THE SURVEYOR AS AN EXPERT WITNESS IN LAND DISPUTE: BEING DINNER SPEECH DELIVERED AT THE ANNUAL DINNER OF THE NIGERIAN INSTITUTION OF SURVEYORS KWARA BRANCH ON 8TH DECEMBER, 2005 AT CIRCULAR HOTEL ILORIN BY: YUSUF O. ALI ESQ; SAN MCIArb

INTRODUCTION

Generally a surveyor is defined by **Oxford Advanced Learner's Dictionary 6th Edition** at page 1208 as a person whose job is to examine a building, to make sure its structure is in a good condition or to examine and record the details of a piece of land; while in **Blacks Law Dictionary** to survey is defined to mean the measuring of a tract of land and its boundaries and contents, a surveyor is described as one who surveys land and buildings.

Also the Survey Law Cap 154 Laws of Kwara State, a Surveyor is defined in section 2 to mean a licensed surveyor or an officer of the survey Department authorized by the Director or the Surveyor General to carry out surveys.

From the definitions above, we can conclude that the surveyor's primary job is measuring tracts of land to ascertain its boundaries and contents subject to the limitations provided in the Survey Law Cap 154 Laws of Kwara State as follows:

(a) That he is so licensed as a surveyor or

(b) He is an officer of the survey Department authorized by a Director or the Surveyor General to carry out a survey.

To be a licensed surveyor, it may be necessary to undergo a particular kind of training and be certified by the relevant regulatory body namely, the Surveyors Registration Council of Nigeria, while the yardstick for authorizing an officer of the survey department may be influenced by the experience acquired on the job or entirely at the discretion of the Director or the Surveyor General. The survey law did not state the category or categories of officers that may be authorized in this regard by a Director or the Surveyor General as long as he or she is an officer in the survey Department he or she may benefit from this fiat.

Having attempted a definition of who a surveyor is, it is proper at this juncture to examine who is an expert? An expert may simply be defined as a person with special knowledge, skill or training in something. Thus expertise can be acquired through experience after doing a particular task over a period of time or acquisition of skill over time or undergoing training as required by regulatory authorities. It is noteworthy to observe that at times, someone who may not have seen the four walls of a classroom may be an expert through exposure and hand-on experience over a period of time.

An expert, in other words, is a professional in a field where he professes opinion. It is worthy of note that but for an expert, the fact that any person is of the opinion that a fact in issue or relevant to the fact in issue does or does not exist is irrelevant and opinion evidence is generally inadmissible. To demonstrate his expertise or where is expertise is in issue, he is under a duty to

state his qualifications, experience, reasons for his opinion and how they are arrived at.

Also in our accusatorial system of dispute resolution the law is that he who asserts must prove. To discharge that onus and in accordance with the rules of natural justice as it pertains to fair hearing in the court, Tribunal or anybody saddled with adjudicatory duties, must hear the case of both parties as presented by them. The plaintiff claimant or defendant may prove his case by documentary or oral evidence.

Where he proves his case by oral evidence, it must be the evidence of a witness who saw, if it is something that can be seen or heard if it is something that can be heard or perceived if it is something that can be perceived, in other words, oral evidence must be direct and not hearsay because hearsay evidence is not admissible at law**. Management Ent. Ltd vs Otusanya (1987) 1 NWLR (Pt.55) 179 at 193.**

Also facts in issue may be proved by documentary evidence, the law provided for fact to be proved by producing the documents in its original form and this is called primary evidence, often regarded as the best evidence and in the absence of primary evidence, resort may be had to secondary evidence, once the condition precedent has been fulfilled which as the circumstance may permit

include laying of necessary foundation as to why the original cannot be produced such as its been lost, destroyed by fire or in the possession of the adverse

party who has been given notice to produce and failed to do so, while in the case of a public document, the only secondary form of evidence admissible is the certified true copy.

The position as stated above in relation to documentary evidence can safely be argued to be obtainable in the superior courts namely the High Court, Court of Appeal and Supreme Court wherein the provisions of Evidence Act are applicable while in the inferior courts, such as Area Courts and Customary Courts the main stay principle of admissibility is relevancy, that is once a document is relevant to the particular transaction or subject matter of adjudication it may be admitted.

Dispute on the other hand can be described as altercation, argument, contention, contest, controversy, discord, estrangement, feud, squabble, variance, difference, quarrel, or disagreement over an object, issue, facts or transaction as the case may be and in Emiri vs Imieyeh (1999) 4 NWLR (Pt. 559) 442 at 465, the Supreme Court defined land in dispute as a disputed land which both parties are claiming to be their own. Having examined the key words in the topic under discussion, the time is now ripe to have a look at the Surveyor as an expert witness in a land dispute?

