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Identity, Identification and Survey Plan in Land Litigation in Nigeria

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Abstract

Survey plans are key aspects of land administration and management and have been incorporated as part of land related legislations across the globe and in Nigeria. They play important roles as prima facie evidence of ownership to a land in dispute when tendered by the claimant or the defendant during litigation processes in the court of law. The position of the law is that survey plans might not be necessary in instances where there is proper identification of the land in dispute vide pleadings and evidence. Why then are survey plans deemed necessary in land litigation? On what accounts or grounds can they be discountenanced as prima facie evidence in law? These questions were answered and discussed in this paper, as part of efforts geared towards a better understanding of the vagaries of land litigation processes when land related conflicts arise. The paper is doctrinal, journals, textbooks, published and unpublished articles, notes, internets, online books and journals, seminar papers, law reports, judgments and a host of others in the field of law were consulted in arriving at the findings. The theory adopted for the research is the theory of identification. Survey plan is an essential part of any land transaction; land purchasers should ensure that they survey their land and same be done by a registered surveyor so that it will be useful during litigation.

Keywords: Land, Conflicts, Litigation, Ownership, Survey Plan.

1.0 Introduction

Land is a fixed and immovable property.[1] The term 'land' when used in relation to a specific allotment often refers to the surface of the earth, the soil below the surface to the centre of the earth and the column of air above the surface and it includes all things growing on or affixed to the soil such as trees, crops, structures and / or buildings. It encompasses all the minerals contained in the soil with the exclusion of gold and silver, which by law are considered as state property. This description of land is often subject to

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[1] Gus Donnelly and ICSM, "Fundamentals of land ownership, land boundaries and surveying", ANZLIC Committee on Surveying and Mapping (ICSM), (2014), pp.3-15

restriction by statutory law, and can be challenged by common law. It is, however, still regarded as the most basic description of what land is.[2]

Land played an essential role in the sustenance of humans throughout recorded history as a common property; land had been used as a means of bringing people together to ensure simple and harmonious living during the formation of early societies.[3] With the rise of modern societies, more demands were placed on land and land is gradually being converted to private property, eventually causing land to become a source of conflict among people and societies.[4] Land related conflicts are a common phenomenon in the modern era and can occur at any time or place. Need, greed and scarcity are often considered as the precipitating factors for land disputes.[5] The conflicts generally arise in cases where there is a chance to obtain land for free, regardless of whether the land is a state, common or someone else's private property. Similarly, in post-conflict situations or during the early phases of economic transition, when regulatory agencies, controls and system of sanctions are not put in place within the state, citizens impatiently seize land if their position allows it, or forfeit land if they are in a scrawny position.[6]

Land conflicts can arise in several respects. There are land conflicts between individual parties, inheritance conflicts between siblings and disputes concerning the use of a given piece of land.[7] These conflicts can be settled comparatively quickly. Those that include several parties, invasions or expulsions of whole settlements might be harder to resolve. The most complicated land conflicts include dishonest land control and state capture, illegal expulsions by government officials operating without a mandate, conflict of ownership due to legal pluralism, conflicts of ownership due to lack of land registration, state and private ownership conflicts, restricted access to land because of legal, customary or practice discrimination, conflicts of natural / human use, violent acquisitions of land including clashes and land wars, disputes regarding the payment of land use / purchase price, disputes over land value[8], state expropriation without compensation, sales of

[2] ibid
[3] ibid
[4]Pauline Peters, "Challenges in Land Tenure and Land Reform in Africa: Anthropological Contributions", *World Development*, 38(8), (2009),pp. 1317-1325.
[5]David Mbazor and Ojo Babajide, "Impacts of Land Disputes on Community Development", *TeMA - Journal of Land Use, Mobility and Environment,* 12(1), (2019), pp. 85-89.
[6] ibid
[7] John Bruce, *Land disputes and land conflicts.* Property Rights and Resource Governance Briefing Paper #12, Washington, D.C.: U.S. Agency for International Development, (2013) Retrieved 21 September 2020, from https://www.landlinks.org/wpcontent/uploads/2013/06/USAID_Land_Tenure_Land_and_Conflict_Issue_Brief_1.pdf
[8] Wole Morenikeji, Dayo Ayorinde and Gideon Owoyele, "Land Administration Problems in Nigeria: A case studies of Oyo and Niger states". Urban and Regional Planning Department, Federal University of Technology, Minna (2013), pp. 21-22

private property of someone else,[9] leasing / renting of private property of someone else, illegal sales of community land to non-group members or to the state by traditional rulers,[10] multiple sales and double allocation of land.[11] These conflicts have negative implications for both the individuals and the society. Across the world, many countries especially developing countries like Nigeria have experienced serious problems because of land related conflicts with the most prevalent being environmental destruction, landlessness and squatting.[12]

