

AN ANALYSIS OF THE IMPACT AND CONTINUED RELEVANCE OF SALOMON V. SALOMON ON NIGERIAN CORPORATIONS BASED ON RECENT JUDICIAL AUTHORITIES AND THE NEW CAMA 2020*

Abstract

Corporate personality doctrine, enunciated in *Salomon v Salomon*,¹ is a fundamental principle of Company Law cutting across jurisdictions. It developed over centuries, for purpose of bearing rights, duties and obligations. This age-long doctrine, presupposes that, an incorporated company, acquires a distinct personality and conduct its operations through its members, agents or organs as the case may be. However, overtime, several exceptional circumstances have been identified by courts and the legislature in a bid to determine when a corporation's distinct personality status can be disregarded. This situation appears to threaten the very foundation of the doctrine. In view of this challenge, this paper attempts to examine *Salomon's* case, its application, impact and continued relevance on Nigerian corporations based on recent judicial decisions and the new Corporate and Allied Matters Act, 2020. It therefore concludes that from available evidence, *Salomon's* doctrine is still relevant in modern Nigerian company law as its basic premise remains intact till date.

Keywords: Corporate Personality, Corporations, Judicial Authorities, *Salomon v Salomon*, Lifting the Corporate Veil

1. Introduction

'Separate legal personality' principle, enunciated in the celebrated case of *Salomon v Salomon*² is a universal legal concept across several jurisdictions the world over. It emphasizes the distinctiveness of the personality of a corporation from that of its shareholders, members and directors. The peculiar nature of a corporation is its recognition as a legal entity different from its owners, shareholders, directors and employees that are conducting its day to day operations. This concept came to limelight in the case of *Salomon v Salomon and Co Ltd.*³ This case is universally recognized as authority for the principle that a corporation is a separate legal entity. Thus a member's demise does not affect the existence of the company since it is legally conferred with perpetual succession status upon incorporation. It follows therefore that the rights and duties of a corporation are not the rights and duties of its directors or members who are, most of the time, obscured by a corporate veil surrounding the company.⁴ It is safe to state that this case provides the foundational platform and precedence for the doctrine of corporate personality and judicial guide to lifting the veil of incorporation. Dignam and Lowry⁵ posits that the logical follow on from the creation of a separate legal personality is that a corporation is capable potentially of suing and being sued in its own name, and logically therefore of making profits and losses that are its own and not those of its members. However, it appears that over a century that *Salomon's* case was decided, several exceptional circumstances have been applied by the courts and also identified by the legislature across jurisdictions, in a bid to determine the red-line within which a corporation's distinct personality status can be disregarded; thereby threatening the very foundation of *Salomon's* doctrine. Also, the courts have not derived clear cut indicators in lifting the veil of incorporation since their decisions varies from one case to the other, as the justice of a case demands. It is against this background, that this paper attempts to examine the impact and continued relevance of this age- long doctrine on Nigerian Corporations, based on recent judicial authorities and under the new Companies and Allied Matters Act, (CAMA) 2020.

2. Facts of *Salomon's* Case

Mr. Salomon carried on business as a leather merchant. In 1892, he incorporated a company (*Salomon & Co. Ltd.*) with members comprising of himself, his wife and five children holding one share each in compliance with the Act. The newly incorporated company purchased the sole trading leather business, valued by Mr. Salomon at £39, 0000. The price was paid in £10,000 worth of debentures, £20,000 in £1 shares and £9000 cash. Mr. Salomon also paid off all the sole trading business creditors in full. He thus held 20,001 shares in the company while his family members held the six remaining shares. He was also because of the debenture, a secured creditor having a floating charge on the assets of the company. Things did not go well with the leather business and Mr. Salomon had to sell his debenture to save the business. This did not have the desired effect, as the company failed and was placed in insolvent liquidation. *Salomon's* right of recovery against the debenture stood prior to the claims of unsecured creditors, who would, thus, have recovered nothing from the liquidation proceeds.

Issue

The case concerned claims of certain unsecured creditors in the liquidation process of *Salomon & Co. Ltd.*, a company in which *Salomon* was the majority shareholder and accordingly was sought to be made personally liable for the company's debts. Thus, the issue was whether, regardless of the separate legal identity of a company, a shareholder/controller could be held liable for its debts, over and above the capital contribution, so as to expose such member to unlimited personal liability.

