

# **VALUATION LITIGATION: THE ROLE OF ESTATE SURVEYOR AND VALUER AS EXPERT WITNESS**

**By**

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## **ABSTRACT**

*Estate Surveyors and Valuers as the core professional in property valuation are required to give expert opinion of value in any property valuation litigation. But, many of them seem not to understand their role in this regard.*

*The aim of this paper therefore is to enlighten and educate Estate surveyors and Valuers of the role expected of them before and during litigation bordering on property valuation. In this regard, actions and responses expected of Estate Surveyors and Valuers at every stage of the trial proceedings in valuation litigation were highlighted.*

*It is the ultimate wish of these authors that this work would contribute to the knowledge of and give good orientation to Estate Surveyors and Valuers in matter relating to valuation litigation.*

## **INTRODUCTION**

In the administration of justice, the judges are obliged to look out for the truth of any matter put before them to decide on. The regular courts, rent control, tribunal, arbitration panel, panel of inquiry, Land Use and Allocation Committee and Valuation courts are however prone to relying on the aid of expert witness in certain areas as a vital part of the machinery for administration of justice.

Estate Surveyors and Valuers fall into the category of professionals from whom such facts and opinions are required by any of these courts.

The focus of this paper is on property valuation aspect of estate surveying; this is an aspect that is exclusively to be practiced by Estate Surveyors and Valuers by provision of law.

## **PROPERTY VALUATION AND ESTATE VALUER**

Property valuation is the art or science of determining or estimating the monetary worth of a particular interest in a given property for a particular purpose at a specific date.

Estate Surveyor and Valuer is a person who is a corporate member of Nigeria Institution of Estate Surveyors and Valuers (NIESV) and registered by Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) to practice the art of determining the monetary worth of interest in any property in any part of Nigeria.

Not all those who engage in the valuation exercise in Nigeria are Estate Valuers, only those who were registered by ESVARBON to determine the monetary worth of interest in any property at any part of Nigeria are legally recognized as Estate Surveyor and Valuer. And they are the only ones that can appear to

give professional facts and opinions of value in any law courts in Nigeria. Anything contrary to this will amount to illegality by virtue of section 2(d) of the Estate Surveyors and Valuers (registration etc) Decree 24 of 1975 (now cap. 111 of the Laws of the Federation of Nigeria, 1990).

Each of the less than 2000 elected and less than 1990 registered Estate Surveyors and Valuers in Nigeria must therefore have both corporate membership number (NIESV) as well as the registration number (ESVRABON) and this must be quoted for reference purpose in any law court during valuation litigation. It should be stressed that the expert opinion of an Estate Valuer is not limited to litigation alone. His expert opinion might be required for public enlightenment programs in the media, it may be to guide the law making process or it may be for government decision making.

### **DISTINCTION BETWEEN WITNESS AND ADVOCATE**

Witness is somebody who can attest to the facts and information as it happened and present the same to the court in litigation. There are two types of witness: lay witness and expert witness. Lay witness have to do with events happening circumstances, having present at the place and time of action that prompted the litigation, which placed him at vantage position to give eye witness account. The basic principle is that he has the ability to make observations, but he cannot proffer opinion on the cause and effect of what happened. The expert witness on the other hand is a skilled professional in the fields of the litigation that requires court evidence. Therefore, Estate Surveyor and Valuer is an expert in the field of estate surveying.

A person may however be regarded as an expert in a particular field even where his knowledge in this field was acquired without systematic tutoring (such as tertiary education), provided that he has, in the opinion of the court, had sufficient practice in the particular field as a professional or as an amateur, to make his opinion reliable. *Shell Petroleum Development (NIG.) LTD. V Tiebo (a)*

An expert witness is expected to furnish the court with both scientific and technical information that is likely to be outside the experience and knowledge of the presiding judge. *R.V. Turner (b)*

An expert witness in furtherance to rendering facts and happening within his personal knowledge is permitted and encouraged to include in his evidence the opinion he has formed and the conclusion he has drawn (Bryan, 1972). A witness must be objective and tell the truth and nothing but the whole truth disregarding how such truth would affect the party engaging him. There is therefore a need for Estate Valuer to maintain professional dignity rather than the wish of the client. In *white house V Jordan (c)*, Lord Wilberforce observed that 'it is necessary that expert evidence presented to the court should be, and should be seen to be, independent product of the expert, uninfluenced as to the form or content by the exigencies of the litigation. Estate Valuer's allegiance is to his profession but not to the party engaging him. If an Estate Valuer is found to consciously distort the facts or states an opinion, which does not hold purposely to mislead the court, he shall be liable to perjury.

