

Valuers' Perception of Expert Witnessing in Real Estate Litigation Practice in Ibadan, Oyo State.

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Abstract: The study examined the valuers' perception of expert witnessing in real estate litigation in Ibadan, Oyo State with the aim of improving professional practice. Primary data was collected from respondents 103 registered valuers (RSV) drawn using systematic random sampling technique from 158 financial members contained in the Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) directory. Data collected from 87 returned questionnaires were analysed using frequency, percentage distribution, mean scores and factor analysis. The result established that rent dispute was the commonest real estate litigation where Valuers as an expert witness had been involved. The result shows that expert witnesses in the study area were experienced professional valuers who could sufficiently guide decision making in real estate litigations and give objective and sound evidence. Also, the findings showed that there is no statistically significant variation between the professional qualification and their level of engagement in real estate litigation as the $p > .05$ level for respondents [$F(2,76) = .067$, $p = .935$] for ESV. This infers that the respondents' involvement in litigation was not a function of professional qualification of the respondents. The study recommended that for efficient expert witnessing in real estate litigations, valuers need to understand the procedures of being an expert witness and develop sufficient knowledge in the area of expert witnessing.

Keywords: Expert witnessing, Ibadan, Litigation, Real estate, Valuers.

I. Introduction

Real estate involves series of activities leading to effective use of land and landed properties. It brings about the development of products which is essential to human livelihood. Its importance is corroborated in the belief that housing, which is an aspect of the product of real estate, is an essential aspect of life. With the importance of real estate to economic growth and development activities relating to its effective delivery and subsequent investment are required to be sensitively handled, coordinated and managed for the benefit of the human race.

Real estate activities are diverse and of a wide range. It is carried out at several stages which

often range from planning to completion stages such as land acquisition, land development, construction, management and rent determination to others such as rent collection, valuation and sales. It requires the input of various stakeholders and as such subject to dispute [1] and may lead to litigation. Real estate disputes and litigation have been in existence from time immemorial. As in other countries of the world, Nigeria real estate practitioners often play series of critical roles as expert witnesses in courts as well as in preparing expert reports for attorneys to establish contentious issues and to guide and assist a judge in making sound decisions during proceedings [2].

Nigerian courts often entertain and adjudicate on such real estate issues as conflict of interest, breach of contract, boundary disputes, and value differences among others. Being technical issues, estate valuers are often required either by lawyers handling the issue to prove a case or by a judge to assist in making an informed opinion. In such cases, especially where the motive of the litigation is getting

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value for whatever the investment is, which in some cases may not be pecuniary, the professional advice of an estate surveyor and valuer, versed in the legalities of real estate disputes can be essential. As such, litigation support is one of the most common reasons to hire an expert [1]. This is essentially the process by which the estate surveyors and valuers who are familiar with commercial disputes provide consultation and advice to attorneys during legal proceedings. Since solving disputes through the traditional method of going to court (litigation) requires that the judge has oversight over cases filed in the court, he/she as the trier of fact, often requires the expert witnesses opinion where the truth about real estate issues can only be obtained from the estate surveyor and valuer who are the trained professionals knowledgeable about real estate.

This study seeks to evaluate the practice of expert witnessing in disputes ensuing from real estate practice and the understanding of the professionals on how expert opinions are being prepared and presented in the court of law. Estate Surveyors and Valuers fall within the categories of professional expert witnesses whose actions and opinions are required at every stage in the proceeding of real estate litigations by Lawyers who prepared them for determination of cases before the court and how the evidence is admissible. Hence this study will examine the Estate Surveyors and Valuers' understanding of expert witnessing in real estate litigation in Ibadan.

Real estate can be defined according to [3] as "space delineated by man, relative to fixed geography, intended to contain an activity for a specific period of time". According to [4], it is multi-dimensional, characterized with distinct features of use, landscaping, slope, development potential, tenure, building (materials, design) and the pattern of externalities (access to resources such as labour, school and amenity) that includes

bundles of goods or services which could not be traded or priced independently.