With these issues in mind, land litigation becomes very important to prove the identity of a piece of land in dispute and to ensure effective legal adjudication of conflicts. The place of land litigation is to ensure adjudication of land conflicts through court proceedings, rulings, judgments, implementing current laws to ensure effective settlement through seemingly reasonable common legal decisions. While the processes of land litigation can be effective in adjudicating land related conflicts, it can also be complex and exasperating. The adjudication of land related conflicts are often complicated and might be embellished with several historical, political and cultural shades. With such issues being rife, the proof of identity of a piece of land in dispute is of utmost importance if any success is to be achieved in any land litigation process. A claimant seeking for declaration of title to a disputed land has a cardinal duty to show with certainty, the areas of land being claimed and a survey plan can be a veritable means for showing ownership or claims of land with certainty. This paper focuses on the identity, identification of land and relevance of survey plans in proving the identity of a land in dispute in land litigation and explicates areas where it is necessary and unnecessary in the litigation procedures. However, before establishing such focus, general principles of land ownership under land titles and land registration laws need to be established as a way of reconciling the place of survey plans in land litigation.

2.0 **Land Ownership and Land Registration**

In property law, the law that apply to claims of ownership to land, houses, works and intellectual property have been established in the courts of law across the globe.[13] Even though the concept of ownership and extent of ownership has changed significantly in interpretation from the 19th to the 20th century, at common law, property laws relating to

[9] Olusola Atilola, "Land Administration Reform Nigerian: Issues And Prospects", in *FIG Congress 2010 Facing the Challenges - Building the Capacity*, (2010): Sydney, Australia

[10] Bertus De Villiers, *Land Reform: Issues and Challenges. A Comparative Overview of Experiences in Zimbabwe, Namibia, South Africa and Australia* (Konrad-Adenauer-Stiftung, 2003), pp. 1-3

[11] Urmilla Bob, "Land-related conflicts in Sub-Saharan Africa. African Journal on Conflict Resolution, 10(10), (2011) pp. 4314

[12] Adekunle Awolaja,*Land registration in Nigeria: Issues and challenges*. Lagos: State Valuation Office, 2012), pp. 1-5.

[13] Isreal Udoka, "Effect of Land Titles Registration on Property Investment in Nigeria", *International Journal of Advanced Studies in Economics and Public Sector Management*, 5(2) (2017), pp. 82-86.

land protects relationships between persons and acknowledges various forms of interest in matters relating to land and distinguishes between the physical and intangible rights associated with land use. Property laws also attribute the need to carry out titles and registration of land. Titles refer to the legal right to own land and the document that indicates that such rights are available. They also refer to documentary evidence that a person or a party has the right to ownership on a given parcel of land.[14] Land registration on the other hand, defines the process of registering the title to aid as proof of ownership for facilitating the sale and prevention of unlawful disposal of the land, which procedure varies according to the jurisdiction of ownership, possession or other land ownership rights.[15]

Across the world, land titles and registrations are made mandatory and are contained in statutory as well as case laws. The laws generally establish state responsibility for the registration of mechanisms that affect land in the state and for the maintenance of records relating to individual allotments of land.[16] The aim being the effective facilitation of administration and maintenance of land related affairs and issues.[17] The Nigerian regulations and legal provisions which govern land administration, property rights and access to land can be found in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Land Use Act, subsidiary legislations and in Case Laws.

