



LAND DISPUTES AND CONFLICTING LAND-COURT JUDGEMENT IN GHANA Perspectives of Regulatory Stakeholders

Mark BOAFO-ANANG¹, Emmanuel Offei AKROFI², Forster Junior SHITSI³

¹ Department of Geomatic Engineering,
Kwame Nkrumah University of Science
and Technology,
mark25gh@yahoo.com, Kumasi, Ghana

² Department of Geomatic Engineering,
Kwame Nkrumah University of Science
and Technology,
eoffeiakrofi@gmail.com, Kumasi, Ghana

³ Department of Business and Law,
University of Brescia, Italy.
f.shitsi@unibs.it, Brescia, Italy

ABSTRACT

Context and background

Conflicting land-court judgements is becoming a growing concern to researchers and practitioners, amid persistent cases of land conflict, particularly within Sub-Sahara Africa. Generally, Africa as a continent is faced with natural resource management and conservation, and the issue of land management within some parts of the continent require critical attention. In mixed economies such as Ghana, land conflict between tribes and individual stakeholders is very common. The forms and types of land dispute is varied and mostly overly contested with increasing complications resulting in loss of human lives. More so, contested lands in court often take forever to be resolved, and in many cases, the issue of conflicting court judgement becomes apparent. This issues have social and economic implication and for that matter require the critical attention of all stakeholders.

Goal and Objectives:

This study focused on identifying the main forms and causes of land disputes as well as gaining understanding of the rationale behind conflicting land-court judgements. It is a preliminary investigation into the forms and causes of land-court judgement

Methodology:

A purposive sample of lawyers, land court officials and officials from Lands Commission formed the focus for an in-depth data gathered via individual interviews and analysed using the thematic approach. A qualitative research approach was adopted as the main design for the study. The thematic approach was adopted in identifying the forms and causes of conflict, and the causes of conflicting land court judgements in land adjudications.

Results:

Contesting claims over land titles and boundary disagreements were the main forms of land conflicts resulting mostly from inappropriate surveys, double sales and poor system of land administration among others. Multiple filing, poor data management, lack of automated data system, and lack of coordination between land court and Lands Commission were some of the causes of conflicting land-court judgement. The study suggested the need for building resilient coordination between the Lands court and the Lands Commission to reduce occurrence of conflicting land court judgements.

Keywords

Land tenure, Land Disputes, Conflicts, Land court, Judgements, Ghana, Land administration

1. INTRODUCTION

Natural resources, including land and its constituting features are undoubtedly an important aspect of life. It gives life support, provide resources for production and economic activities and also serves as a deposit source for wastes. Africa is the most endowed in terms of natural resources with its fertile and arable lands, discovered and undiscovered mineral resources, incredibly vast stretch of water bodies and wildlife, yet, the natural resource outcome of conservation and management has been contrastingly argued. For example, researchers have referred to resource endowment such as oil in such contrasting manner – Curse or blessing (see Polterovich et al., 2010, van der Ploeg, 2011). Land management for instance, and its access in Sub-Saharan Africa has been associated with relative egalitarian (Yamamo and Deininger, 2006).

The high demand for land in all aspects of development readily reflect its importance in all facets as Gyamera (2018) in his contention describes land as the most significantly powerful asset in the world. The traditional understanding of land as implicit agricultural input has traversed modern understanding to its importance in assessing economic growth in terms of natural and capital wealth (Paaga, 2013). The economic importance, vis-à-vis the continuous appreciation of land; the productive capabilities and usefulness to individuals, communities, and nations as a whole cannot be overemphasized. The increasing importance attached to land by economic agents, both individuals and households as well as communities and nations explains the increasing land disputes and conflicts¹. This is more so in developing economies where the system of land ownership and use is guided by relatively ineffective managerial and administrative oversight as a result of adaptation and blending of incompatible systems.

Although a number of international organization including the World Bank has funded and supported major land and real estate reform programs across different countries (Galal and Razzaz, 2001), the issue of land management and administration in most developing countries leaves much to be desired. Land management according to Foley et al. (2005) defines the process of managing land use and development of land resources. Land administration on the other hand, whether formal or informal, entails the application of rules of land tenure and encompasses a wide range of processes and systems including the transfer of ownership rights of land from one party to another through inheritance, sales, loan, lease and gift among other forms of transfer (FAO, 2002) as well as matters relating to revenue generation, and resolution of conflicts relating to ownership rights and use of lands. According to UN ECE (1996) land administration refers to the processes of recording and disseminating information about the ownership, value, and use of land and its associated resources. It includes the determination (sometimes known as the adjudication) of rights and other attributes of the land, the survey and description of these, their detailed documentation, and the provision of relevant information in support of land markets. This definition is adopted in this paper.

