

ASSESSING CORPORATE GOVERNANCE THROUGH JUDICIAL DECISIONS

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ABSTRACT

“In theory judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it”.²

Judges play a very vital and important role in the development and implementation of corporate governance principles and practices by imposing obligations on the corporate entities through case laws, most of which are pronouncements on provisions of the relevant laws that regulate corporate bodies. These laws have to a large extent impacted positively on corporate governance practices and have become reference points in areas of guidelines, structures, and processes on how companies should be organized and managed for effective performance. In some instance the pronouncements of courts have resulted in enactment of Codes of Corporate Governance. Although judges are not into law making, when they adjudicate and make pronouncements on cases, their decisions become law which in turn becomes precedents that bind Judges in future similar cases under the doctrine of stare decisis. It therefore follows that Judges do more than just apply law as it is. They sometimes and at other times create new laws that remain binding on all until reversed or overruled by Courts that are higher in the hierarchy of courts and competent to do so³.

The main crux of this paper is a discourse on corporate governance principles and practices and an appraisal of the role of the Courts/Judges in ensuring a healthy management of the corporate organizations through judicial decisions with particular emphasis on Nigeria legal system.

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² Prof. Chianu Emeka in “The Horse and Ass Yoked: Legal Principles to aid the weak in a world of unequals” Inaugural Lecture Series, 91, University of Benin, September 20, 2007.

³ A paper presented by Justice George Oguntade, JSC (as he then was) at the maiden Honourable Justice Adolphus Godwin Karibi-Whyte convocation lecture of the Nigerian Institute of Advanced Legal Studies. www.nigerialawguru.com/articles/practice and procedure/dissenting judgment and law making. Accessed on March 18, 2014

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1.0 CORPORATE GOVERNANCE IN PERSPECTIVE

For organizations to effectively and efficiently achieve their objects and have good organizational and management performance there is a need to have in place some form of regulation and structure. It is in this light that the principle of corporate governance evolved over the years to provide guidelines, structures, and processes on how companies should be organized and managed for effective performance. The principle of corporate governance like other principles has no definite meaning but overtime practitioners have come up with their own definitions based on their understanding of the principle. It is worthy of note that corporate governance can be viewed narrowly and in a broad aspect. The broad view perceives corporate governance in terms of issues relating to shareholder protection, management control and the popular principal-agency problems of economic theory. Another view contends that there exists a narrow approach to corporate governance, which views the subject as the mechanism through which shareholders are assured that managers will act in their interests.⁴ In this light, certain definitions will be highlighted.

Corporate governance is a framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in a company's relationship with all its stakeholders (financiers, customers, management, employees, government, and the community).⁵ Corporate governance has also been defined as an internal system encompassing policies, processes and people, which serve the needs of shareholders and other stakeholders, by directing and controlling management activities with good business savvy, objectivity, accountability and integrity.⁶

E. Kachikwu presents a definition of Corporate Governance that has taken into consideration the Nigerian specific context. He succinctly puts it thus:

“....corporate governance are intended to regulate the conduct of directors, accountability to shareholders, recognition of the interest of other stakeholders and the need to encourage investment to flow where it could be most productive by raising in this case the Nigerian corporate governance standards to best

⁴ Practice and Standard of Corporate Governance in the Nigerian Banking Industry by Wumi .K. Olayiwola, <http://www.ccsenet.org/journal/index.php/ijef/article/view/7936/0> assessed on the 280114.

⁵ <http://www.businessdictionary.com/definition/corporate-governance.html>, assessed on the 280114.

⁶ G O'Donovan, 'Change Management: A Board Culture of Corporate Governance' (2003) 6 Corporate Governance International Journal 28.



international practices in comparable jurisdictions. This would appear to be the reason and purpose of corporate governance".⁷

From the above definitions, the minimum standard elements that must exist in a corporate governance practices include the existence, direction and proper exercise of management powers, probity and accountability of meeting shareholders' and other stakeholders' needs.

⁷ Foreword by Dr E Kachikwu to F. I Ajogwu, Corporate Governance in Nigeria: Law & Practice, (Centre for Commercial Law Development (CCLD) 2007).