For the opinion of an expert witness to be accepted and acted upon by court, it must not be challenged by other evidence and must not contradict to common sense and the usage of mankind (*West minister dredging (NIG) Ltd. & Anor V Ogun Oyibo & Sons (d)*).

An expert witness cannot argue, he only needs to take the guide as given by the advocate. It is only the advocate that can present his client's case the way he thinks and can argue without misleading the court. An expert witness is only to present the facts and opinions and to speak the truth according to his sworn oath, first as to the facts and secondly as to the objective conclusion he has derived from them. The distinction

between an advocate and Estate Surveyor in the capacity of expert witness was drawn by Mr. John Clifton, the first president of the surveyors' Institution in United Kingdom who says ' I cannot conceal to myself that as individuals we have allowed ourselves to become partisan and advocate the business of Surveyor, I hold to be, is to give an unbiased opinion on the subject placed before him, and not to become in any way an advocate' (Waston, 1975).

### **PRE-TRIAL ROLE OF ESTATE SURVEYOR AND VALUER**

As earlier emphasized, property valuation litigation may be in defense of the estate valuer's past work or to oppose the work of other party. This party may either be lay man or professional. If it is to defend the past work, the role of Estate Valuer shall be to revert back to how such past work was organized, how facts were gathered and how the opinions were formed to make a proper defense thereof. In this case, Estate Valuer is expected to prepare for opposition from other expert witness who will assist the court in testing the validity and or reliability of such past work. He shall therefore stand as an 'expert witness in defense'. If an Estate Valuer is to oppose the work of other party, there will be a need for fresh valuation work from such Estate Valuer known as 'expert witness in opposition'.

If such party's witness is not an Estate Valuer, and has undergone property valuation work, the litigation is already weakened from the beginning by virtue of section 2 (d) of Estate Surveyors and Valuers (Registration etc) Decree 24, 1975 (now Cap. 111 of the Laws of Federation of Nigeria 1990). The pre-trial starts when the writ is served on the Estate Valuer and the pleadings will commence. Pleadings are statements in writing, served alternately by one party on the other, stating the contentions and containing such information, as his opponent needs to prepare his case in reply.

Pleadings contain facts and it is an indication of the specific items of evidence by which facts are to be proved. Evidence of facts not mentioned in the proceedings may not be entertained at the hearing. As parts of pre-trial exercise are the meetings: between the claimant and his advocate, between the advocate and his witnesses including Estate Valuer. This series of meetings is a confidential one where all the facts and underlying issues are disclose to the advocate for him to know how to conduct his case.

Also the advocate will guide the witness of what to do and say during the court proceeding. An expert witness is expected to keep with the advocate's direction so as not to disrupt his case setting. In a case involving Estate Valuers at both sides, there is a need for pre-trial meeting between he duo to sort out 'the schedule of greed facts' and 'the schedule of discrepancies'. This is in terms of location, description, title measurement, areas unit of comparison, basis and method of valuation, opinions and assumptions etc.

Estate Valuer must have prepared himself for the litigation by inspecting or re-inspecting, gathering of comparable properties in the same neighborhood of the object of litigation, update of current property market situation, and gathering of some convincing exhibits.

Exhibits are not mere verbal evidences, but they are documented evidences, which are relevant to the opinion or inferences of the witness. Such include enabling statutes, maps, schedules of comparable, photographis etc. which are identified alphabetically or numerically as in exhibit A, exhibit 1 etc. for easy reference. Section 30 of the Lagos State Tenement Rates Edict No. 10 of 1989 and section 36 of the Ogun State Tenement Rates Edict No. 7 of 1995 empowers the tribunal to 'require and enforce the production of all books, papers and documents which it may consider necessary'.

At the end of all the necessary preparation work, the Estate Valuer shall prepare his proof of evidence. Proof of evidence is a written statement prepared by an expert witness in advance of the hearing for the information of the advocate and it contains the substance of intended evidence both facts and opinions. Proof of evidence must be more convincing than ordinary valuation report and each opinion must be adequately backed up with reason. The proof of evidence of Estate Valuer must contain among others:

- (1) Full names, address, qualification, professional association membership, registration number and status, working place and experience.
- (2) Proof of inspection of the real estate stating the date
- (3) Statement of facts:
  - (a) Historic facts referring to the enabling law or statute, the gazette of acquisition notice and date of publication.
  - (b) Descriptive facts referring to descriptive structure such as dimensions and areas, property location, accommodation details etc.
  - (c) Non descriptive facts referring to abstract things like title and tenure, price, comparable properties, assumptions etc.
- (4) Statement of opinion base on established facts. This embodied analysis of market situation, indication of comparable, basis and method adopted with reason, process and mechanics.
- (5) Seal and stamp of authority. The proof of evidence must be signed, stamped and sealed with date.