Albeit major policy-rooted project supports from internal, external, international and local stakeholders in land tenure system in Ghana, such as World Bank funded project on 'Land titling and financial literacy' the administrative and management have not been efficient enough. Inefficiencies in land administration including absence of reliable land information and lack of coordination among

¹ The words conflict and dispute are used interchangeably.

land sector agencies, have been blamed on the increasing agitations over lands and its related disputes in the face of excess demand for lands (UNIFTPA, 2005; USAID, 2005). Others attribute the worsened plights and prevalence of land disputes to inter-marriages and the multicultural nature of the Ghanaian society (Abdallah, 2015; Clottey, 2015). Early arguments on land disputes and conflict are linked to documentation problems in the original land arrangements. Plan of lands were not annexed, boundaries not surveyed, unclear demarcation and lack of documentations in most cases. The original boundaries of lands became more unclear with various internal and external developments including new settlements. The ownerships over the years have been threatened by the lack of reliable information on land in the past, leaving room for boundary and ownership conflicts among families, kinsmen and chiefs.

Although the issue of land administration including land disputes has seen some improvements within the legal system of land administration in Ghana, since the introduction of the special land courts and the Customary Land Secretariats, the manual system of record keeping within the judicial system leave much to be desired. While various legal systems play major role in the resolution of land disputes, the systems are analogue, traditional, labour-intensive, less innovative, hence, inefficient and ineffective. The challenges of the current manual system of records keeping in the land court system is not limited to slow processes but also, time and money cost resulting from delays in court proceedings, and in some cases conflicting judgement. The later, conflicting judgment on land cases poses threat to the integrity of the system of land administration and also increases insecurity among existing and potential land owners and users. This have attracted particular attention of stakeholders, especially researchers.

The term conflicting land-court judgement has not been explicitly defined in literature. In this study, conflicting land-court judgement as the name connotes refer to land cases that have received inconsistent judgement from the land administrators in court. A scenario is where two parties to a land conflict are pronounced owners of the land in question under different adjudications in the same or sometimes different courts. Thus, say, court X rules on a land conflict in favour of individual A, and a different court of same or similar jurisdiction rules on the same land cases, but this time, in favour of individual B. In this scenario, the judgments are said to conflict.

The issue of conflicting land-court judgement was initially investigated by examining some exhibits that are archived at the land courts. The researcher found the issue of documentation to be paramount within the land court system. There seems, however, to be no traces of past exhibits on conflicting judgements passed on some adjudicated lands. Following the lack of secondary data on conflicting land court judgement despite affirmation from major stakeholders on the adjudication of land cases with conflicting judgement, the researcher deemed it imperative to examine the causes of land conflicts and conflicting land-court judgement. The focus of this paper is preliminary investigation into the forms and causes of conflicting land-court judgements so as to design a system that builds resilient coordination between Lands Commission and the Land Court based on digital access to court precedents.

1.1 History of land disputes/conflicts in Ghana – Regal Pluralism

Historically in Ghana, lands were mostly communally owned with customary control over the right to use of these lands (Akrofi, 2013) under customary law. However, colonialism introduced statutory

law in land administration, which introduced individual rights. This has been a major cause for land conflicts Article 257 of the 1992 Constitution of the Republic of Ghana identify individuals, families, clans, communities and stools or skins as private or customary owners of lands in Ghana.

The land system in Ghana has experienced varying disputes and conflict for many decades. This disputes over land has resulted in a number of tribal and civil wars and has stifled the socio-economic development of the country for many years. Paramount of these disputes is that on land rights and property boundaries coupled with unsatisfactory outcomes from conflict resolution through adjudication, popularly referred to as the conflicting land-court judgements (Wehrmann, 2008). The continuous increase in land disputes is deep-rooted in the historical background of land systems in Ghana. In a country where lands are owned mainly by stool and skins, communities, tribes, and individuals, the system of land regulation is mostly customary with gradual incorporation of state laws and statutes to promote authoritative administration of land through legal decisions and ruling on land (Akrofi, 2013). The historical antecedent has given way to regal pluralism in the land administration system.