Under the Nigerian Constitution, ownership rights to land are referenced in Sections 43 and 44. Section 43 in particular specifies that '... every citizen of Nigeria shall have the right to acquire and own immoveable property anywhere in Nigeria", while Section 44(1) states that "No immoveable property or any interest in an immoveable property shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law...' However, the Constitution, by a catch-all provision in Section 315(1) provides for validation of the jurisdictions of some existing laws in Nigeria subject to changes which may be required to bring it in line with the provisions of the constitution. In section 315(4)(b) of the Constitution, 'existing Law' is described as any law, including any rule of law, enactment or instrument which may be in effect immediately prior to the date of its entry into force or which has been passed or rendered before that date shall come into force after that date. To this end, it proclaimed in Section 315 (5) that within the Constitution, there shall be nothing invalidating the provisions and

[14] Martin Dixon, *Principle of land law.* 4 Edition,(London: Cavendish Publishing Limited., 2002), pp. 165-168

[15] Chika Udechukwu, *Introduction to Estate Management*, (Lagos: Treem Nigeria Limited, 2006)

[16] Olawoye, C. O, *Title to Land in Nigeria*. (Evans Brothers Nigerian Publishers Ltd, Ibadan 1974)

[17] Gershion Feder&Akihiko Nishio, (1999). *The benefits of land registration and titling, economic and social perspectives. Land use policy. Britain, Elsevier science Ltd*., 15(1), (1999), pp. 25-43

jurisdictions of these constitutionally recognized existing laws, and in sub-section (d), the Land Use Act is specifically referred as one of such existing laws.

The Land Use Act promulgated in 1978 under the Olusegun Obasanjo military regime is a law which sought to harmonize divergent existing laws on land ownership and management across various ethno-tribal and linguistic divisions in Nigeria.[18] Challenges associated with land use and control especially in the urban areas, high demand for land prompted by increased population and industrialization; limitations of unequal land rights which formed the hallmark of various customary land tenure systems across Nigeria and issues bordering on the fragmentation of land within rural areas prompted by the application of customary inheritance principles and population growth which leads to increased demand for land were the major precipitating factors that stimulated the promulgation of the Land Use Act in 1978.[19]

With the implementation of the Land Use Act, the rights and duties of government, land users and other stakeholders to land in Nigeria became fully defined. By vesting land to the Government, land users or every eligible person are only entitled to 'usufractuary' rights and the validity or otherwise of rights to occupancy are contingent on the government's approval under the provisions of the Act. The Act recognizes both statutory and customary rights of occupancy to land which were to be certified through the consent of the State and Local Government in compliance with the provisions of the Act.[20]

Case laws form an important part of Nigeria's legal framework on land matters. They are already decided cases that are deemed by authorities to be important and relevant in the interpretation of principles and constitutional provisions as well as to be referred to in the adjudication of land related issues. The Nigerian courts are expected, in the interpretation and determination of land-related cases, to depend on provisions and principles of bodies of law according to the context and circumstances of the cases in question.[21]

Despite the above regulations and legal provisions which govern land administration, property rights and access to land in Nigeria, especially as contained in the Nigerian Constitution, Land Use Act, Case Laws and the efforts of government, land related issues continue unabated. Disputes relating to land for occupancy in particular continue to prevail and have been accentuated by fraudulent or illegal purchases of land, which often

[18] Land use Act of 1978, (CAP 202, Laws of the Federation of Nigeria, 1990)
[19] James Adigun and Amos Utuama *"A decade of Land Reform in Nigeria-The Land Use Act, 1978 in Perspective",* NALTproceeding in Matthew Nwocha, "Impact of the Nigerian Land Use Act on EconomicDevelopment in the Country" (2016). 8 *Acta Universitatis Danubius. Administratio,* pp.117
[20] Muhammed Nuhu, "Enhancing land titling and registration in Nigeria", *FIG working week*, Eilat, Israel: *Surveyors Key Role in Accelerated Development* (2009). p. 1-12.
[21] ibid

contravene existing laws.[22] The situation in Nigeria is no different from what is obtained in many developing African countries, where the widespread opportunities for financial benefits from land purchases and sales have led to illegal dealings in land leading to land related conflicts with the poor and disadvantaged peoples in the society bearing most of the brunt.[23] These disputes have been exacerbated by lack of proper documentation and formalization of land across Africa and have been the bane of inequitable tenuriary practices.[24] Under some systems for instance, urban investors might cheat locals of their land by obtaining formal, written support for their land rights, while locals might feel that they are covered by customary representation of their rights, not knowing that current situations demand more effectual land documentation.

