

LAND TITLE CONFLICTS AND REAL ESTATE INVESTMENT AND DEVELOPMENT IN RIVERS STATE

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ABSTRACT : Land titling and property development are two processes which are important in real estate investment decision-making and investment itself. Land title guarantees certainty of ownership of a site for real estate construction and development to take place, hence, real estate investments consist of developments on land. Land Titling protects an individual's right and by extension any improvement upon the land in the form of property investment. It excludes others from appropriating the fruits of an investor's investments. Unfortunately, Land ownership conflicts as well as the ignoring and neglecting land issues in post-conflict situations often have extensive negative effects on economic, social, spatial and ecological development. Solving and preventing land conflicts as well as addressing land issues responsibly in both conflict and post-conflict situations is key to sustainable development. It is also crucial for peace and stability, and the realization of human rights. Priority attention on land conflict prevention and solutions, coupled with the establishment of a responsible land governance framework, is a key cornerstone for the achievement of the Sustainable Development Goals. The study examined the characteristics and nature of land title conflicts in Rivers State, Nigeria, and how it interferes with real estate development and investment prospects. The methodology had a largely pragmatic undertone and research philosophy. It employed the use of qualitative research instruments in the data collection and analysis. Archival review of documents with content and thematic analysis led to the study's findings. The findings revealed that trespass, encroachment, double or multiple sales and allocation are the major sources of land title conflicts which negate and impede sustainable land titling and subsequently real property investment and development. The study concludes that, in order to promote real estate investment and development, and eliminate land title conflicts, it is pertinent for Government at all levels to deal with and treat cases of land title conflict as a criminal offence with capital punishment for offenders. Government should be more proactive and pragmatic while giving land title approval to individual(s) and corporate organizations. Due diligence should be taken when issuing Certificate of Occupancy to person(s), so as to avoid double allocation of single plot to two person(s) which will in turn result in conflict. The study makes several recommendations: (1) In order to reduce or eliminate the issue of trespass to land; For Native lands, Communities should have a registered layout of Native lands before selling such lands. (2) Government land titling offices should demand for such Native land Layout before issuing title to any person(s) or group of individuals in relation to any land. (3) On Government lands, government should implement an on-ground layout or any acquired land in the State and not an on-paper layout as the case in many government layout (proposed). (4) Government in acquiring property where there are existing certificates of occupancy, should properly revoke such C of O's before issuing another certificate of occupancy to a new or an old landlord. Government should implement and enforce strict compliance with the registration of deeds of conveyance and survey plans which is also an income generation opportunity for Government too.

KEYWORDS: Land title, land title conflict, Real estate, Real estate investment, real estate development

I. INTRODUCTION

Land related development is a key focus of national development undertaken or funded by individuals, corporate organizations, government at various levels and international agencies. Property and tenure theories, individualization of Tenure, economic aspects of property rights, history of individualization, and property theories, also support the importance of land and security of land tenure to growth and development of the individual and ultimately the society. Land titles and property development are two processes which are important in real estate investment. Land title guarantees certainty of ownership of site for real estate construction and development to take place, hence, real estate investments consist of developments on land.

Land title is considered a key determinant to economic and property development (Omirin 2003 and Ojo 2014). It protects an individual's rights and investment and excludes others from appropriating the fruits of his investments to themselves. In Nigeria, it is not uncommon to find millions of city dwellers without formal titles to the property they own and occupy. This non-possession of formal property titles usually impedes the use of such property as collateral to access credit facilities such as loans from financial institutions and markets. Non-possession of title also affects the sales of such property, as investment in untitled land may be regarded as illiquid (Nwanekezie and Mendie, 2019) but often changes hands transferring the risks to subsequent purchasers. Due to the high level of fraudulent activities in the private land market, most prospective buyers will prefer government allocated plots to individual private plots, since title information on government plots are readily available.

Land titling is usually administered through government departments, ministries or agencies with each overseeing specific aspect. In Rivers State, the Ministry of Lands and Survey manages, controls and regulates land use. The ministry embodies various departments with specific functions geared towards effective land titling. Udo (2017) opined that the process of land titling is often very time-consuming, and it can take over a year for title issuance.

The study focused on Land titling and associated Conflicts and explored prospects for sustainable land titling in Rivers State, Nigeria and the potential impacts this would have on real estate investment and property development. A Case study approach grounded in pragmatism was adopted for the study.