The colonial era in Ghana witnessed the policies of Indirect Rule by the British as well as some policies for land regulation to prevent land exploitation. This situation led to the unification of the local or customary laws into a common law system. This was undertaken through the institution of Native Courts (Crook, 1986: 2005; Woodman, 1996; Crook, 2005; Woodman, 2001). Since 1986, legal reforms in Ghana have led to the integration of various forms of land tenures, both customary and stature into a single legal framework. During this period, the system of registration of instruments by deeds was transferred to Land Title Registration. The National Lands Commissions (NLC) was charged with the mandated to centrally regulate Land Title Registration in the country. According to Kasanga et al. (1996) and Kasanga and Kotey (2001), these systems of land laws and regulation integration and the attempted centralization of the regulatory mechanisms have been unsuccessful with its high level of ineffectiveness. This has resuscitated the customary system of land regulation and the traditional institution continue to remain strong (Kasanga and Kotey, 2001: Akrofi, 2013).

In 1999, the Ghana National Land Policy was published as part of a holistic approach to promote harmonization of the legal and regulatory framework for land administration. As Crook (2005) argued, the strategic approaches to promote this harmony between land laws included legal reforms, strengthening local authorities and customary land institutions, the institution of specialized courts for land issues, and undertaking a mass mapping and registration of land holdings and rights. According to Crooks (2005), this strategic move must focus on policies that concurrently promote and protect land interest and reduce the growing land conflicts.

For more than two decades, provisions under the 1992 Constitution of Ghana and the Court Act 1993 (Act 459) make the State courts in Ghana an integral and important part of land regulation and administration. The state courts, to date, continue to play significant role in the system of land regulation in Ghana. The various provisions of the constitution and Court Act empowers the state courts to constitutionally apply all the legal standards including common and statute law as well as customary laws recognized in Ghana. In principle, the state courts are viewed as legal institutions in settling land dispute and providing authoritative decisions on land cases by many litigants. Notwithstanding the promise of the court system in providing authoritative settlement to land cases,

only a small number of land cases can be heard or settled within reasonable time (Crook, 2005). This is due to the increasing number of land cases filed at the court and as a result, it is overwhelmed with litigation and dispute cases, hence, many cases are still pending and awaiting judgement. An important aspect of these large number of filed cases which require critical examination is the increasing incidence of multiple filing of land cases (Crook, 2005). Multiple filing is a situation where either of the contesting parties file a case on land contest with different courts under the same or different jurisdiction. It could be a party to the conflict filing the same land case to different courts, or the two parties filing the case in different courts.

2. LAND DISPUTES IN GHANA

Land disputes technically refers to a disagreement over a piece or parcels of land between two or more individuals. This disagreement could legally fall between an individual and the state. Wehrmann (2008) emphasizes the legal consequences of such disputes and why disputes have to be settled using a number of avenues and procedures. Among the various forms of land disagreements include disputes over land boundary, riparian or littoral boundary, and land title which entail mainly, litigation of ownership right and use of a given parcel of land. Similar to common understanding, Lind and Naylor (1999) relates land disputes or conflicts to conflicting claims to the right of ownership over a given stretch of land or in part of it by two or more parties, and which could assume other forms such as easement.

Land dispute or conflicts could assume any form. Theoretically, the nature of disputes is determined by the definition of land ownership, use and administration in a particular jurisdiction. Four categories of land conflict that are highly discussed in literature include land title, easement, riparian ownership and use, and land boundaries (Wehrmann, 2008; Gyamera et al., 2016). A land title is the claim to or ownership right to a piece of land. It technically refers to a formal document that spells out the details of land and its ownership, in a form of a deed; whether to legal or equitable interest owned by a person or parties. One of the strategic approaches employed to safeguarding lands and potential conflict on land is the institution of the land registration scheme for all land owners to acquire deed or titles to their lands. This is because the most significant factor in title-related conflicts has been related to the issue of property chain-of-title, poorly written conveyance and situation where grantor deeds more than is actually owned in terms of land size (Gyamera et al., 2016). The creation of easement by deed is also another situation resulting in land disputes. Because easement is created by deed, aside allowing the rightful use of a piece of land, the arrangement of temporary shared ownership easily and often breeds conflict. This arrangement usually referred to as licenses or equitable servitude, its real nature as a form of property covenant is argued in literature (Aryee et al., 1989; Gyamera et al., 2016) to be one of the highly disputed form of land conflict that is rooted in land law and land surveying practices.