Parties to a transaction typically have no contractual requirement to register their records; it is wise that they do so. The purchaser who first files his or her transaction will have stronger land claims even after the first transaction, given that the purchaser has purchased in good faith and is not aware of the first purchase.[25] In this situation, the first purchaser has no claim on the record of deeds and can take civil action against the seller who might then be bankrupt or who was responsible for the proceedings.[26] In such cases of civil actions, an effective and efficient legal system is a prerequisite for resolving the cases. While during legal proceedings, the occupation and use of the land may be regarded as proof of ownership to the land, it cannot be tendered as evidence. Where there is no evidence of title to the land, then as the maxim goes, 'possession is nine tenths of the law'.[27]

2.1 **Survey Plans**

The Black's Law Dictionary[28] describes a survey plan as 'a map that displays the results of the measurements of a tract with its boundaries and contents'. There are different types of survey plans; survey plans that deal with land are often carried out to determine land boundaries to show the size and position of land parcels along with text records explaining the land's attributes for legal purposes and land ownership. It is usually done

[22] Benjamin Ekemode, Oluseyi Adegoke & Adetunji Aderibigbe, "Factors influencing land title registration practice in Osun State, Nigeria", *International Journal of Law in the Built Environment*, 9(3), (2017), pp.240-255; Akintunde Otubu, "Land Reforms and the Future of Land Use Act in Nigeria", *Nigerian Current Law Review 2007 – 2010, NIALS* (2010), pp.2-3
[23] Udoka (n6) at 86
[24] ibid
[25] Awolaja (n13), pp.3
[26] ibid
[27] Udoka (n6) at 86
[28] Black's Law Dictionary 8th Edition, pp.1486

by a registered surveyor.[29] A surveyor is a person licensed to measure tracts of land and their boundaries and contents.[30]

Land surveys differ from country to country in terms of requirements, however, for survey plans to be deemed authentic, it must have been prepared, signed and authenticated by a registered surveyor, and reviewed by the survey department of the state in question and is counter-signed by the surveyor general to ensure genuineness and acceptability.[31] In Nigeria, what governs the acceptability of a survey plan is contained in *Section 3(1) (i) of the Survey Act Cap LFN 1990*.[32] A survey plan must contain the following information for it to be detailed:

a. name of the owner of the surveyed land,
b. address or description of the surveyed land,
c. the size of the surveyed land,
d. the portion of the land survey drawn out and mapped out on the survey plan document,
e. the beacon numbers and coordinates,
f. the surveyor who drafted the survey plan and the date on it was drawn up and
g. a stamp that indicates the land is either free or not free from government acquisition.[33]

Land surveying practices are regulated by legislation, bylaws and regulations that standardize not only the activities related to land surveying but also the requisite qualifications and professional experience needed to become a registered and licensed land surveyor.[34] Without this registration, an individual is not entitled to be allowed to carry out surveys for dealings in matters relating to land boundaries. As registered and licensed land surveyors determine the location of the property boundaries of their clients, they are also effectually determining the boundaries of adjoining lands. This is why surveyors are considered important in land related matters and they have the dual obligation to ensure credibility of the survey plan of their clients as well as the integrity

[29] Donnelly & ICSM (n1) at 4-6
[30] ibid
[31] ibid
[32] Francis Fajemirokun & Peter Nwilo, "Surveying Practice in Nigeria: Strategies for Survival in the new Millennium", *Proceeding of Technical Session, NISAGM Edo*, 17 (2000), pp.1-3.
[33] Yusuf Opaluwa and others," Surveying and Mapping in Sustainable Land Administration and Socioeconomic Development in Nigeria: An Overview", *American Journal of Geographic Information System*, 3(2), (2014), pp.88-97
[34] Asma Ibraheem, "Development of Large-Scale Land Information System (LIS) by Using Geographic Information System (GIS) and Field Surveying", *Scientific Research*, 4, (2012), pp. 107-118

of the survey registration systems and laws by complying with standard obligations and best practices which govern the land survey practice.[35] Surveying Acts and Regulations are usually administered by specified agencies (the Nigerian Geographical Survey Agency) who act in the interest of the State investigating and rectifying survey errors, monitoring the work of surveyors through intermittent audit and hearing complaints against surveyors and handling charges where necessary.[36]

The goal of a survey plan is to ensure the correct topological relationship of parcels or allotments of land, as well as to decide their boundaries and areas to a degree of precision.[37] Survey plan provides the spatial underpinning of a land title or registry scheme by indicating the proper relationships of all parcels of land in a registration district.[38] It indicates land parcel perimeter, dimensions and surface areas derived from scaling. The survey plan will not show contours or other topographical details unless a natural feature, such as a stream, forms a parcel boundary. Each individual parcel of land is shown on a broad survey plan; this typically displays houses, fences and other enclosures and boundary markers, in addition to numerical boundary and area details. The composition of a survey plan may rely on many methods of surveying and mapping which can be used independently of, or in combination with, each other.