THE SURVEYOR AS EXPERT WITNESS

It is the law that set the standard for the designation of anyone as an expert witness as distinct from other witnesses. For our purpose section 57 of the Evidence Act provides that:

> "57 (1) When the court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinion upon that point of person specially skilled in such foreign law, native law or custom, or science or art, or in question as to identity of handwriting or finger impressions are relevant facts.
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> (2) Such persons are called experts."

Dispute can be resolved in a number of venues and ways not necessarily through the court or by litigation. There is arbitration. mediation, conciliation which are now codified in the Arbitration Act but litigation represents an immemorial way of dispute resolution For our purpose, we shall limit ourselves to land dispute which are subject to resolution by a court of law or where the parties have submitted themselves to the courts jurisdiction.

By the provision of the Land Use Act 1978, the High Court have exclusive jurisdiction over land in urban areas, while in rural areas it has concurrent

jurisdiction with the inferior courts in land dispute resolution. **Adisa vs Oyinwola (2000) 10 NWLR (Pt. 674) 116**.

When the ownership, boundary, title and rights generally over a piece of land is in dispute, the law has crystallized that the description of the land in dispute must be so certain and precise that a surveyor taking the record, would be able to produce a survey plan with accuracy of the land in dispute and that mere mention of names without more is not enough for identification of land. This position is confirmed in the recent case of **Oko vs Ntukidem (1993) 2 NWLR (Pt.274) 124 at 134-135.**

And in the case of **Emiri vs Imieyeh (1999) 4 NWLR (P**t. 599) **422 at 463** the Supreme Court said that one important way now commonly used by parties in land dispute to establish the identity of the land in dispute is by filing a detailed and accurate survey plan of the land showing various features of such land, sufficient to point to the clear boundaries of the land in dispute, thus a survey plan is none or less a necessity in the resolution of land dispute and its role cannot be over emphasized.

A perusal of our statutes for example Section3 of Survey Law of Kwara State reveal that

No map, Plan, or diagram of land:-

(a) If prepared after 1 day of June 1918 shall be accepted for registration with any registrable instrument which is required by any written law to contain a map, plan or diagram and

(b) if prepared after the 16th day of May, 1918 shall save for a good cause shown to the court be admitted in evidence in any court unless the map, plan

or diagram has been prepared and signed by a surveyor or is a copy of a map, plan or diagram so prepared and signed and certified by a surveyor as being True Copy.

A similar provision to that of Survey Law of Kwara State was construed in the case **of Babatola vs Aladejana (2001) FWLR (Pt. 61) 1670** wherein the plaintiff who was a geography teacher drew a map of the land in dispute and tendered same in evidence. The Supreme Court held the sketch map to be inadmissible in evidence because it was not prepared and signed by a surveyor.

Also the Land Instrument Registration Law Cap 83 Laws of Kwara State makes Registration of Land Instrument mandatory-Refer to sections 6 and 7 of the Law to the effect that whether the land instrument was executed before or after the commencement of the Law, it must still be registered and section 9 (1) (a) of the law provides that no land instrument shall be registered with the exception of Power of attorney, unless it contains a proper and sufficient description and subject to the regulations a plan of the land affected by such instrument and in the case of a state grant, land instrument executed after 1 June 1918 will not be accepted for registration unless the plan of the land affected is signed by a surveyor and counter signed by the Surveyor General (section 9(2) Land Instrument Registration Law) but the need for the Surveyor General to counter sign will not be necessary where the land subject matter of the instrument is not a state land.

In section 2 of the Land Instrument Registration Law of Kwara State, instrument was defined to mean a document affecting land whereby one party (hereinafter

called the grantor) confers, transfers, limits, charges or extinguishes in favour of another party (hereinafter called the grantee) any right or title to or interest in land and include a certificate of purchase and a power of attorney under which any instrument may be executed but does not include a will See:

Buraimoh vs Karimu (1999) 9 NWLR (PT.618) 310 at 322.

Such instrument as described above must be registered or else cannot be pleaded or given evidence in any court as affecting any land and it does not matter whether the court is superior or inferior

We have perused the statute this far to examine the importance of the surveyor in land documentation and invariably their impact on land dispute resolution. The surveyor is a professional recognized by the statute in the performance of his functions and his profession is also protected from impersonators on the pain of sanction by section 5 of Survey Law of Kwara State where it provides:

> "Any person who practices or professes to practice the profession of surveying, not being a surveyor shall be guilty of an offence and shall be liable to a fine of one hundred naira in respect of each transaction in which he was engaged and shall not be entitled to sue in any court for remuneration in respect of a survey plan, map, or diagram made by him."