2.0 JUDICIAL INTERVENTION IN CORPORATE GOVERNANCE IN NIGERIA

A judicial system thrives when by its judgment; it instills confidence in the larger society that is fair, impartial and corruption-free in the adjudicatory process. A judiciary that is weak, corrupt and unreflective of the people's aspiration is irrelevant to the people and destined to collapse with time. We live in a world of advanced technology in which the judgments given in a national Court are in a question of minutes being disseminated all over the world. A fair, well considered and sound judgment which is free from corruptive influence strengthens a country and its global standing. On the other hand, a weak and unsound judgment reflects the state of the maturity of the judicial process in a country. A country identified as home to a weak and corrupt judiciary soon loses international respect and becomes an anathema to the international business community.

However, for effective results in corporate governance there are various practices or mechanisms that must be in place to ensure proper management of the corporate entity in order to improve the shareholders' interest and balance against other stakeholders' interest in the society as a whole. The Courts in Nigeria have made notable pronouncements on certain practices which have positively affected corporate governance ratings in the country. This paper examines the following areas where the Nigeria Courts have delivered judgments that promote good corporate governance practices:

- a. Corporate Personality
- b. Financial Improprieties
- c. Officers of Companies
- d. Liability of Directors
- e. Removal of Directors
- f. Undue Interference with the affairs of a Company

2.1 Corporate Personality

A Company is a legal person distinct from its shareholders and may in every case be said to carry on business for and on behalf of its shareholders; but this certainly does not necessarily constitute a relationship of principal and agent between them or render the



shareholders liable to indemnify the company against the debts which it incurs. In the locus classicus case of **Salomon v Salomon**⁸, Lord McNaughten laid down the ageless principle of corporate personality as follows:

“The company is in law a different person altogether from the subscribers to the memo, and though it may be that after incorporation the business is precisely the same as it was before, and the same hands receive the profits, the company is not in law agent of the subscribers or a trustee for them. Nor are the subscribers liable, in any shape or form, except the extent and in the manner provided by the Act.”

In this case, Aaron Salomon, a sole proprietor dealing in boots and shoes for over 30 years decided to transform the business into a limited liability company and sold his business to the new company. To satisfy the requirement of law that a company must be formed by at least 7 persons, he issued shares to himself, and 6 members of his family held one share each as his nominee. A year later, the company fell into debt from some debenture holders including Salomon who secured his own debenture with the assets of the company. The company later went into receivership and the liquidator appointed sold the assets of the company ignoring Salomon's fixed charges and paid other unsecured creditors, claiming that the company is one and the same thing as Salomon. The Trial Court and the Court of Appeal agreed with the liquidator, stating that the company is a sham, and mere front for Mr. Salomon, and he would be liable to indemnify the company against the claims of the unsecured creditors. On further appeal to the House of Lords, the judgment was reversed and it was held that once incorporated, a company assumes a separate legal personality from its members, and it is immaterial that it is the same persons that formed it that are managing it and in the helm of affairs, and that the company can contract with its members.

The above decision has been codified in Nigerian law especially in section 42 of the Companies and Allied Matters Act⁹ (CAMA). Section 42 of CAMA is to the effect that a company becomes a distinct person in law upon incorporation and is neither the agent nor trustee of the shareholders and

⁸ [1897] AC 22

⁹ CAP C20 2004, Laws of the Federation of Nigeria. VOL3



vice versa. Also, neither the company nor its members are liable for the debts or acts of each other. The Nigerian Court in **Habib (Nig) Bank v Ochete**¹⁰ applied this principle. In this case; the Respondent operated both personal and corporate accounts (in the Belyn Pharmacy Ltd which was originally a business name-belyn Pharmacy) in the Appellant Bank. The Respondent paid in a cheque in his personal name and the appellant Bank mischievously paid it into the corporate account which was heavily overdrawn, and the Respondent could not make use of the money. He brought an action for rectification and damages, and the trial Court granted the order and the Appellant appealed. While dismissing the Appeal, the Court of Appeal¹¹, restated the position of law and held as follows:

“The moment a business name is incorporated into a limited liability company, it legally assumes a separate and distinct personality from its members. It puts on a corporate veil beyond which no one can penetrate except when it is lifted in a manner authorized by law. From that moment it could own property and accept transfer of assets and liabilities in its corporate name”.