2.2 **The Purpose of a Survey Plan**

The overall aim of titling and registration of land is to provide timely evidence of ownership or proprietary rights to a parcel of land, as well as facilitate the elimination of fraudulent practices in other transactions carried out on the given land. In land litigation, the overall purpose of a survey plan is to graphically confirm the morphology of the disputed area or parcel of land, its extent and size.[39] During the land litigation process, if a plaintiff wants to draw up a survey plan showing a contested land or to have it drawn up, the plans must clearly show the dimensions and boundaries of the land as well as other essential features.[40]

2.3 **Necessity of a Survey Plan in Land Litigation**

There are instances where survey plans might be sufficient to adjudicate land disputes; there are some instances they might not be enough to properly address or adjudicate land

[35] Didigwu Augustusa & Olakanmi Olufisayo, "The Importance of Cadastral Survey Information for Effective Land Administration in Nigeria", *International Journal of Environment and Pollution Research*, 4(1), (2016), pp. 12-13

[36] Opaluwa Y. D and others (n38) at 88-92

[37] Larsson Gerhard, *Land registration and cadastral system: Tools for land information andManagement*. London: Longman, 1991)

[38] UNCHS, *Guidelines for the improvement of land registration and information systems in developing countries*. Nairobi: United Nation Centre for Human settlements (Habitat), (1990)

[39] Oyefeso v. Coker (1999) 1 NWLR (Pt. 588) 654 CA

[40] Arabe v. Asanlu (1980) 5-7 S.C. 78

conflicts. It all depends on the discretion of the court. The law courts can aptly decide or consider whether a survey plan needs to be produced and tendered as evidence in the adjudication of a particular case relating to land or not.

2.4 **When is a Survey Plan Necessary in Land Litigation?**

Where there is an action of encroachment on a land, the plaintiff must prove the exact area of the allotment of land he owns and being encroached. When the land is in dispute, the identity, location, boundaries and other factors must be clearly defined and precisely determined.[41] The peculiarities of the land in a land dispute can be questioned when the defendant makes it one in his statement of defence. If he challenges either the area or the location or the design features depicted in the plaintiff's plan, the identity of the land becomes contentious.[42]

Where the identity of a contested land is in question, a survey plan needs to be produced in particular if the facts produced in evidence cannot with certainty determine the identity of the land in question.[43] It is the responsibility of the party who disputes the land's identity and wants to prevail in the case to submit a composite plan when necessary or as the court may direct at the trial. The rationale behind the submission of a composite plan is to fix and delineate the land in dispute.[44] In a situation where the claimant pleads and serves a defendant a survey plan, the plan can then be admitted in evidence before the court as exhibit and which depicts the boundaries and features of the disputed land, and it could constitute sufficient substantiation of the boundaries as well as features of the disputed land.[45]A defendant who wishes to question or contest the boundaries or features set out in the survey plan must do this by explicitly traversing the litigant's pleading. A mere general or cursory traversing might be grossly inadequate.

Where a survey plan for the disputed land is tendered by the plaintiff as evidence and is admitted without objection and the defendant fails to file a counterclaim, the pleas of the defendant cannot be heard to assert that the plaintiff has not established with certainty the borders of the disputed land.[46] In a situation where a party to a land in dispute have produced and tendered the survey plan showing the area or allotment of land he is laying claims to with certitude and ascertainable boundaries, the party may not need to call surveyor to testify before the court. Under such situations, the court can attach credibility to the tendered survey plan. A survey plan can also be tendered by consent.[47] It must however be remembered that it is unreasonable on appeal to deprive the plaintiff of the