The study on land disputes is common in developing countries. These studies examined the antecedents and consequences of land disputes and conflicts (Crook, 2005; Crook et al., 2005). Specific studies on Ghana included Sackey (2002), Odametey (2007), Wehrmann (2008), Gyamera et al. (2016) and few others.

Aryee et al. (1989) distinguished between land conflict and land disputes. In this study, both words are used interchangeably to refer to any form of disagreement between parties who claim ownership

to a given piece of land, be it in full, part, conflict over boundary among other forms of competing claims. The two terms mean the same in the context of this study. According to Aryee et al. (1989), dispute over land is between two or more parties or individuals, while land conflict involves competing claims among groups, usually families or clans, over a large stretch of land. In this distinction, the size of the land is not significant as the parties involved. In examining the root cause of many land conflicts in Ghana, Aryee et al. (1989) aroused attention on the issue of conflicting land court judgements. According to them, competition created by the limited availability and access related to high demands, the richness of lands in terms of mineral deposits and other valuable resources underneath, insecurity of tenure, intra and inter family disputes, lack of accountability and transparency in land allocation and related transactions, and the inability of the law to appropriately resolve land dispute or when disputes are not executed properly (instance of conflicting land court judgement), are among the numerous land related issues. Other issues included normative dissonance, historical grievance, poor and inadequate regulation and supervision of public lands resulting in settlement by squatters, intentional and unauthorized sale of government lands, land allocation and conversion to other uses without consultation of local authorities such as chiefs and family heads, and deliberate or unintentional survey of lands in excess of actual sizes which usually results in disputes over land boundaries.

A number of the aforementioned factors have been linked to land conflicts (Aryee et al., 1989; Wehrmann, 2008). Gyamera et al. (2016) classify these under four broad factor categories – administrative, legal and judiciary, psychological and technical. They classified legal factors to include failure in legislative system, legal pluralism, contradictory legislation, lack of definitive boundaries to village lands as defined by the traditional land laws, lack of access to law by the disadvantaged and the poor, injustices, ignorance of the law, and inactive legal mechanisms among others. Administrative factors such as ineffective implementation of formal regulations, corruption and nepotism. Lack of coordination between land administrators or agencies, poor communication and lack of control over state lands breeds misunderstanding on land ownership and use since the very institution fail to promote the necessary administrative and environment control. Technical related triggers to land dispute include missing, inaccurate, and/or outdated land registers, as well as wrong surveying or the use of outmoded technical instrument for land surveying. Psychologically, thirst for power, desire for revenge, and lack of identity could also lead to land disputes.

3. METHODOLOGY

A qualitative research approach was adopted as the main design for this study. The Koforidua township and the state of land conflict as well as the situation of conflicting land-court judgement in the courts of Koforidua was the geographical area of study. The issue of land conflicts in the Koforidua township was the best choice of data source for this preliminary research. Data was gathered from a purposive sample of 10 individuals from three key stakeholder groups; lawyers, land court officials and officials from the Lands Commission as indicated in table 1 with the respective targeted number and response rate. In-depth interviews were employed owing to the depth of information sought from a few sample and delicate topic. Interviews were conducted using semi-structured interviews guide with the aim of avoiding restriction to the depth of information that could be gathered. The

interview process was recorded and later transcribed and analysed. The thematic method of qualitative analysis following the Clarke and Braun approach (Braun and Clarke, 2014) was adopted.

Sample Category	Sampling Technique	Target	Response
Court Officials	Purposive	3	2
Land Commissions Officials		4	3
Lawyer		6	5
Total		13	10

Table 1. Distribution of Study Respondents and Response Rate

4. RESULTS

Following an investigation into the forms of land disputes, two main conflict types emerged from the analysis. Apparently, ownership title or right and boundary conflicts were the main land dispute types. All respondents mentioned dispute over land title while 8 of the interviewees mentioned land boundaries as the forms of land disputes in the study area, and particularly between individuals.