Ruling

The Court of first instance, held the Company to be the mere nominee of Mr. Salomon and that he must indemnify the company against its outstanding debts. Mr. Salomon appealed, to the Court of Appeal and then to the House of Lords. The Court of Appeal, looked at the motives of the promoter and members of the company and declaring the company to be a myth, reasoned that *Salomon* had incorporated the company contrary to the true intent of the Companies Act as his family members never intended to participate in the business but only held shares in fulfilment of a statutory requirement provided by the Companies Act. Upon further appeal, the House of Lords, reversed the ruling, and unanimously held that, an incorporated company, is an independent person with its rights and liabilities appropriate to itself, and that 'the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are'.

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³(1897) AC 22

⁴supra

⁵supra

⁴ HAJ Ford, *etal Principles of Corporations Law* (16th edn, London: Lexis Nexis Butterworths, 2015) p 101

⁵A Dignam & J Lowry, *Company Law* (7th edn, Oxford: Oxford University Press, 2012) p 17

3. Universal Application of Salomon's Principle

It is trite that the legal fiction of corporate veil between the company and its owners/controllers was firmly established in Salomon's case. From this point on, the separateness of the corporate personality from its members became firmly embedded as forming the core not only as a principle of English company law but of a universal commercial law regime. Salomon's decision, is affirmed across several jurisdictions and applied in plethora of cases such as *McLain Watson & Co Ltd v Department of Trade and Industry*⁶, *Lee v Lee's Air Farming Ltd*,⁷ etcetera. In the same vein, Lord Denning's statement in the case of *Bolton (Engineering) Co. Ltd. v Graham and Sons*⁸ is instructive on corporate personality status of corporations when he stated as follows: '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 holds the tools and act in accordance with direction from the centre....' Although a company is a distinct legal person, it is an artificial one which can only act through its human agents and officers. In the old English case of *Lennard's Carrying Co. v Asiatic Petroleum Ltd*,⁹ Viscount Haldane stated the position as follows:

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 directive will must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation, the very ego and centre of personality of the Corporation.

Similarly, the Supreme Court of Nigeria in the case of *Bulet Int'l (Nig.) Ltd & Anor v Olaniyi & Anor*,¹⁰ per Kekere-Ekun, JSC, espoused the legal concept of corporate personality when it stated thus: 'The concept of corporate personality was established a long time ago in Salomon's case to the effect that a company is a legal entity distinct from its members. It has a distinct legal personality and is capable of suing and being sued in its corporate name'.

4. Application of Corporate Personality under Nigerian Company Law

The Law regulating corporate status of corporation is dictated by the Nigerian legal system. The principal statute governing corporate law is CAMA¹¹ which gave approval to Salomon's corporate personality doctrine as follows- Section 42

As from the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other person as may from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land and having perpetual succession and a common seal.

Thus, in Nigeria, corporate personality is affirmed and applied in plethora of cases in relation to administration, control and governance of corporations. For instance in *Emenite Ltd v Oleka*¹² it was held that the legal personality of a corporation can only be established as a matter of law by the production in evidence of the certificate of incorporation. This was the decision of the court also in *Goodwill and Trust Investment Ltd & Anor v Witt & Bush Ltd*.¹³ Also in *Adewumi v Adebest Telecommunications Ltd*¹⁴ the Court of Appeal stated that as from the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may, from time to time, become members of the company shall be a body corporate by the name contained in the memorandum of association. Again in *Xingjiang Power Transmission & Transformation Engineering Company v Motract Global Networks Ltd*,¹⁵ the Court of Appeal held that 'the direct consequences of incorporation are that a registered company is hereby conferred with the privileges of corporate personality. In the same vein, the Supreme Court in the case of *Reptico S.A. Geneva v Afrifbank (Nig) Plc*,¹⁶ gave effect to the statutory provision of CAMA highlighted above, when it held that the certificate of incorporation is the basis for which corporate personality status can be proved.' Furthermore, in *Pharmacia (Nig) Ltd v Pharmacia Corporation*,¹⁷ the Court of Appeal stated that, a company is a legal entity distinct from its members and is capable of suing and being sued in its corporate name. It also has the capacity to enter into any agreement in its corporate name. In addition to the above, in *Konkon Conglomerate Ltd & Ors v NIPCO*,¹⁸ the Court of Appeal held that upon the issuance of a certificate of incorporation, the incorporated company becomes a personality distinct from those that aided in its formation. This position is also established in other cases such as *N.I.D.B & Ors v Fembol (Nig.) Ltd & Anor*¹⁹, *Ekweozor v Reg. Trustees of The Saviours Apostolic Church of Nigeria*,²⁰ *NLNG Ltd v Onwukwe*²¹ and in the more recent case of *John & Ors v Akhuamenkhun & Ors*,²² where the Court of Appeal (Benin Division), held that it is trite law that a company duly registered under CAMA is regarded as a distinct legal entity from each and every shareholder or member of the company. Consequent upon the foregoing, it is clear that CAMA²³ and the courts in Nigeria have continually given express approval to corporate personality principle as propounded in Salomon's case. However, it is worthy of note that corporate personality doctrine, under express statutory provisions and under Common Law does not in all cases shield the person who seeks its use most especially for fraudulent purposes as we shall see later in this paper.