[41] Elias v. Omo Bare (1982) 5 SC 25
[42] Gbadamosi V. Dairo(2007)48WRN1;(2007)3NWLR(Pt.1021)282
[43] Kyari v. Alkali (2001) 11 NWLR (Pt. 724) 412
[44] Igwe v. Kalu (2002) 4 MJSC 99
[45] Adimora v. Ajufo (1988) 3 NWLR (Pt. 80) 1
[46] Adepoju v. Oke (1999) 3 NWLR (594) SCNLR 375
[47] Awoyoolu v. Aro (2006) 4 MJSC 128

benefit of judgment in his favour, because the defendant did not raise the question of a survey plan at the trail court if he had the opportunity to do so.[48]

The identity of a disputed land is sacrosanct and must be established unless it is not put in issue on the pleadings of the parties involved. The sheer fact that the parties involved called the land under dispute by different names or placed different boundary markers alone will not be enough to decide if the identity of the land in dispute can be considered an issue. It must relate to the location, description, size and characteristics of the land in order to dispute the identity of the land. In the case of *Atanda v. Iliasu (2013)*[49] It was held that first duty of a party seeking a declaration of right to land before the Court's is to prove with certainty the land over which that party claims as per his summons letter. In the case, Ogunbiyi (JSC), emphasized thus:

> *It is elementary to state therefore that the certitude of the identity of land in dispute is a sine qua non, a necessity... It is also trite that the mere mentioning of the area is not enough. The description and extent of the boundaries must be proved with exactitude... The test of certainty and precision is of necessity to ensure whether a surveyor can from the evidence before the trial Court produce an accurate plan of such land… The burden of proving identity of land will rest on the claimant only where it forms part of the subject matter and has been put in issue…*[50]

Further, Rhodes-Vivour (JSC) held in the judgment:

> *The position of the law is that a party who claims declaration of title of land must show or satisfy the Court with certainty the area of land for which the claim is made. Failure to satisfy the Court would result in the claim being dismissed. It is advisable but not mandatory that a survey plan is produced by the plaintiff in claims for declaration of title. What the Court requires is for the land to be precisely identified with the definitive certainty, and in discharging the requirement credible evidence can be led to identify the land in question".*[51]

In another perspective, Muhammed, (JSC) stated that:

> *"However, where the identity of the land is not in issue, in the sense that parties know exactly the identity of the land the subject matter of the*

[48] Reasigba v. Evih (1963) FSC 281
[49] Atanda v. Iliasu (2013) 18 WRN 1
[50]Ibid
[51]Ibid

> *dispute between them, the requirement that the Plaintiff and / or parties prove(s) the identity of the land ceases to be a necessity."*[52]

A survey plan is necessary in land litigation because it can be able to proof the identity of the land and used to describe the land in question with reasonable certainty and precision. Laying claims to a land cannot be done by only pleading the description and boundaries of a disputed land, but should be supported by the provision of credible evidence at the trial, given that even though pleadings might be comprehensive enough, they could be mere notice of the case of the party to the other party during trial. The law cannot and will never make a declaration of title in a situation where the land in dispute is not properly defined.

3.0 **When is a Survey Plan Unnecessary in Land Litigation?**

Survey plan is considered to be necessary in land litigation. The position of the law, however, is that survey plan is not necessary in the case or instance where ownership of a disputed land is properly or clearly identified vide pleadings and evidence.[53] Where the land in dispute is known to all parties involved in the litigation process or is clearly ascertainable whether from the averments in pleading or otherwise and its area, precise location and exact boundaries on the ground are either obviously and correctly pleaded or are admitted or acknowledged by the defendant, the non-production in evidence of the survey plan for the disputed land will not be fatal to the plaintiff's claims over such land.[54]

The first duty of any claimant seeking a declaration of title to land is to accurately determine with exactness the description, area, size and location of the land over which declaration of title is sought. The claimant can be relieved of this duty only where the identity of the land is not put in issue by the defendant and it is not in dispute and the land is well known to the parties. A survey plan or even a visit to the land in question by the court might be not be required where there is no dispute as to the identity of the land in dispute and under such situations, a survey plan ceases to be a *desideratum* in a claim of a declaration of a title to land. A party claiming a title declaration of a property must definitely demonstrate or satisfy the court of justice in respect of the territory in which the claim is made.[55]

In *Mr. Tajudeen Rufai & 4 ors vs. Engr. Ojo Olumuyiwa Akniwale*[56] the court held