These evidences, upon which opinion were drawn, must be clearly stated, otherwise such opinion must be discountenanced (Uwa partners V Investment trust Ltd. (e)).

In the case of contest of value, between two Estate Valuers, the court will prefer the opinion of the Valuer who backed up his value with clear evidence of data and facts (Banjo Banjo V Alli Jamal (f)).

### **THE ROLE OF ESTATE VALUER IN COURT-TRIAL PROCEEDINGS**

The following are the proceeding of the regular courts, which is similar to that of other quasi-judicial tribunals and arbitrators:

- (1) Preamble to the litigation session. This include the entrance of the judge/magistrate to the court chamber, calling of the next case, appearances of the claimant and respondent advocates, reading of the case file and opening address by the claimant's advocate.
- (2) Examination of witnesses for the claimant's each witness is expected to take oath before giving evidence in regular courts, although this is discretionary at tribunals, see section 30(C) of the Lagos State Tenement Rate Edict No. 10 of 1989.
- (3) Summary, submission and conclusion from the advocates. After a period of thorough examination of the witness by the parties' advocates, the respondent's advocate will first summarize, submit, conclude and close his presentation, thereafter the claimant's advocate.
- (4) Court's ruling, verdict or judgment. After the presentations from both parties, and admission of proofs and exhibits by the court, the presiding judge shall deliver the judgment or he may 'reserve' his judgment for a later date (Miller, 1982).

The first examination is called 'examination in chief' which the claimant's advocate conducts on the claimant's witness. It is a way of establishing the claimant's case with facts and evidences. The advocate questions the witness in the box starting with introductory matters like names, address, occupation,

qualification and experience. (Lysaught, 1984) to establish the fact that the witness is competent. However, he cannot ask leading questions i.e. the questions which suggest the expected answers (Lysaught, 1984).

It is expected that the witness gives the full introductory matters, but this must not be exaggerated. (Kenneth Idugbe V Dnnis Esech (g)). The advocate then proceed to ask for the analysis of facts of the case, the comparable properties in the neighbourhood inferred, basis and methods of valuation and eventually the valuation opinions. While doing this, the advocate maneuvers the Estate Valuer to comment or shed lights on certain areas for clarity. The Valuer should display his competence in his field by answering the questions asked with professional touches to distinguish him from quacks. The ability to demonstrate this is a way of convincing the court of his professionalism and this will pave way for easy sail through of the litigation in positive manner. However, he should avoid unnecessary surplus in an attempt to convince.

The Valuer may consult his prepared proof of evidence, but this should not be done frequently, hence the court may perceive that the assignment was a dependent work. After the examination in chief comes the 'cross examination' to be administered by the respondent's advocate Cross examination is the most effective means of testing the truth of the matter of litigation and advocate is permitted to ask leading questions.

According to section 199 of the Evidence Act, Cap. 162 of 1958, in cross examination, questions may be asked:

- (a) To test the accuracy, veracity or creditability of the evidence:
- (b) To discover who the witness is and what is and is his opinion in life;
- (c) To shake the credibility of the witness by injuring his character.

In cross examination, slang and abbreviations should be avoided (Rees, 1994) as much as possible, and the answer to the cross examination questions should be short and direct to the point. The Valuer should not be panic, take offence or be intimidated by questions like 'your report shows that you lack experience', 'you are incompetent' etc.

All these are attempts to throw the Valuer off-balance and to test his steadfastness. The valuer should be calm, courteous, firm, and bold with a good focus of truth. He should rather concentrate on the facts and leave the weight of evidence to the court (Miller, 1982). Furthermore, the Valuer should know his professional limitations and must strictly confine himself to the matter in which he is especially skilled. According to (Rees, 1994), Valuer cannot rely solely on the transaction in which he has been informed (whether orally or by letter) or which he read in the press. Thus, advertised sale/rental value in the usual 'Guardian' newspaper and 'castles' is particularly opened to objection: as they are merely asking price. However, Valuer can draw inferences or conclusions from documents which are of universal application, though he may not be a party to its preparation e.g maps, survey plans, valuation tables etc. After the cross-examination of the witness of claimant by the respondent's advocate, the next step is the re-examination of the claimant's witness by the claimant's advocate.