⁶[1988] 3 WLR 1033 at 1098 per Kerr LJ.

⁷(1961) AC 12

⁸(1934) 1 K.B 57

⁹(1915) A.C 705 at 713-714

¹⁰(2017) LPELR - 42475 (SC)

¹¹ Companies and Allied Matters Act, 2020, ss.41(6), 42

¹²[2005] 6 NWLR (Pt. 921) 350

¹³(2011) LCN/3814(CA)

¹⁴(2011) LPELR – 9087 (CA)

¹⁵(2019) LPELR – 47677 (CA)

¹⁶(2013) LPELR – 20662 (SC)

¹⁷(2020) LPELR - 49581(CA)

¹⁸(2021) LCN/ 14998(CA)

¹⁹ [1997] 2 NWLR (pt 489) 543

²⁰[2020] 11 NWLR (Pt. 1743) 61

²¹[2019] 10 NWLR (Pt. 1680) 253

²²(2021) LCN/ 15126 (CA)

²³*Op cit* s.42

4. Legal Effects of *Salomon v Salomon* on Nigerian Corporations

The significance of *Salomon*'s case lies in the consequences and implications which flow from its decision. This case whilst emphasizing the independent status of a corporation also stipulates that a corporation is accountable for its acts notwithstanding that those acts were done through natural human beings. Consequently, Alogo²⁴ stated that the fundamental attribute of corporate personality is that the corporation is a legal entity distinct from its members. This attribute is fundamental as other attributes flow from there. Incorporation which became firmly embedded in Nigeria, formed the bedrock which on its own gave birth to several other consequences of incorporation.²⁵ It will not be easy to identify or ascertain the entire nature and legal effects of incorporation; however, for the purpose of this paper, the most common ones are discussed below:

Limited Liability of Members

In Nigeria, CAMA²⁶ in affirmation of limited liability status of a corporation provides that the memorandum of every company shall state whether the liability of its members is limited by shares or by guarantee or unlimited as the case may be.

Ultra Vires Doctrine

A company must act according to its object clause; that is it must act intra vires. If it acts beyond the object, the act is *ultravires* and will be declared null and void as provided for under CAMA.²⁷ This was also extensively illustrated by the courts in plethora of cases such as: *Hakair Ltd & Anor v Sterling Bank Plc*,²⁸ *United Foam Products Ltd v Opobiyi*,²⁹ *National Palm Produce Association of Nigeria v Udom and Ors*,³⁰ and *Investments and Allied Assurance Plc v Imperial Assets Managers Ltd & Ors*.³¹ It is worthy of note that under the common law an ultra vires act is unenforceable and cannot be ratified. This is not to say that the act in question is illegal. It is simply an act outside the power within the memorandum and articles of association. However CAMA³² provides for means of validating *ultravires* acts.

Debts of Corporation not Debts of Members

The officers of a corporation including its directors are not personally liable for its debts. As a legal person, a corporation is liable for its debts. The issue of debt and inability of a corporation to pay its debts could impact negatively on the existence of a company. In *Anyaegbunam v Osaka*,³³ the Supreme Court held that an incorporated company is a separate legal entity which must fulfil its own obligations under the law. In Nigeria, CAMA³⁴ provides the circumstances in which a corporation may be wound up by the court if it is unable to pay its debts. Thus in the very recent case of *First Bank of Nigeria Plc v Anyiam Osigwe Group*,³⁵ the Federal High Court sitting in Lagos ordered the winding up of the Respondent corporation over its inability to pay a debt of N750Million owed the Petitioner since November, 2006. The Court held that the Petitioner had proved and satisfied the court that the Respondent was unable to pay its debt and pursuant to the relevant sections of CAMA, the winding up order was granted. Similarly, in *Air Via Ltd v Oriental Airlines Ltd*,³⁶ the Supreme Court held that a company may be wound up by the court, if the company is unable to pay its debts.