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[52]Ibid; Udeze v. Chidebe (1990) 1 NWLR (Pt. 125) 19; Auta v.Ibe (2003) 1 NWLR (Pt. 387) 247; Ajao v. Adigun(1993) 3 NWLR (Pt. 282) 389

[53]Usung v. Nyong (2010) 2 NWLR (Pt. 1177) 83 at 112; Kyari v. Alkali (2001) 5 SC (Pt.II) 192

[54] Oshodi v. Eyifunmi (2000) 7 SC (Pt. 1) 145

[55] Tanko vs. Echendu (2010) 18 NWLR (Pt. 1224) 253 and Maberi vs. Alade (1987) NWLR (Pt. 55) 101

[56] Suit N0. HCS / 347 / 2017 Judgment of Ogun State High Court of Justice sitting at Sagamu Judicial Division Delivered by Hon. Justice N. I. Agbelu - J on 28 / 11 / 2020 (unreported).

> *"…The Claimants in their pleadings and evidence described the land in dispute as being and lying at Boun Village, Via Simawa in the Sagamu Local Government Area of Ogun State. The boundaries of the land were stated as follows: on the left-hand side by Osese River, in the front by Loto / Simawa Road, while on the Right by Soloye family land and at the back Alaga family land measuring 27 Acres of land"* The court further held: *"…the Claimants gave the boundaries of the land which surveyor can produce an accurate plan. The argument of the Defendant's counsel on failure of the Claimants to establish the identity of the land by failure to file a survey plan which they indicated to file in their pleadings is therefore of no consequence"*

3.1 **Consequences of Erroneous Land Litigation Survey Plans**

It is the duty of the surveyor to prepare plans which will not only capture specifics of what their clients show them, but also features to aid the court to get a clear picture of the land. Surveyors would do well to bear in mind that they would lose their licences under the provisions of the Survey Act of Nigeria if they make false or erroneous surveys or fictitious plans. The court has the power to punish a surveyor for contempt of court when it is affirmed beyond reasonable doubts that the surveyor has made an inaccurate plan.[57] In cases where a potential inconsistency has been found in plans submitted by a claimant and defendant and where no expert has been called upon to clarify the inconsistency, the trial court will not enter judgment in favour of the claimant for his claim.[58] The court will not ascribe value to a survey plan that lacks features that can offer with certainty the boundaries of a disputed land. Whether an inaccurate plan is put before the court or if the claimant's evidence runs contrary to his survey plan, the court will not make a declaration of title. The correct order to be made by the trial court in such a case is not a dismissal of the case of the claimant, but a non-suit with the claimant having the liberty to take fresh action until the plan is revised.[59]

4.0 **Conclusion**

Globally, conflicts over land and its boundaries and ineffectual settlement of such disputes can lead to the breaking down of law and order. It is recommended that all persons planning to acquire legal titles to a piece or parcel of land must consider it expedient to register their landed properties with the necessary government agencies. Tilting and registration of land through documents such as certificate of occupancy, deed of assignment and Excision (gazzetted) might play an important role in vesting enforceable rights by the owner over purchased allotments of land, a survey plan is often

[57] Ketting v. Adie (1960) 4 ENLR 113
[58] Federal Public Trustee v. Akinwunmi (1960) SCNLR 375
[59] Akubueze v. Mwakuche (1959) 4 FSC 262.

recommended to be drawn by every purchaser of land. Survey plan is not a title to land and it is only a document that is needed to give accurate measurement and description of land, it is usefully needed to draft a deed of assignment, a document which transfers title to land to the purchaser. It establishes rights over a piece of land.[60]

The production of a survey plan is one way of demonstrating the identity of the land purchased by an individual. It is necessary in land litigation as a means of proving ownership of a piece of land. There can be exception to this only where the identity of a land is not put in issue by litigants or when either party claiming a title of declaration to a property clearly demonstrate or satisfies the court of ownership and there is proper identification of the land in dispute vide pleadings and evidence. A survey plan is deemed accurate and devoid of errors, it is often recommended that it received from a licensed surveyor and must be countersigned by the surveyor general of the State.[61]

[60]Babawuro Usman,"Cadastral Information System for Title Management in Nigeria", *Pacific Journal of Science and Technology*, 11(2), (2010), pp.408-415
[61] Arabe v. Asanlu (1980) 5-7 SC 78