From the above decisions of the Court, it can be gleaned that some of the consequences of Companies' Corporate Personality are as follows:

1. Companies can sue and be sued in their own name.
2. Companies enjoy perpetual succession.
3. Companies can hold property and members have no property interest in company property.

In **Trenco Ltd v. African Real Estate Ltd**¹² the Supreme Court per Aniagolu, JSC held as follows:

“But a company, although a legal person, is an artificial one which can only act through its human agents and officers. Vicount Haldane L.C. in Lennard's Carry-ing Co. v. Asiatic Petroleum Co. Ltd (1915) AC. 705 stated: - “My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of

¹⁰ [2001] 3 NWLR (PT.699) CA 114.

¹¹ Per Umoren JCA, (pg 134-135, para H-D), Ibid

¹² [1978] 11, NSCC 220 at 220-228



somebody who for some purpose may be called an agent, but who is really the directing mind and will of the corporation, the very ego and center of the personality of the corporation. This human personification of a company was clearly brought out by Denning L.J in *Balton (Engineering) Co Ltd. V. Graham and Sons* (1957) 1 Q.B, 159 at p. 172-173 where he said: - “a company may in many ways be likened to a human body. It has a brain and nerve centre, which controls what it does. It also has hands, which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of those managers is the state of mind of the company and is treated by law as such”. It follows that a company although having a corporate personality is deemed to have human personality is deemed through its officers and agents and will therefore, speaking generally, contract like an individual.”

The principle of corporate personality is at the core of corporate governance and from the definitions of corporate governance that have been highlighted earlier on, there would be nothing to govern or direct if the courts fail to recognize that corporations are distinct legal persons that require separate governance mechanisms. Also, as part of promoting good corporate governance practice in Nigeria, there are occasions when the veil of corporate personality can be lifted, and this is also well recognized by the Courts. For instance, the Court of Appeal relied on the Supreme Court's pronouncement in the case of **Akinwumni O. Alade v. Alic Nig. Ltd & Anor**¹³ where the Supreme Court held that one of the occasions when the veil of incorporation will be lifted is when the company is liable for fraudulent or reckless conduct. Thus, the consequences of recognizing the separate personality of a company and to protect its directors are to draw a metaphorical veil to shield the directors from

¹³ (2010) 19 NWLR (Pt. 1226) S.C



liability. The law is that the veil should not be lifted unless under special circumstances. However, this veil can be pierced because a statute or rule of law will not be allowed to be used as an excuse to justify illegality or fraud where the application of law will result in grave injustice. In such a case, the Courts would be required to remove the corporate veil and reveal the persons behind the unsavory activities of the company. Relying on the above, the Court of Appeal reaffirmed the decision of the learned trial judge to the effect that the Appellant is personally liable for the indebtedness of the company.

2.2 Financial Improprieties

Directors who are major officers of the company act in the position of trustees of the properties and moneys of the company. They therefore owe a duty of care to the company on the handling of its finances and properties. They have the duty to act in good faith in any transaction they engage in for the company and must give proper account of such transactions as and when due. The facts of **Cadbury Nigeria Plc v SEC & APC**¹⁴ are instructive in this regard. In October 2006, Cadbury revealed that it had discovered what it described as a “significant and deliberate” earnings overstatement in its financial statements for some of the past years, to the tune of N15 billion. This came to light when Cadbury Schweppes (the parent company) retained PricewaterhouseCoopers (PWC) to review the accounts. Cadbury Nigeria's previous auditors had not discovered the misstatements. In 2007, the Administrative Proceedings Committee (APC) of the Securities and Exchange Commission was empanelled to investigate these findings of misstatements in Cadbury Nigeria's financial statements. The Defendants (Board of Directors of Cadbury Nigeria Plc, Union Registrars) were invited to appear before the APC, but they challenged its competence to sit and investigate the matter since the APC was set up by the SEC. Consequently, the Defendants filed an action at the Federal High Court seeking preservative orders to restrain and halt the proceedings. The Court granted an interim order but following SEC's application to allow the stay of proceedings, the injunction was removed. In 2008, the APC went ahead with the proceedings and based on its findings, it imposed sanctions on the Defendants, for violating the provisions of the Investments and Securities Act 1999, the SEC Rules and Regulations 2000, Code of Conduct for Capital Market Operators and their Employees and the Code of Corporate Governance in Nigeria. Some of the directors filed appeals to the Investment Securities Tribunal (IST) seeking to overturn