Previous studies (Wehrmann, 2008; Mkele, Mcanda and Sima, 2015) have identified that land conflicts arise from several issues. The practice where individuals are given land allocation by government on paper only without physically setting out these lots on the ground and installing survey beacons such that there is on-the-ground evidence of existing layout and as the physical representation of survey plans is a major example. Secondly, the inadequacy of compensation paid for the acquired land and incomplete acquisition processes by government across the State (Nwanekezie and Mendie, 2019; Ojo 2014) are partly responsible. These in turn lead to limited exercise of control over land resulting in land holding families repossessing land that were acquired by government (Ikunga, 2017). Multiple claims of ownership; destruction of property by angry parties as well as threats to personal safety; missing land transaction documents especially with regards to government acquisition and issuance of duplicate titles over land and overlapping layouts coupled with multiple litigations in Court are some of the issues connected with land titling.

In order to fill the gap in knowledge on the nature and pattern of land title conflicts and seek to enhance real estate investment decision-making and property developments, this research was undertaken with the aim of identifying land titling conflict situations, understanding its causes and proffering solutions for how to best manage them, particularly in the study area of Rivers State. The objective of the study was to investigate the type of land title conflicts experienced. The study proposition is that a problem understood is a problem half solved. The study therefore proposed that understanding the nature of land title conflicts will help in tackling the attendant causes of land title conflicts and it thereby mitigate its impacts on real estate investment decision-making for property development.

II. CONCEPTS IN LAND TITLE CONFLICTS AND REAL ESTATE

Land title is considered a key determinant to economic and property development (Omirin 2003, Galiani and Scharogradsky 2010 and Ojo 2014). It protects an individual's rights and investment and excludes others from appropriating the fruits of his investments. In Nigeria, it is not uncommon to find millions of city dwellers without formal titles to the property they own and occupy either in the form of land title documents or simple tenancy agreements. This non-possession of formal property titles usually impedes the use of such property as collateral to access credit or loans from financial institutions and markets. It also affects the sales of such property, as investment in untitled land is has been described as being illiquid (Nwanekezie and Mendie, 2019). Not entirely agreeing with the authors on this because property continues to change hands despite the lack of bankable titles due the forces of demand which far outweighs supply of land with development value in and around the State. Owing however to the high level of fraudulent activities in the private land market, prospective buyers tend to prefer government allocated plots to individual private plots, since title information on government plots are readily available. Unfortunately, the government layouts and grossly inadequate to satisfy the needs of the teeming populations in Nigerian Towns and cities.

Land registration (titling) is the process of official recording of rights in the land through deeds or title (on properties). It means that there is an official record (the land register) of existing rights on land or deeds concerning changes in the legal situation or defined units of land. It gives an answer to the question "who" and "how" (Zevenbergen J, 2004). Land conflicts coupled with the nonchalant attitude of government and the neglect of land issues in post-conflict situations, have often had extensive negative effects on economic, social, spatial and ecological development. Solving and preventing land conflicts as well as addressing land issues

responsibly in both conflict and post-conflict situations is key to inclusive and sustainable development. It is also key to peace and stability, and the realization of human rights, making land conflict prevention and solution coupled with the establishment of a responsible land governance framework, which is a key cornerstone for the achievement of the Sustainable Development Goals (SDGs) (Wehrman, 2006). Land conflict is a social fact in which at least two parties are involved, the root of which different interests are over the property rights to land; the right to use the land, to manage the land, to generate income from the land, to exclude others from the land, to transfer it and the right to receive compensation for it. It can be seen as a misuse, restriction or dispute over property rights to land (Wehrmann (2008). Land conflicts have been identified as one of the most delicate conflicts, the prevalence of which, affects the entire human livelihood (Kariuki, 2005; Wehrman 2008). This draws from the indispensable nature of land as it is linked to economic and social relations. Land conflict in itself is a complex phenomenon bothering on two principal axes — the users, and the use to which the land is put. On the ‘use’ perspective, Deininger and Castagnimi (2006) defined land conflict as competitive demands for present to future uses of the land, causing negative impact on other land uses. On the other hand, the user-related perspective of land conflict, Deininger and Castagnimi (2006), identified land conflict as social disputes that are raised by involvement of the private individuals, institutions, industries, development movements, developers, non-governmental organizations, civil service and regulatory agencies in the ownership, use and development of land. The involvement of these various users coupled with their different motives for the use of land necessitates conflicts and affects the developmental potential of a given place or neighborhood (Daegeon and Dorjderem, 2012; Yie, Ma & Liu. 2014). Wehrmann (2008) provided a synergy to both the uses and user-related perspectives of land conflict.