Real estate includes the land and the building thereon or any improvements subject to change in use or modification, alteration, and redevelopment on the land [5]. Thus, a real practice could be referred to as the inclusion of real estate and the associated collection of legal rights therein which could be subject to use, or to enjoy, to transfer, to alienate or to benefit from any futuristic intended use [6]. Real estate litigation is a tool used by real estate practitioners, brokers, buyers and sellers, and landlords and tenants in order to pursue legal rights and redress perceived or experienced wrong. It was observed in [7] that the three most common causes of real estate litigation are; breach of contract, failure to disclose property defects and negligence or breach of duty which might require the evidence of expert by the court. Also, the work of [8] affirmed that in business and real estate litigation, expert witnesses are an essential part of the development and execution of many cases and are routinely involving, among others, non-disclosure, boundary disputes, easements, valuation and fiduciary disputes.

An estate surveyor and valuer (ESV) is a professional trained in the art and science of estate management to direct and supervise an interest in landed properties with the sole aim of obtaining optimum returns for the owners of such properties [9]. By his training and experience, he is an elected corporate member of the Nigerian Institution of Estate Surveyors and Valuers (NIESV) and legalized by the Estate Surveyors and Valuers (Registration, ETC) Decree No. 24 of 1975, now CAP E13 LFN 2007.

The Estate Surveyor and Valuer offers a number of professional services to both individuals and the society at large which no one else can provide without professional skill

and expertise. His functions include, among others, provision of services such as property management, valuation of assets, feasibility and viability studies, estate agency, public lands administration, land use planning and management, project management, property investment counselling, arranging finance for investment, arbitration [10, 11].

An expert witness is regarded as an expert because the individual possesses specialized knowledge that pertains to the particular subject matter involved in real estate litigation cases. The goal of expert witness' preparation is to assist the expert in delivering the message he or she has to share effectively and responsibly. Furthermore, [12] averred that the first method in preparing the testimony of an expert witness is to become an expert by acquiring an in-depth knowledge of the subject matter, speak the expert's language and understand the basic concepts of the discipline. Also, the work of [13] suggested that expertise is situation-specific and an effective expert witness must prepare for the role. However, the author was of the opinion that expert witnesses are not necessarily experts at being witnesses. Various studies supported the fact that experts who are less credible are less persuasive [14-16]. In [17] argued that the most common method of expert preparation is self-preparation. There are several literature devoted to helping expert witnesses prepare themselves for testimony in court, such as [18-20] and [21-23]. The study added that attorneys also work with expert witnesses to prepare them for testimony by reviewing, discussing and in the modification of testimony material with the witness [24]. Also, [24] cited in [17] in his review of the state of witness preparation distilled three basic components of the preparation method; witness education, attorney education and modification of testimony delivery.

A competent witness is one considered in law as a fit and proper person to testify. Section 155(1) of the Evidence Act stated that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind".

Every compellable witness is obviously a competent witness since the court will not compel anyone who is not competent. However, there are exceptions to the rule such as children and public officeholders. Though public officers are competent witnesses under S.155 (1) E.A., they are not compellable while they are in office. See *Okon v. State (1988) 1 NWLR (Pt.69) 177*; *Okoye v. State (1972) 12 SC 115*; *Rotimi & Ors v. McGregor (1974) 9 NSCC 42*. It was noted that the trial court will consider the witness's life experiences, education, professional standing, licenses, certifications, publications, actual knowledge, honours received, books written, chapters written, literature published, and other qualifying matters to determine if a witness should be accepted as an expert in a given field. The witness must be competent in the subject matter; they must be qualified through knowledge, skill, practical experience, training, education, or a combination of these factors [25].

The work of [26] found that the job of the expert witness is to assist the decision maker (a court, tribunal, or other related body) with the information about the specialized area before a decision can be made. In 2009, The Brenner Group observed that when an expert is called to witness in a court proceeding, the expert witness must consider the following: the requirements of the court concerning the role the expert is expected to play, the rules of evidence and the procedure the expert must follow, and the standard of reliability and the

relevancy that the work must satisfy; the ethical and professional responsibilities to which the expert must adhere; the need for effective communication in the form of written and oral testimony.