Transfer of Shares

In Nigeria, CAMA³⁷ provides for transferability of shares to be limited to public companies while a private company is required to put a clause in her Article of Association restricting transfer of its shares. In *AG Lagos State v Eko Hotels Ltd & Anor*,³⁸ the Supreme Court held that one of the ways transfer of shares of a company can be effective is by sale. It is instructive to note that upon incorporation, corporations are at liberty to transfer their shares subject however, to the company's Memorandum and Articles of Association and other extant laws.

Shareholders not Individual Owners of Corporate Property

Again a notable legal effect of incorporation is the property rights conferred on a corporation. In *Melwani v Feed Nation Industries (Nig) Ltd*,³⁹ the court held that upon incorporation the corporation attains corporate personhood distinct from its promoters who cannot claim ownership of the corporation or can they individually dispose of its property. This is the decision of the court also in *Williams Esq & Anor v Adold/Stamm International Nig.Ltd*.⁴⁰

Perpetual Succession

In *Rev. Rufus Iwuajoku Onuekwusi and Sors v The Registered Trustees of the Christ Methodist Zion Church*,⁴¹ the Supreme Court held that once trustees have been registered, they become a body corporate by the name in the certificate and shall have perpetual succession.

²⁴EE Alogo, *Company Law and Practice in Nigeria* (Lagos: Princeton and Associate Publishing Ltd, 2022) p 241

²⁵ I. Akomolede, *Fundamentals of Nigerian Company Law* (Lagos: Niyak Print & Publications, 2008) p 37-41

²⁶ Companies & Allied Matters Act, 2020 s.21 (a) (b) (c)

²⁷ *Ibid*, s.46 (1)

²⁸(2019) LPELR - 47638(CA)

²⁹(2017) LPELR - 43166(CA)

³⁰(2013)LPELR – 21134(CA)

³¹(2019) LPELR - 48858(CA)

³² Companies & Allied Matters Act, 2020 s.44 (1)(3)

³³(2000) 3 S.C. 1

³⁴ Companies and Allied Matters Act, 2020 s.571 (d)

³⁵ Unreported Suit No FHC/L/CP/925/14 Ruling delivered on 5/4/23 by A. Faji, J. at Federal High Court, Lagos, Lagos Division (published by Punch online Newspapers on 7/4/23><https://punchng.com/court-orders-companys-wind-up-over-n750m-debt>>accessed on 8th April, 2023.

³⁶(2004) 4 S.C. 77

³⁷ Companies & Allied Matters Act, 2020 s.22 (2)

³⁸(2006) 9 SCNJ 104

³⁹(2002) FWLR (pt. 113) 135

⁴⁰(2013) LPELR – 20356 (CA)

⁴¹(2011) 2-3 SC (Pt.1)1

The body becomes a legal entity with powers to sue and be sued in the corporate name. In Nigeria, CAMA⁴² provides for limited liability partnership to be a body corporate with perpetual succession.

Corporation Acts through Natural Persons

In *Oyebanji v State*,⁴³ the Court of Appeal held that a corporation, although a legal person is an artificial person who can only act through its human agents and officers.

Corporations comply with formalities and regulations

A body corporate is a juristic person. In order to prove its corporate status, it must comply with various formalities as provided by CAMA⁴⁴ and as held in *A.O.Afolabi & 6 Ors v Western Steel Works Ltd & 2 Ors*.⁴⁵ Also, in *Bernard Longe v First Bank Plc*,⁴⁶ the court held the failure of First Bank Plc, to comply with issuance of statutory notice, as fatal to their case.

A Person can act in dual capacity

The magic of corporate personality qualifies a single person to function in a dual capacity in the same corporation as master and servant at the same time and to get all the advantages of limited liability. In *Lee's case*,⁴⁷ the Privy Council held that Lee and his company were distinct legal entities, which entered into contractual relationships under which he became qua chief pilot, a servant of the company and therefore he qualifies as a worker within the meaning of the Act.