In relation to disputes over land ownership rights, one of the Lawyers (Respondent J) made these remarks;

“I would say that most of the land cases I have handled and witnessed are usually individuals in conflict of land ownership... in few cases, these are individual members’ claim over family land, which is minimal; in most cases though, the defendant and plaintiff are not related in any way”

This is supported by the responses of respondent H who had this to say in terms of the forms and causes of land conflicts in the area;

“... but the cases have been major on individual levels; two people’s claim over a land title. I quite remember a situation in I think 2014 where three people were contesting claim over the ownership of a particular land. Although there was a boundary related issue with one of the contesting parties”

Some of the extracts that related to boundary conflicts are also presented below.

“...you see! About roughly 70% of the cases handled here concern boundary uncertainty.”
(Respondent D)

“Boundary encroachment; deliberately or unintentional, is also one of the key issues when it comes to land disputes. This is mostly because of the existence of ‘quack’ surveyors...”
(Respondent B)

“... sometimes too, you would realize that the issues; it is just because someone’s land cuts into another’s. This we usually call the boundary dispute or dispute over boundary. This is because of demarcation problems” **(Respondent E)**

Concerning the causes of land disputes, respondents were asked to share their experiences or opinion on the apparent causes of land conflict/disputes in the study area. Some interesting themes emerging from the cause of land conflicts included multiple sales, force or illegal encroachment, nature of land administration system, improper land documentations, ignorance, conspiracy, and

some technicalities relating specifically to quack surveyors. The emerging themes and the description of the themes by using extracts or quotation from transcribed data are summarized in Table 2.

Causes	Description (Extracts)
Double (Multiple) sales	<i>"cases that do come often are cases with double sales. That's you bring the document, and in the process of registration, the document will go and hit either a transaction, then tracing back the parties, you realize that one of the parties seems to be the one who sold out the land to you. So in short I will put it as multiple sale."</i> (Respondent B)
Poor land administration system	<i>"... I am sure if the land administration system in Ghana is streamlined, just like the port system has been, these issues of land litigation and disputes will be minimal."</i> (Respondent I)
Lack of family history	<i>"So I think basically understanding, double sales, and lack of family history. There are many but I mean these are the few I can talk about."</i> (Respondent C)
Lack of proper documentation	<i>"there are many land owners who have not registered their lands. So when another person attempts to claim ownership, it turns into conflict because the original owner does not have the land registered, this gives the other person the power to litigate the issue and it finally end up in the court"</i> (Respondent F)
Forced encroachment	<i>"In a number of cases, you it is just a matter of some false encroachment due to the fact that the land has been there for long without development or just intentional act by people to take advantage of original land owners."</i> <i>"when the traditional leader of a land passes away [dies], members of the traditional system deliberately try to encroach in some lands sold to people by the deceased leader or ruler"</i> (Respondent H)
Ignorance and inability to read and write	<i>"Some people might not know the boundary, or in course of giving land to other for rent, for sale or other purposes, the people also deceive them and because of illiteracy, if it is one acre, they can make it double or more than that. So the reasons differ."</i> (Respondent F)
Conspiracy	<i>"... At times too, brothers and sisters conspire, one will sell, then later one of them will go to the buyer and say, No. This belongs to me; my brother does not have the power to sell it."</i> (Respondent F)
Quack Surveying	<i>"... all these are usually due to improper survey by quack surveyors. So you will see that the lands are not well demarcated. You find parcels of one parties land surveyed to trespass that of another"</i> (Respondent B)

The finding follows from Lind and Naylor (1999) and other studies in developing countries that argued that conflicting claims to the right of ownership of a given stretch of land by two or more parties could result from land title disputes and boundary disputes. Interesting however, easement and riparian and use of land did not emerge as the forms of land conflict that emerge in those areas. Family land conflicts were also found to be minimal in those areas. Again, results indicate that the land disputes in the study region assumes a legal, administrative, psychological and technical nature as classified by Gyamera et al. (2016).

A number of factors were attributed as causes of conflicting land-court judgements. Among the preliminary findings include, multiple sellers, multiple filing in either the same of different court of jurisdictions, poor coordination between Land Court and Lands Commission, poor data management, lack of system automation or centralization, improper documentations, fake documentation and the use of quack surveyors. The sale of the same piece of land by different individuals is an indication of

an inherent land conflict which could result in conflicting court judgement which may involve judgement between original acclaimed owners on one hand, and new acquirers on the other. These finding would be further investigated and the final results used as the basis for the development of a database of adjudicated databases that would link the Courts and Lands Commission so as to minimize incidences of conflicting land court cases. Findings such as fake documentation, use of quack surveyors, and an inefficient land administration system confirm findings by Sackar (2016).