Real estate investment and development and land title conflict has remained a critical issue for consideration due to the increasing competition for urban lands (Mkele, Mcanda and Sima, 2015). The fight over land is as long as man’s history and this conflict has negative effect on economic, social, spatial and ecological development. Where land title conflict occurs, the development potentials of the land are halted in addition to other violent disruptions (Daegeon and Dorjderem 2013). In most cases where land title conflicts are contested in courts, injunctions are placed on the development of such lands until the rightful owner is ascertained or the issue resolved. This places real estate development and or properties in a poor condition (Egbelufu 2015). Several parts of the State are rife with lands on which injunctions have been placed. The prevalence and widespread occurrence of land conflict within a particular location creates a situation of disinvestment in land projects within the location (Sabir, Torre and Magsi, 2017). This draws from the stigma attributable to the knowledge of land conflict in the area, as no rational investor would invest capital in a conflict prone area. The implication of this is that real estate activities will be greatly reduced, creating various forms of uneven and haphazard developments (Mkele et al. 2015). Urban land conflict in its varied nature is one of the potential causes of low investment in the real estate sectors in developing nations as it reduces investor confidence. In more devastating circumstances, urban land conflict can result in total loss of investments as well as project abandonment. (Adesina, 2010).

Land conflict-induced project abandonment can occur due to factors such as double sales of land, litigation as a result of competing claims and preponderance of youthful disruptions based on claims of community. While stressing this fact, Ayodele and Alabi, (2011) explained that in situations where the outcome of the litigation or other resolution mechanisms is against the investor, the entire level of investment becomes a wasted investment on the part of the investor. Land ownership conflicts have negative effects on individual households as well as on the nation’s economy, real estate investment and development in particular. They increase costs, slow down real estate investment and development, loss of property for one or several parties thus creating homelessness, result in the loss of property for a conflict party, high cost for attempts at conflict resolution and reduce tax income (land tax, trade/commercial tax) for the state or municipality (Wehrman, 2008).

The study examined the instances of documented land titling conflicts to ascertain the preponderance of certain types over the other and the pattern of occurrence. The context of the study is in the quest for solutions to mitigate its impact on the property investment market. The ultimate goal is the increase the potentials for land based internally generated revenue which is currently sub-optimal as a result of these conflict situations.

III. METHOD EMPLOYED

A Case study research design approach grounded in pragmatism was adopted for the study which is descriptive and exploratory in nature. A simple random sampling method was used to select data from documented conflict cases in historical archives. Documents from the Archives on land title conflicts cases held in Rivers State Courts were randomly selected and reviewed. Professionals in the field of study domiciled in Rivers State were purposively selected and interviewed based on their experience and knowledge of the subject. In addition to the archival method, Participant observation as a key player in these processes also formed a basis for primary data collection. Qualitative data was collected with the aim of obtaining a clearer explanation to the study research objectives, the responses were transcribed and analysed using data reduction, content and thematic analysis method.

IV. RESULTS AND ANALYSIS

The archival review of litigation cases on land title conflict in Rivers State extracted from the Rivers State Judiciary, the following were the revealed nature of land title conflicts which includes; trespass, encroachment, multiple sales, double sales, and multiple allocation. Litigation cases were studied, and the contents disaggregated into themes and thematic analysis was performed thereafter through a process of Data reduction. Within each case that was examined, the main objective was to identify the nature of conflict in each one, noting also that some had multiple. These were then grouped together, and simple statistics applied to the findings.

The summary of responses from the cases appears in Table 1 below.

3.1 Summary of Land Title Conflict Types

TABLE 1 - Nature of Land Title Conflicts Causes

S/No	Nature of Title Conflict	Responses	Percentage (%)
1	Trespass	94	37.6
2	Multiple Sales	61	24.4
3	Multiple Allocation	49	19.6
4	Encroachment	28	11.2
5	Double Sales	18	7.2
6	Total	250	100

Source: Archival Survey - Fieldwork 2020

The result on the table above on nature of land title conflicts cases reviewed shows that 37.6% is on trespass, 24.4% is on multiple sales, 19.6% is on multiple allocation, 11.2% is on encroachment while 7.2% is on double sales. From the analysis, trespass, multiple sales, multiple allocation followed by encroachment and double sales are the main ways in which land title conflicts manifest itself in practice from the archival review carried out on the study.