Re-examination is a form of addendum or re-presentation of issue emanated from cross-examination. It arises in pursuance of issues largely generated from the cross-examination and it is done to redress the facts or information, which was distorted by the opponent advocate during the cross-examination, Re-examination may not be called for if the claimant's advocate feel that the proof of evidence in the examination in chief's not distorted, shaken or weakened during the cross examination.

After the re-examination if there is any, the next line of litigation action is for the advocate to respond to examine each of the witness of the respondent in the same manner as the claimant's advocate did. After examination, the claimant advocate will also cross-examine the respondent's witness, after whom the respondent's advocate may re-examine his client's witness in the same manner the claimant's advocate did.

## **RECOMMENDATION AND CONCLUSION**

It is the wish of these authors that law courses like: Nigerian legal studies, Land law, legal drafting and conveyance, law of tort and contract be introduced or/and made compulsory for students of estate management in tertiary institutions in Nigeria and by the education committee of the Nigerian Institution of Estate Surveyors and Valuers. In addition, practical visit to the courts to attend the relevant court session should be embedded in law courses syllabi. This is desired to broaden the legal knowledge of Estate Surveyors and Valuers right from the breeding stage.

Furthermore, when Estate Surveyor and Valuer is undertaking any Valuation task, he or she should be guided by the principle of accountability because he may be called upon at any time to give account for his stewardship.

On the concluding note, no matter the length of Valuer's litigation experience, it does not make him a lawyer (Bryan, 1972). His business is only 'to give an unbiased opinion of the subject placed before him and not to become in any way an advocate' (Waston, 1975).

Estate valuer must have it in his/her mind that being a professional, he owes his client a duty of care and as such, should always guide against 'sordid deal', professional misconduct and negligence of duty, Estate Surveying is a noble profession, therefore nobility is expected of each Estate Surveyor and Valuer.

## **References**

- Aguda A. (1998)** Law and practice relating to evidence in Nigeria. Lagos MIJ professional publisher ltd. 1998 2<sup>nd</sup> edition.
- Babawale K.G. (2002).** 'The position of the estate surveyor and valuer as an expert witness' The estate surveyor and valuer Journal of Nigerian Institution of Estate Surveyors and Valuers vol. 25 No. 1, March, 2002, p. 21-25.
- Bryand A. (1972)** 'Nothing but the truth' The expert witness Journal of the chartered institution of arbitrators. Vol. 39 No. 1 1972 p 38.
- ESVRABON (1975)** Rules and regulations for the practice of estate surveying and valuation Estate Surveyors and Valuers Registration Board of Nigeria (1975).
- Lysaught C. (1984)** 'the expert witness-the legal framework' (U.K) 'The expert witness', Journal of the chartered institution of arbitrators vol. 50 No. 2 (1984).
- NIESV (2001)** Scale of professional charges (3<sup>rd</sup> edition) 2001.
- Rees W.H. (1994)** 'Resolution of valuation disputes' – the position of expert witness' Journal of property valuation and investment vol. 2 No. 1, 1994 p. 20.
- Waston J. (1975)** Nothing but the truth: expert evidence in principle and practice London gazette ltd 2<sup>nd</sup> edition 1975.

## **LIST OF STATUES**

- (a) Evidence Act Cap. 62 of the Laws of the Federal of Nigeria and Lagos. 1958

- (b) Ogun State Renement Rate Edict No. 7 of 1995
- (c) Lagos State Tenement Rate Edict No. 10 of 1989

**LIST OF CASES**

- (a) Shell petroleum, Development (Nig). Ltd. V Tiebo 1996 NWLR 659 C.A.
- (b) R.V. Turner 1975 1 ALL E.R. 79
- (c) White House V. Jordan 1981 1 WLR 246 P. 256
- (d) West Minister dredging (Nig) Anor V. Ogun O ibo & Sons 1992 5 NWLR 7
- (e) Uwa printers Ltd. V investment trust Ltd. 1988 t NWLT p. 100
- (f) Banjo V. Alli Jamal (unreported) Ibadan suit No. 1/122/69, June 3, 1970
- (g) Kenneth Idugbe V Dennis Eseh 1996 5 NWLR 750 C.A.