.S), GPRS to replace Electronic Data Management System (EDMS); enactment of the right legislation to make land titling accessible; and ensuring regular consultation with all stakeholders in land title registration systems.

7.0 Conclusion

In order to ensure the sustainability of the effective and efficient land title registration that the Lagos state, Land Registry seems to have achieved in Nigeria, especially with the introduction of Electronic Data Management System (EDMS). The state government needs to improve on this

level and as the trailblazer in this industry in Nigeria should create impact on other states land registry, so that the country could as well capture all its land parcels. To achieve this goals the federal government initiative in federal land information system (FELIS) and Abuja geographic information system (AGIS).

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