3.2 Nature of Land Title Conflicts Identified

The review shows that Land title conflicts can make property investment and development unsafe and insecure, it causes delay in the process of land acquisition for real estate investment and development and leads to delayed and prolonged land transactions. Insecurity of property investment in the case of overriding public interest which may be exercised by the State, makes conveyance for property investment cumbersome and tedious thus discourages socio-economic development of several areas and the State. The fact that land title conflicts hinders landowners, property developers and investors access to cheap and medium or long-term credit through mortgage, as title to the land may be contestable in a law court.

Trespass on Land

Trespass as a form of land title conflict occurs where a person unlawfully enters, uses and takes possession of someone else's land or property (farmland, building, fish pond, premises, etc.), in most cases inflicting injuries or damages to the owner of such property or land. Several Cases were reviewed. (a) The first reviewed case on trespass shows destruction of ridges and ponds belonging to the plaintiff by the defendant, plots were allocated to the defendant with certificate of occupancy, mortgaged of land to a merchant bank in consideration for a loan by first defendant, lease of landed property illegally; lease of land with subsisting leasehold interest to a second party without prior consent from the owner; and a plot of land having two building leases. The outcomes of these cases included payment of compensation for damaged property; payment of damage for unlawful entry, harassment, invasion and trespass to the tune of N100,000 Naira (USD 254) as consequence of the action; the plaintiff was fined by the court the sum of N2,000,000 (USD 4905), for trespassing on a land which title was duly registered and documented; restraining the second defendant, his agent and privies from further access to the said land and award for general damage the sum of N5,500 for trespass and where a 2nd defendant was charged to pay N2,000,000 for general damage done to the property of the claimant.

(b) Further review shows an instance where a deed of conveyance over a government land was forged, even though the respondent claimed he bought the land from government. Evidence presented before the court showed that the respondent forged the said deed of conveyance purporting the claimed purchase of the land. The court billed the respondent to pay the sum of N137,750,000 as penalty for forging and stealing of government land.

Multiple Sales by Vendors

From the review, multiple sales occur when a single landed property is sold to more than two persons by original vendor or two persons especially those related to the vendor(s) including family members. The archival review of several cases revealed instances of multiple sales as one of the major sources of land conflict. The

review examined cases showing that two separate deeds of conveyance existing over a piece of land held by two different persons claiming ownership of the said land. The court gave judgment in favour of the defendant whose deed was first registered and stamped as acknowledged by the landlord. Hence, the 2nd defendant was fired to pay damages to the first defendant for delay him from carrying out improvement on the land. However, the fact that one parcel of land gets registered buy the second buyer before the original purchaser cannot be used as the basis to decide on who owns the land. It does not reflect the true picture of the sequence of events in a transparent manner. Where there is overwhelming evidence including banking transactions to show that criminality was the intent on the part of the Vendors by selling land multiple times and to multiple buyers, a case of criminality should be established, and such matters pursued on those grounds. The findings from the criminal investigation should form the basis of the ruling and not only evidence of land registration. First registration of stolen land is insufficient justification to determine land ownership. Fraud should be discouraged. In a separate case, a parcel of land was sold to individuals by a government official who purported to be acting on behalf of the government. Here the government official illegally leased the said property to the second defendant by virtue of his office; the outcome of the case revealed that the ownership right of the first buyer of the said property overrides the interest of the second buyer. Thus, the right and interest of the second buyer was declared null and void by the court. The review also reveals that a parcel of land having two certificates of occupancy which is a case of multiple sales. Evidence revealed that the first buyer whose certificate of occupancy was duly registered and recorded with the land registry is the original owner of the said land. The second defendant title to the said land was declared null and void and illegal with payment of damages to the first defendant for distraction and disturbing his right, use, enjoyment of the parcel of land

Multiple Allocation

A review of archives on litigation cases filed in the Rivers State Judiciary on land title conflict reveals that multiple allocations is another major form of land title conflict in the State. The review reveals that this occurs where a parcel of land is discovered to have two certificates of occupancy (two owners). In this case, the Judge gave judgment in favour of the 1st defendant whose title was duly registered and documented with the land registry. Although the second defendant claimed that the disputed parcel of land should be reallocated to the right person, this claim was declared null and void as it lacks the necessary evidence to support.