II. Materials and Methods

The study made reference to the 2018 Estate Surveying and Valuation Registration Board of Nigeria (ESVARBON) directory which comprises financial members that were entitled to practice estate surveying and valuation residing in Ibadan metropolis. The directory has the name of 158 financial registered estate surveyors and valuers as of 2018 in the study area. Hence, the sampling frame for the study will be 158 registered estate surveyors and valuers. Adopting a systematic sampling technique by selecting one out of every fifteen respondents, the sample size for the study was 103 estate surveyors and valuers for which questionnaires were administered. Eighty-seven (87) questionnaires were retrieved representing 84.4% within the study area. Data collected were analyzed with the descriptive statistics of frequency, mean score and factor analysis. The author collected the data for the study in 2018.

III. Results and Discussion

In order to establish the reliability of the data collected, information on the profile of respondent registered valuer in Ibadan was gathered, thus providing relevant details that enhanced the drawing of relevant inferences from the result.

In Table 1, the result reflects that majority 45 (51.70%) of the respondents qualified within the period of 2006 and 2011. Also, the Table shows that the respondents with more than 16 years of experience representing 31 (35.6%) were highly in existence across the others and no response were 17 (19.5%) and 3 (3.4%) respectively.

Table 1: Profiles of Estate Surveyors and Valuers in Ibadan

Variables	Frequency	Percentage
Years of Registration		
1989 – 1999	6	6.90
2000 – 2005	22	25.3
2006 – 2011	45	51.70
2012 – 2016	14	16.1
Total	87	100
Years of post-registration Experience		
5 and below	5	5.8
6- 10	27	31
11 -15	18	20.7
16 and above	31	35.6
No response	6	6.9
Total	87	100
Position Held		
Principal Partner	16	18.4
Managing Partner	9	10.4
Senior Manager	18	20.7
Manager	24	27.6
Others	17	19.5
No response	3	3.4
Total	87	100
Academic Qualification		
HND	23	26.4
B.Sc.	30	34.5
M.Sc./MBA	30	34.5
Others	4	4.6
Total	87	100
Professional Qualification		
ANIVS	73	83.9
FNIVS	6	6.9
ARICS	1	1.1
No response	7	8.1
Total	87	100

Source: Authors' Field Survey, 2018

Furthermore, the result of the academic qualifications of the respondents ESV in the study area showed that a majority of the respondents had one form of higher formal education or the other, with those in the B.Sc. and M.Sc. category having larger percentages 30 (34.5%) that indicated sufficient understanding of the questionnaire given to them, thereby enhancing data reliability. In the same vein, the professional qualification of these respondents was also examined. The result showed that 73(83.9%) of the respondents were associate members of the professional body, which serves as one of the criteria for registration as a registered valuer, while 6(6.9%) were at the fellowship cadre of the Nigerian Institution Estate Surveyors and Valuers.

The study examined various real estate litigations that expert witnesses had been involved and engaged in. This was done in terms of their level of involvement and engagement as rated or perceived by the respondents. The result of the involvement of the respondents in real estate litigations in Ibadan metropolis is contained in Table 2 below. The findings show that most of the

estate surveyors and valuers were involved in real estate litigations. The findings revealed that 16.1% and 33.3% of the respondents were involved in real estate litigation in the study area as “very often” and “often” respectively. This could be as a result of their year of experience and high positions occupied by the respondents in their various organization.