The surveyor as an expert witness in land dispute like any other expert must satisfy the court as to his professional competence, he must state his qualifications and experience on the subject in which is opinion has come into question, he must also state clearly the reasons for his opinion, otherwise his evidence may hardly carry much reliability, or weight.

Mohammed vs State (1997) 9 NWLR (Pt. 520) 169 at 215.

Also it should be noted that the mere fact that an expert evidence is admitted and unchallenged by way of cross examination or contradictory evidence, does not make it inevitably acceptable merely because it is an expert evidence which has not been contradicted or challenged, it would be accepted only if there is no good reason to reject it and in the process of scrutinizing, it could be rejected if there are reasons to do so

A.G. Oyo State vs Fairlakes Hotels No. 2 (1989) 5 NWLR (Pt. 121) 255 at 273.

The need to call on the Surveyor as an expert witness may only arise where the judge cannot read or understand the survey plan. The judge is freely entitled to interprete a survey plan without recourse to a survey expert just like any other document thus it is not the law that a litigant must call a survey expert to interprete a survey plan for the court.

Anaedobe vs Ofodile (2001) 5 NWLR (Pt. 706) 365 at 377.

Where the evidence of a surveyor called to testify as an expert conflict with that of another surveyor the court is under a duty to resolve the conflict and come to a conclusion and it can do so by rejecting the opinion of either of the experts and the court is not bound to give reasons for preferring one to the other.

Emeka vs State (1998) 7 NWLR (Pt. 559) 556 at 589-590.

There are times when a trial judge would be right to prefer credible evidence of a non expert witness on an issue to the evidence of an expert on the same issue where the former is an independent witness, whilst the latter prepared his evidence specifically for the case on hand on the direction of the party

calling him, provided there is surrounding circumstances from the totality of evidence before the court supporting the testimony of the Independent witness for example in **Elf (Nig) Ltd vs Sillo (1994) 6 NWLR (Pt, 350) 258 at 272** the court rejected the evidence of a chartered surveyor described as an expert in siltation of river who prepared his report on the basis of a direction of the defendant (Elf Nig Ltd) the case, while preferring the report of an Independent witness who prepared same when amicable settlement of the dispute at the instance of the Bendel State Attorney General was being pursued.

The main function of an expert witness is to assist the court to arrive at the truth in the judicial process. Thus while expert evidence is relevant in certain cases and instances, it is not a **desideratum** in all cases where technical matters are involved. The court is therefore not bound to accept expert evidence particularly when it is not consistent with ordinary course of events as led in evidence of other witnesses.

Iden vs State (1994) 8 NWLR (Pt. 365) 719 at 723

Expert opinion is only necessary where the expert can furnish the court with scientific or other information of a technical nature that is likely to be outside the experience and knowledge of the judge. **Shell Petroleum Co Ltd vs Otoko (1990) 6 NWLR (Pt. 159) 693 at 713**

No matter the level of qualification and training attained by can expert, it is for the judge to decide whether a person is sufficiently skilled to give expert evidence R. vs **Onitiri (1946) WACA 58 at 59.**

That the expert must give his qualifications and experience before evidence would be accepted as expert evidence was decided in the case of **Ado Kofar Wambai vs Kano N.A. (1965) NMLR 15 at 17.**

Lastly and by way of emphasis, a surveyor as an expert witness must impress all the participants in a dispute, the parties, the lawyers, other experts and the Tribunal of the correctness of his views if he is to be effective. The experts should have (a) specialist knowledge, (b) integrity (c) Experience in producing credible reports and giving evidence (d) the personality to command respect (e) Proper Training.

We should make the point that like other experts a surveyor who is negligent in his work will be liable to attune in damages if the client decides to sue.

CONCLUSION

In this dinner speech, I did not set out to make lawyers of the members of the audience, rather I attempted to define the key words. Thereafter we took a tour of the whole labyrinth of expert evidence, especially surveyors, It is clear that to be accepted as an expert in court, the expert must state his qualifications, experience and familiarity with the subject of the inquiry, The acceptance of the testimony of an expert is at the discretion of the court, which usually is based on the credibility, honesty, truthfulness, candour, knowledge, experience and other qualities of the witness. Like other professionals, the surveyor must be careful in his work in order to avoid litigation bordering on negligence.

I thank the organizers for this opportunity and I do hope that I have not destroyed your appetite nor bore you.