¹⁴ IST/APP/01/08



the decision of SEC but the IST upheld the sanctions imposed by the Securities and Exchange Commission on Cadbury Nigeria Plc and its directors for culpability in the misstatements of the accounts of company. This also shows that the Courts and tribunals are willing to promote good corporate governance practices by instilling financial discipline on those that are charged with running and directing the affairs of corporate entities.

In the celebrated case of **E.F.C.C v Oceanic Bank & ors**¹⁵, the former Managing Director of Oceanic Bank Plc, Mrs. Cecilia Ibru was sentenced to an 18-month imprisonment on a three-count charge to run concurrently. The anti-graft agency had alleged in the amended charge that Mrs. Ibru granted a credit facility in the sum of 20 million US Dollars to Waves Project Limited which was above her credit approval limit as laid down by the bank. She was also accused of failing to take all reasonable steps to ensure the correctness of Oceanic bank's monthly return to the Central Bank of Nigeria (CBN) between October 2008 and May 2009. Mrs Ibru was also said to have recklessly approved the grant of a credit facility in the sum of N2 billion by the bank to one Petosan Farms Limited without adequate security as laid down by the regulations of Oceanic bank, thereby committing an offence punishable under section 15 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act.¹⁶ The charges were reduced by the commission from twenty five to three, apparently on the basis of the plea bargain. The voluntary forfeiture of assets by the former Managing Director to cover the credit facility given was also a term of the plea bargain. In his judgment, the Federal High Court held that though the law stipulated imprisonment of between 10 and 13 years for her crime, it would be lenient on Mrs Ibru because she had agreed to voluntarily forfeit assets that could substantially cover the sum she was accused of, also all the asset recovered from her were to be handed over to the Asset Management Corporation of Nigeria (AMCON).

In the Oceanic Bank situation, the problem required a governance structure that dealt with a framework for ethical behavior, defined the boundaries and prohibited managerial self aggrandizement and illegal transfer of wealth from the company or their subsidiaries to managers.¹⁷ In all the cases analyzed above, the Courts intervened to ensure that there is financial discipline on the part of those with the responsibility to manage and direct the affairs of the company. Courts have also given out sentences in all these cases that will serve as deterrents and promote good Corporate Governance practices.

¹⁵ www.nairaland.com/528223/former-md-oceanic-bank-cecilia. Accessed on March 21, 2012.

¹⁶ CAP F2, Vol 6, Laws of the Federation of Nigeria, 2004

¹⁷ Corporate Governance and Group dynamics, Fabian Ajogwu, SAN, Centre for Commercial Law Department. Pg 90



2.3 Officers of Companies

The officers of the Companies include the Board of Directors and Secretary. Directors are the alter ego of the company thus they are said to be the mind and brain behind company's activities and constitute the policy making as well as the executive organs of the company. Directors of a company are persons duly appointed by the company to direct and manage the business of the company¹⁸. The Court of Appeal in **Ogbaji v. Arewa Textiles Plc**¹⁹ put it graphically thus:

A company may in many ways be likened to a human body. It has a brain and nerve centre, which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So, you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company...