Table 2: Involvement by ESV as Expert Witness in Real Estate Litigations in Ibadan

Level of involvement	VO (5)	O (4)	SW (3)	NO (2)	N (1)	No Response	Total	Mean	Std. Deviation	Variance
Frequency	14	29	12	18	13	1	87			
Percentage	16.1	33.3	13.8	20.7	14.9	1.1	100	2.85	1.342	1.8

Key: VO (Very Often), O (Often), SW (Somewhat), NO (Not Often), N (None)

Source: Authors' Field Survey, 2018

Table 3: Level of engagement in Expert witnessing

Engagement of expert witness	Valuer	
	Frequency	Percentage
Engaged	35	40.2
Not engaged	52	59.8
Total	87	100

Source: Authors' Field Survey, 2018

Table 4: Variation of Respondents' Professional Qualifications in Their Level of Engagement in Real Estate Litigations in Ibadan.

Respondents		Sum of Squares	Df	Mean Square	F	Sig.
ESV	Between Groups	.214	2	.107	.067	.935
	Within Groups	121.229	76	1.595		
	Total	121.443	78			

Table 5: Relationship between Professional Qualification and Level of Engagement as Expert Witness in Real Estate Litigation

ESV	N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum
					Lower Bound	Upper Bound		
ANIVS	69	1.59	.495	.060	1.48	1.71	1	2
FNIVS	6	1.50	.548	.224	.93	2.07	1	2
ARICS	1	1.00					1	1
Total	76	1.56	.499	.056	1.45	1.67	1	2

Source: Authors' Field Survey, 2018

Table 6: Ranking of Involvement of ESV as Expert Witness in the Real Estate litigation

Real Estate activities	N (1)	R (2)	S (3)	O (4)	A (5)	TWV	Mean	MD	Std. Dev	Variance	Ran k
Rent dispute	1	4	9	13	4	108	3.48	0.829	0.996	0.991	1 st
Tenancy tenure Disagreement	1	7	8	10	3	94	3.24	0.589	1.057	1.118	2 nd
Property Maintenance Dispute	1	6	12	9	2	95	3.17	0.519	0.95	0.902	3 rd
Land ownership Dispute	0	11	11	9	1	96	3	0.349	0.88	0.774	4 th
Service Charge Administration	4	5	10	8	2	86	2.97	0.319	1.149	1.32	5 th
Estate Agency Dispute	4	8	12	8	0	88	2.75	0.099	0.984	0.968	6 th
General valuation	6	4	15	5	1	84	2.71	0.059	1.071	1.146	7 th
Compulsory acquisition disputes	8	9	7	7	1	80	2.5	-0.151	1.191	1.419	8 th
Compensation	9	10	6	6	1	76	2.38	-0.271	1.185	1.403	9 th
Estate Taxation	12	8	8	5	1	77	2.26	-0.391	1.189	1.413	10 th
Partition of real estate interest	10	11	6	2	0	58	2	-0.651	0.926	0.857	11 th
Family Property Dispute	11	13	5	3	0	64	2	-0.651	0.95	0.903	12 th
Restrictive covenant: easement,	13	9	5	4	0	62	2	-0.651	1.065	1.133	13 th

The result in Table 3 above reveals the frequency of engagement of the respondents in expert witnessing in the study area using direct rating responses such as engaged and not engaged. The result showed that the level of respondents' involvement and engagement in expert witnessing practice was on the average with 35 (40.2%). However, the respondents who had a significant level of involvement in real estate litigation, expert witness engagement was low. This could be attributed to the low level of real estate litigations that required the services of an expert witness to support the case evident before the court. The respondents that were involved or engaged in expert witnessing in real estate litigations in the study area were further examined to elicit information on the area of real estate litigations that they might have been involved in.

The respondents' professional qualification and their level of engagement in real estate litigation in the study area were examined in order to determine whether or not there were variations between them. The result presented

in Table 4 shows that there is no statistically significant variation between the professional qualification and their level of engagement in real estate litigation as indicated by the $p > .05$ level for respondents [$F(2,76) = .067$, $p = .935$] for ESV. This infers that the respondents' involvement in litigation was not a function of professional qualification of the respondents as shown in Table 4 above.

Further analysis was carried out to know if there was any relationship between the respondents' qualification and their level of engagement as expert witnesses in real estate litigation in the study area. The result is contained in Table 5 above.