Illiteracy – the inability to read/write and understand what is contained in the contract also contributes to disputes and calls for the use of professionals like surveyors and lawyers in executing land transactions for land owners who cannot read nor write. Some literates cannot interpret plans and may also need the use of professionals. This finding has implication for the administrative, technical and traditional aspect of land sales and use. Thus, poor records keeping and inefficient and uncoordinated communication between the two key players in the land administration system has the likelihood of resulting in an environment for undue practice of multiple filing, which has consequences for conflicting court judgement. Similarly, the use of unprofessional surveyors and spatial/physical planners has implications for conflicting judgements, particularly, judgements on boundaries. The responses from study participants that suggested these potential and actual causes of conflicting land-court judgements is presented in table 3.

Factors	Abstracts/Supporting Quotes
Multiple Sellers	<i>"... the judgement was in favour of one of the partners. However, it was later realized upon further investigations that other party bought the land from the rightful owner. The problem is that the person who assisted in his documentation was an imposter who gave him a fake document."</i> (Respondent G)
Multiple filing: Same jurisdiction or Different jurisdiction	<i>"One of the causes will be ruling passed by two different courts". This is because both parties lodge their cases in different courts, or one party file in a different court after an initial court ruling. Sometimes too, the same court had to pass different ruling on the same land case based on the evidence presented at a point in time.</i> (Respondent D)
Lack of coordination between Land Court & Lands Commission	<i>"We do not usually have direct link from the court. So one can go for a judgement from one court and later the other party may file a different case. And when they come with the ruling, ones the judgement comes in we will not have anything to say than to plot them."</i> (Respondent E)
Poor Data Management, Personnel and Infrastructure	<i>"So the problem is data. Data management, access to data, personnel and infrastructure."</i> (Respondent F)
Lack of Automated and/or centralized system of storage	<i>"... also, I think because the system of Land registration is not automated and records are also not kept in an automated system, it becomes easy to get conflicting judgements."</i> (Respondent I)
Fake documentation	<i>"... the problem is that the person who assisted in his documentation was an imposter who gave him a fake document."</i> (Respondent A)

Use of Quack Surveyors	<i>"Most of the issues of land conflict has also been related to land boundaries. Some are not even big issues or ownership. For instance, a court will rule on a boundary in favour of one party. But when the actual plotting is done by the Lands Commission we realize that the ruling goes in favour of the former loser."</i>
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(Respondent D)

Table 3. Themes Emerging on Causes of Conflicting Land-Court Judgement

5. CONCLUSION

Land dispute or conflict results from a number of factors ranging from improper/lack of documentation, ignorance, lack of knowledge of family history, conspiracy on the part of seller of land to defraud buyer and its associated multiple sales of lands, forced encroachment, and issue of inefficient land administration system. Many of these issues are capable of resolution at the local level through mediation and arbitration given proper education and orientation. Land disputes, however, may lead to conflicting land court judgements in the absence of coordination between the Land Courts and Lands Commission. This problem is compounded by poor data management, lack of qualified personnel and adequate infrastructure. Consequently, there is the need for proper coordination between the Land Courts and the Lands Commission to ensure proper administration of land. Also investigation into land adjudication process and their implementations thereafter will be worthwhile. Ensuring a robust system of land administration and judgement implementation will be a step in the right direction to promote land tenure security, instill confidence in the general public and promote efficient land market.

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10. ADDITIONAL READINGS

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11. KEY TERMS AND DEFINITION

Conflicting Land-Court judgement: conflicting land-court judgement reference to land cases that have received inconsistent judgement from the land administrators in court. A scenario is where two parties to a land conflict are pronounced owners of the land in question under different adjudication.

Land Dispute or Conflict: These terms were used synonymously to refer to a contesting claim or disagreement over a piece of land, thus, land use, ownership or boundary disagreement.

Quack Surveyors: These are people who impose as land surveyors without the requisite license or qualification and do not also work under the supervision of approved surveyors.