The above decision was given recognition by the Court in **Chief Bola Adedipe v. Sameindir Frameinendur**²⁰. In the above case, the Appellant's company contracted with the Respondent to help sell their stockfish and to pay the proceeds into a designated account of which he was a signatory. He now caused another account to be opened of which he was also a signatory and into which the proceeds of the stockfish were diverted. The Respondent original investors who imported the stockfish did not get any of the proceeds of the sale. The Court of Appeal relying on section 290 of CAMA which is to the effect that where a company receives money and fails to apply it for the purpose for which it was received, the directors must be held personally liable. The Court further stated that there is no doubt that the persons behind the company are not phantoms; they are flesh and blood who have been unmasked. The Appellant cannot use

¹⁸ Section 244 (supra no 6)

¹⁹ (2000) 11 NWLR (Pt. 678) 322 at 337

²⁰ (2012) 3 CLRN 107.



the veil of legal entity to defeat public convenience, justify wrongs, and perpetuate and protect fraudulent activities.

It is the duty of the directors of a company to exercise powers vested in them for the benefit of the company. Their fiduciary relationship is not for individual advantage but for the company²¹. It is important to note that the company must have held the person out as directing its affairs. The general description of “executive director” has been recognized in Nigeria through judicial decisions. Sometimes the Articles of Association of companies give the directors or the company power to appoint executive, special or alternate directors. In practice, the “executive” or “special” director is an employee of the company whose status has been raised to that of a director but who continues essentially as such employee, e.g. a Sales Director. His status is usually limited by the articles but may eventually be elevated to full directorial status.²²

A director of a company is not expected to fill all the positions in the company himself, and he should be entitled to assume that qualified staff are performing the duties of their offices with competence. He is certainly not expected to abdicate his responsibility, but he is undoubtedly entitled to rely on the judgment of responsible assistants with the requisite knowledge, training and expertise. There is no inherent distinction in the duties and liabilities of categories of directors; but the chairman of the board of directors and the managing director must, by the articles of association of the company, and must, by the nature of their special access to and connection with the detailed machinery of control, be expected to know better than other directors.²³

A company secretary on the other hand is an important officer of a company. He is the chief administrative officer of the company responsible, along with the directors, for certain tasks under CAMA. They are saddled with the responsibility of also providing governance structures and mechanisms, corporate conduct within an organization's regulatory environment, board, shareholder and trustee meetings, compliance with legal, regulatory, and listing requirements, contact with regulatory and external bodies etc. By section 330(1) of the Companies and Allied Matters Act, 2020, every company except a small company must have a secretary. Historically, the functions of the company secretary were ministerial and administrative and not concerned with the management of the company. The position of the company secretary in England in the 19th Century was summed up by Lord Esher, M.R. in the 1887 case of *Barnett Hoares & Co. v. South London Tramways Co.*²⁴, as follows:

²¹ Per Eso, JSC. In *Okeowo v. Migliore* (1979) 12 NSCC 210 at 263

²² Per Uwais, J.S.C. In *Iwuchukwu v. Nwizu* (1994) 7 NWLR (Pt. 357) 379 and 396

²³ Per Coker, JSC, in *Shonowo v. Adebayo* (1969) 6 NSCC. 143 at 155

²⁴ [1887] 18 QBD 815.



.... a secretary is a mere servant. His position is that he has to do what he is told, and no person can assume that he has any authority to represent anything at all, nor can anyone assume that statements made by him are necessary to be accepted as trustworthy without further inquiry.

The above position has since changed and the importance of the company secretary was recognized as early as in 1971 when Lord Denning, M.R. in **Panorama Developments (Guildford) Ltd. v. Fidelis Furnishing Fabrics**²⁵ stated thus:

“A company secretary is a much more important person nowadays than he was in 1887... This appears not only in modern Companies Acts, but also by the role which he plays in the day-to-day business of companies. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day-to-day running of the company's business.... All such matters now come within the ostensible authority of a company's secretary”.

In the Panorama's case, the 28-year-old company secretary of the Defendant Company capitalized on the absence of the Managing Director and hired series of high-quality cars from the Plaintiff's purporting to have hired them on behalf of the company but which he used for his own purposes. He was convicted and imprisoned for fraud. However the debt remained unpaid to the Plaintiff, who brought an action for recovery of the outstanding debt. Despite his lack of actual authority, the Court of Appeal departed from earlier common law position on the status of Company Secretary, unanimously held that the Plaintiff Company could rely on the Defendant Company Secretary's representations as the secretary does have ostensible authority to bind his company, by virtue of his position as the chief administrative officer of the company. Accordingly, the Defendant Company was ordered to pay the hire charges incurred by its company secretary.