The result from Table 5 shows that the mean for ESV professional qualification, mean for ANIVS is 1.59, the mean for FNIVS is 1.50 and the mean for ARICS is 1.00. The standard deviation for ANIVS is 0.495, the standard deviation for FNIVS is 0.548. This indicates that professional qualifications have a significant influence on the expert witnessing practice.

From the analysis in Table 6, the most widespread experience was in rent dispute ranked 1st with a mean score of 3.48 followed by tenancy tenure disagreement ranking 2nd with 3.24 mean value. The result could be a result of the number of parties involved in rent dispute issues, which could be in terms of rent determination, rent review, rent collection, etc frequently leading to litigation. This appears that the respondents acted more as an expert witness with the activities that ranked 1st, 2nd and 3rd and may be attributable to the fact that they are general day-to-day professional activities in real estate practice. Other real estate activities involving expert witnessing are compulsory acquisition disputes, compensation and estate taxation representing mean scores of 2.5, 2.38 and 2.26 respectively, while partition of real estate interest, family property dispute and restrictive covenant such as easement were ranked least with a mean score of 2 for each of them. The result from the analysis shows the feat that respondents rarely acted as expert witnesses in these real estate litigations which might be due to government regulations and policies guiding them. In summary, it can be inferred from the analysis that the respondents were involved more as expert witnesses in general real estate litigation than the core area of expertise in real estate such as valuation, appraisal.

The result from Table 6 established that there is a positive correlation between years of registration/experience, position held and level of an expert witness's knowledge. Further findings revealed that the commonest real estate litigations were rent disputes, tenancy disagreement, property maintenance dispute, land ownership disagreement and valuation which were the day-to-day real estate activities engaged by the respondents. Also, findings showed that the legal position of the expert witnessing is not only accepted but strongly endorsed by the professional bodies to which

the expert belongs, the duty of expert witness is reflected in professional certification which is mandatory for its members that could enhance the reliability and admissibility of expert witness evidence

Findings in Table 7 established that attorney-assisted method with 14 (31.1%) was ranked highest by the ESV followed by teamwork assisted and joint expert panel. This might be attributable to the fact that an expert witness prepares his evidence based on his experience and the facts at his disposal that would enable him to present and defend his evidence in court. Meanwhile, the legal practitioners believe that putting the expert through the procedures would be the best method of preparing an expert witness for the presentation of evidence in the court. The reason for these differences in preparation method could be a result of the professional ethics guiding each profession and the standard expected of any professional to meet when acting as an expert witness and when engaging the service of an expert witness.

IV. Conclusion

This study examined the valuer's perception of expert witnessing in real estate litigation. The result revealed that expert witnesses in the study area were experienced professionals, who could sufficiently guide decision making in real estate litigations. They perceived that management related cases such as rent, tenancy, maintenance disputes called for more witnessing in the study area. He or She gives objective and sound evidence of his or her knowledge and ability to act as expert witnesses effectively based on the understanding and knowledge of the case. Also, timely preparation of objective and impartial evidence, good standing with the professional regulatory bodies contributed to the admissibility of evidence in the court. Based on the perspective of the professional valuers, the study discovers there was a low awareness level about the

practice of expert witnessing, the real estate litigations and the likelihood of factors and problems affecting the admissibility of the expert witness report. Thus, there is a need for real estate practitioners to focus more on the act of witnessing in real estate litigation in order to ensure the presentation of sound, objective and impartial evidence to enhance expert witnessing in real estate professional practice.

Arising from the conclusion drawn from the study, it is hereby recommended that practitioners should adequately prepare themselves by understanding the case contents before an appearance in court and experts should continue to strive to gain experience in the profession and strive to be at the top level to be engaged in the practice of expert witnessing. The study further recommends that practitioners should increase their interest in specialization by retraining. Specialization will help in improving the admissibility of opinion. Also, teamwork should be encouraged so as to pool ideas together with other relevant professionals that would produce sound reports that would not be rejected in court.

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