In another case reviewed, a parcel of land had two certificates of occupancy (CofO). The court decided that the first buyer whose certificate of occupancy was duly recorded and registered with the land registry is the original owner of the said land. This follow the claim that there is no need for reallocation as the title of the first buyer subsist all other title to the said parcel of land. The judge declared the first (1st) defendant's lease null and void as there was still an unexpired building lease on the said parcel of land. Again, a plot of land with a lease had two certificates of occupancy by two parties, the outcome of the court judgment on this case reveals that the certificate of occupancy of the 1st and 2nd defendants were declared null and void and unlawful. Though both the 1st and 2nd defendant claimed they are the right owners of the land, but the court gave verdict stopping both 1st and 2nd defendants from the use, access to the said plot of land and also terminate all the claimed leases. The review above shows that multiple allocation of land which is a type of land title conflict occurs where a parcel, plot or real property is allocated with certificate of occupancy to more than one person, thus the remedy to such title conflict is sorted in the court of competent jurisdiction. This flags the issue of lack of records and the use of outdated methodology that makes it possible to issue multiple C of O's on a parcel of land. With the presence of geographical information systems, incidences of issuing multiple title documents should have become history decades ago. Geo-informatics has the ability to recognize coordinates falling within the same physical location and ground truthing can be done to resolve this.

Encroachment

Encroachment is another basis for land title conflict. Reviewed cases reveal instances where a survey plan shows a plot overlapping into another plot, aptly described as encroachment. This case was petitioned in 2007 and the outcome of the case stipulates that the defendant should pay for the entire land as the layout had become distorted as a result of the encroachment and was no longer in conformity with the layout plan of the said land area. Another case reviewed dates back to 2006 apply, where the survey shows that a plot of land was overlapping into another plot, the judgment given by the Judge ordered the defaulter to do a proper survey based on first entry and pay for the extra encroached part of the land, as the survey was not in conformity with the layout plan due to the distortion done to the land by the defaulter. In another scenario, dated in 2010 where layout was distorted, the defaulter was fined to pay for a fresh survey and court order was given restraining the defendant from entering into the property.

Double Sales

This type of land title conflict arises when land owners sell land to two different individuals on different occasions. The review showed that double sales is quite prevalent in land title conflict in the State. The review

shows two deeds of conveyance over a piece of land, as the land was bought by both parties. The court gave an order stopping the both parties access to the land, making the land unused and inaccessible over the years, though the court upon citing evidence presented by both parties, judge the case in favour of the first buyer of the land while payment of damages was awarded to the plaintiff and the second buyer for disturbing the use, enjoyment and peace of the first buyer of the land. Another case reviewed shows two certificates of occupancy over a plot of land which is a double sale the title of the second buyer was declared null and void as no land can have two certificates of occupancy registered. The pertinent question remains unanswered is why the government can continue to be responsible for issuing multiple C of O's since it is the sole preserve of the government to do so. If the first title had not been relinquished as in this case, how possible is it then that a second C of O was issued. Evidence presented before the court shows that the first buyer had his title perfected and registered before the second buyer bought the same land from the agent of the original landlord. In this matter, a clear case of criminality needs to be established and parties found culpable for not following due diligence.

V. CONCLUSION

From the findings of the study on 'the Nature of Land Title Conflicts and real estate investment and development in Rivers State', the following conclusions were drawn from the study;

- a. in order to promote real estate investment and development and eliminate land title conflicts, it is pertinent for Government at all levels to deal and treat cases of land title conflict as a criminal offence with capital punishment for offenders. This will cushion and or serve as a deterrent for intending offenders and also help to eliminate the negative impact on land tilting and property investment and development.
- b. Due diligence should be taking when issuing Certificate of Occupancy to person(s), so as to avoid double allocation of single plot to two person(s) which will in turn result in conflict.
- c. Finally, in order to encourage real estate investment and development, and sustainable property development in the State, the cumbersome process of getting approval (certificate of occupancy) for landed property should be eradicated or removed.

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