The above judicial pronouncement of the modern status of a company secretary was given judicial recognition in the Nigerian case of **Wimpey**

²⁵ [1971] 2 QB 711.



Nig Ltd v. Balogun²⁶ wherein the Court upheld the Company Secretary as a high-ranking officer in the Company who is part of the management of the Company. Today, the company secretary owes a duty to the management, board of directors, shareholders, and the company. Indeed, the role of the company secretary has evolved from being 'a mere servant' of the company to an officer of the company exercising extensive powers and duties²⁷. In **Okeowo v. Migliore**²⁸, The Supreme Court per Idigbe JSC observed that in Nigerian law, a company secretary is a principal officer of the company. The way and manner a company is managed will determine whether such company will succeed or fail. The most recent cases of corporate failure involving Nigerian companies and banks revealed excessive corporate fraud, lack of internal control measures, regulatory complacency and generally, non-compliance with the acceptable codes of corporate governance. Every company must have a corporate governance structure in place and most importantly, someone who must oversee the implementation of the structure. This is the role of a company secretary.

A new phenomenon in modern company practice arising from the growing complexity of a corporate practice is the need to protect shareholders and outsiders against directors who may use their position as insiders to benefit themselves at the expense of the former. The Courts have risen to the occasion and have in no small way helped and are still helping in the just interpretation of the law with a view to promoting good corporate governance practices.

2.4 Liability of Directors

A company being an artificial person can only incur liability through organs, agents, and officers. In **Kurubo v. Zach-Motison (Nigeria) Ltd**³⁰, the Court observed that in view of the fact that an artificial person or company vested with legal or juristic personality lacks the natural or physical capacity to function as a human being, those who work in it do all things for and on behalf of it. It is therefore the law and the tradition for the human beings authorized to negotiate agreement for and on behalf of the company. In exercising the company's powers, directors are regarded as agents of the company and must act within the scope of their authority and powers of the company.³¹ Otherwise the directors will be held liable for acts done outside the scope of their authority or powers. Section 276 of CAMA provides that where a person not duly appointed as director acts as such on behalf of the company, his act shall not bind the company and he shall

²⁶ (1986) 3 NWLR, Pt. 28, 324.

²⁷ The current status of a company secretary in Nigeria has been codified in sections 293-298 of CAMA in the following ways: Statutory provision for the Office as a Management position, power of the board to appoint and remove the company secretary, qualification of company secretary of public company, special procedure for removal of company secretary of public company, protection of dual status as Directors and Secretary and Statutory prescription of duties.

²⁸ (1979) 11 SC 138

²⁹ www.acas-law.com/cipxprobe/publications/The_Company_Secretary_in_Nigeria_-_Pertinent_Issues_-_November_2013.pdf. Accessed on March 31, 2014.

³⁰ Ltd(1992)5NWLR(Pt.239)102 @ 115

³¹ Section 305(2) CAMA.



be personally liable for such action: provided that where it is the company which holds him out as director, the company shall be bound by his acts.

The Supreme Court made a pronouncement on this issue in the case of **Yesufu v. Kupper International N.V.**³², where the Respondent (a foreign company) was awarded two contracts by the Government of the defunct Bendel state in 1977 and in compliance with the Government's directive invited the 1st Appellant to join him in the execution on the two contracts. The 1st Appellant agreed, and their business relationship culminated in the formation of a partnership and the subsequent incorporation of the 2nd Appellant by the Respondent and the 1st Appellant. A serious disagreement ensued between the partners which necessitated a meeting with the Government. The minutes of the meeting (exhibit 14) showed that the partnership between the parties had been mutually dissolved; it also showed that the 1st Appellant undertook to settle all genuine claims submitted by the Respondents. When the Respondents submitted its claims to the Appellant, the 1st Appellant refused to settle same, saying that they were not authorized by the Appellants. The Respondents (as Plaintiff) claimed the sum of N685,750.00 representing the expenses incurred and services rendered for and on behalf of the Appellants at the Appellant's request at Benin City in respect of the Ikpoba Dam Hotel and Afuze-Urha - The Court of Appeal allowed the Respondent's Appeal. The Appellant dissatisfied appealed to the Supreme Court, but his appeal was dismissed, and the Supreme Court held as follows:

“A director of a company is, in the eyes of the law, an agent of the company for which he acts and the general principle of the law of principal and agent would apply. Thus, where a director enters into a contract in the name of or purporting to bind the company, it is the company, the principal which is liable on it, not the director. The director is not personally liable unless it appears that he undertook personal liability. Even where a director contracts in his own name but really on behalf of the company, the other party to the contract can generally, on discovering that the company is the real principal, sue the company as undisclosed principal on the contract.

It is also commendable that Courts in Nigeria have consistently made

³² (1996) 5 NWLR 17 S.C.



pronouncements on the liabilities of directors to promote good corporate governance practices. The pronouncements of Courts examined in this section of the paper clearly show the authorities a director should exercise in the course of his directorship duty. More so, the directors cannot exercise their duties as directors for their personal gains and expect the Courts to look the other way.

2.5 Removal of Directors

The appointment of a director is subject to termination by removal from office irrespective of any protective clause contained in any agreement or articles of association of the company.³³ The steps taken in the removal of the director must however be in accordance with the procedure set out in section 288 of CAMA to ensure that the removal is valid and due process has been followed. A person may also be appointed a director for life, but he can still be removed under section 288 of CAMA³⁴, such a life director is only protected from being affected by the Retirement and Rotation Rule as provided in section 285 (1) (2) of CAMA. In **Longe v. First Bank of Nigeria**³⁵, The Appellant was appointed the Managing Director/Chief Executive of the Respondent (FBN) on February 24, 2000, by its Board of Directors. Before this appointment, the Appellant was the Respondent's executive director. The Appellant was accused of impropriety, following which he was suspended by the Respondent's Board of Directors on April 22, 2002, and his appointment was later revoked on June 13, 2002. The Appellant was not given the notice of the meeting of the Board of Directors of the Respondent where the decision to terminate his employment was taken. Consequently, the Appellant filed an action against the Respondent contending that he was entitled to the notice of meeting by virtue of section 266³⁶ of Companies and Allied Matters Act and failure to give him such notices rendered the termination unlawful, null and void.

The trial Court dismissed the Appellant's Claims. Dissatisfied with the judgment, the Appellant appealed to the Court of Appeal, but his appeal was dismissed. Still aggrieved, he appealed to the Supreme Court and contended that the Court of Appeal was wrong when it held that a meeting of directors is not within the Companies and Allied Matters Act (CAMA) and in particular within section 266(1), and more importantly in the light of the definition of the word "director" in Section 650 of CAMA which the Court failed to consider. The Supreme Court unanimously allowed the appeal. Oguntade J.S.C in delivering the lead judgment held that:

By virtue of the combined provisions of

³³ See S. 288(1) CAMA

³⁴ Section 281(1) CAMA

³⁵ (2010) 6 NWLR [Pt. 1189] 1 S.C

³⁶ See Section 288(2) CAMA 2020



Sections 266(1) and 262 of the Companies and Allied Matters Act, a director to be removed must be given a notice of the meeting. Therefore, failure to give such a notice shall invalidate the meeting. The requirement of notice is mandatory, and the Court has no discretion to exercise in the matter where a director to be removed was not given a notice of the meeting at which his removal was to be discussed.

Also, Adekeye, J.S.C. relying on the provision of section 262 of CAMA, held that:

“There is no power to remove a director under CAMA which shall be taken as derogating from any power to remove a director which may exist apart from this section.”

On the status of a Managing Director of a Company – In the above case it was also held that,

“A Managing Director is the directing mind and the alter ego of a company, through which the company acts. Thus, the Managing Director is also a director of a company. See also Ogbaji v. Arewa Textiles Plc³⁷

The essence of corporate governance is to ensure that proper and right things are done in running the affairs of companies be it appointment or removal of directors. Improper removal or appointment of directors would be an unhealthy corporate governance practice and Courts as can be seen from the cases examined above will frown at such practices and ensure that the affairs of corporate entities be run within the provision of the law. Such pronouncements from Courts have remained the law that seeks to promote good corporate governance practice.

2.6 Undue interference with the affairs of a Company

Shareholders of a company have limited rights when it comes to the affairs of the company and can only be involved to the extent in which the law

³⁷ 2000, 11 NWLR Pg. 337-338, para. E-A88u



provides. Thus, where they are of the opinion that there is a mismanagement of the company, they can only seek redress as provided for by CAMA. In **Avop Plc v The Attorney General of Enugu State**³⁸, the Appellant was a limited liability company operating under the Companies and allied Matters Act (CAMA) with its factory in Enugu State. The Respondent held 18.2% of the shares while the East India Produce Company (technical experts) held 37.49% of the shares. The Respondent appointed a Judicial Commission of Inquiry into the activities of the Appellant, and the recommendations were given to the Managing Director which contained among other things the appointment of Mr. Amadi, an indigenous senior management staff of the Appellant to take over the management of the company. This appointment was made by the Respondent and there was also an advertisement by the Respondent informing the public of the take-over of the management of the Appellant Company by an indigenous management. The Respondent went further to appoint its Auditor-General to audit the books and account of the Appellant.

The Appellants after holding an extra ordinary meeting where it condemned the acts of the Respondent and resolved to seek redress in Court, filed an action at the Federal High Court against the Respondent seeking among other things a declaration that the Respondent had no powers to suspend the management of the Appellant and set up in its place an indigenous management team and to order the auditing of the Appellant's account. The trial Court dismissed the claims and the Appellant appealed to the Court of Appeal which held that; -

By virtue of section 63(1) and (3) of the Companies and Allied matters Act, It was held that, the management of a limited liability company is usually a function of the directors of the company be it Private or Public. Such function is spelt out in the Articles of Association. The acts of the Respondent were contrary to the articles.

The Court also held that;

“It is possible that the organization of the Appellant as a company was rife with mismanagement to provide occasion for probing its activities as the Respondent qua the State government did or attempted to do.

³⁸ (2000) 7 NWLR PT 664 PG 260 AT PG 275. PARA F-H & PG 276 PARA A-B, PG 280-281 PARA H-E



But this can only be done by recourse to the appropriate machinery provided for doing so which, in this regard, is by taking steps outlined in CAMA. What the Respondent has no capacity to do is to indulge in a measure of self-help by a direct intervention in the affairs of Public incorporated company as it did in the same way as an individual is not allowed to take law into his own hands however biting may be the provocation”.

Even though one of the essences of corporate governance is to ensure maximization of shareholders' interest, the Courts will not fold its hand in cases of undue and unlawful interference by the shareholder with the affairs of the companies. One important point that can be taken from the case of **Avop Plc v The Attorney General of Enugu State** is that the shareholders seeking to protect their interest and enhance their value and return on investment must do so within the ambit of the law.



3.0 CONCLUSION

Generally, corporate governance refers to the host of legal and non-legal principles and practices affecting control of business corporations. Most broadly, corporate governance affects not only who controls corporations and for what purpose but also the allocation of risks and returns from the firm's activities among the various participants in the firm, including stockholders and managers as well as creditors, employees, customers, and even communities.³⁹ This paper has shown that it is not in doubt that the Judiciary plays a pivotal role in the implementation of corporate governance practices by making pronouncements that now regulate corporate governance practices. The role of the judiciary should be aimed at not just interpreting the law, but in doing so with a view to achieving good corporate governance. This paper considered through the cases how judges have contributed and given judicial interpretation and exposition of our laws in the area of corporate governance practices which no doubt has positively influenced the laws on corporate governance practices in Nigeria.

³⁹ (J. Robert Brown, Jr. and Lisa L. Casey, [Corporate Governance: Cases and Materials](#), 2012)



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- Company Law & Practice.
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