Corporation can acquire and own property.

A corporation is entitled to enter into contract with any person including its members, acquire land and other properties. The property so acquired belongs to it alone and it is entitled to deal with it as desired. In *Onagoruwa v State*,⁴⁸ the court held that a corporation in Nigeria has legal capacity to own properties.

Members Debts not Corporation's Debts

The independence of a corporation also presupposes that a member's debts have nothing to do with the corporation's financial position. CAMA,⁴⁹ provides that every director or officer of the company shall be personally liable to the person from whom money was received. Also in *Oyebanji v State*,⁵⁰ the court stated that a court may lift the corporate veil where the corporate form is abused or misused in a transaction. Directors will be personally liable for debts arising from such transactions.

Nationality, Domicile and Residence

A company's nationality is determined by the place of its registration, and it retains that nationality throughout its existence. In *Kraus Thompson Organisation Ltd v University of Calabar*,⁵¹ the Supreme Court held that the residence of a corporation is the place of its central management and control and not a branch office or liaison office. CAMA,⁵² in recognition of a company's principal place of business provides that a court process shall be served on a corporation in the manner provided by the rules of court by leaving it at, or sending it by post to, the registered office or head office of the corporation.

Corporation can sue and be sued

Where a wrong is done to a company it is entitled to institute action on its own to seek redress. In *Hakair Ltd & Anor v Sterling Bank Plc*,⁵³ the court held that incorporation foist a status of body corporate on a corporation in that it becomes a sui juris with all the powers of a natural person of full capacity. This confers on the company the ability to sue and consequently be sued.

Holding Company Independent from subsidiary

Again, a notable consequence of incorporation is that a subsidiary company is independent of and not an agent of the holding company as held in *Asset Management Nominees Ltd and Anor v Forte Oil Plc & Ors*.⁵⁴ CAMA⁵⁵ also acknowledges that a subsidiary company though owned and controlled by the Holding company, but in law, they are two separate legal entities.

Also in the recent cases of *Bulet International (Nig.) Ltd & Anor v Olaniyi & Anor*,⁵⁶ and *Pharmacia (Nig) Ltd v Pharmacia Corporation*,⁵⁷ the Supreme Court held that a subsidiary company is separate from the parent company.

5. Exceptions to Salomon's Doctrine

As seen above, the general rule embedded in corporate personality is not without exceptions. Like every other legal endeavour with shortfalls, natural persons often hide under the cloak of incorporation to indulge in illegal, fraudulent, unlawful and improper conduct in a corporation. In response, the law devised the principle of lifting the veil of incorporation as exception to look at the persons behind the corporation for the purpose of establishing liability.

⁴² Companies & Allied Matters Act, 2020 s.746(2) (3)

⁴³(2015) LPELR – 24751 (SC)

⁴⁴ Companies and Allied Matters Act, 2020 ss.40(1); 235; 288(2)

⁴⁵(2012) 7 SC (Pt 111) 64; (2012) 17 [NWLR] (Pt.1329) 286

⁴⁶(2010) 6 [NWLR] (Pt. 1189) 1 S.C.

⁴⁷[1961] AC 12

⁴⁸[1993] 7 NWLR (Pt. 303) 49

⁴⁹ Companies & Allied Matters Act, 2020, s.316 (a),(b),(c)

⁵⁰(2015) 14 [NWLR] (Pt. 1479) 270 at 292

⁵¹(2004) 4 SCM 83

⁵²Companies and Allied Matters Act, 2020 s. 104

⁵³(2019) LPELR - 47638(CA)

⁵⁴(2017) LPELR - 43553(CA)

⁵⁵ Companies and Allied Matters Act, 2020 ss.379-381

⁵⁶(2017) LPELR - 42475(SC)

⁵⁷(2020) LPELR - 49581(CA)

6. Lifting the Corporate Veil

Dignam and Lowry⁵⁸ stated that lifting the veil refers to the situation where the judiciary or the legislature decides that the separation of the personality of the company and the members is not to be maintained. In the English case of *Conway v Ratiu*,⁵⁹ Auld LJ in giving approval to the exception of lifting the corporate veil, spoke of the 'readiness of the courts, regardless of the precise issue involved, to draw back the corporate veil to do justice when common sense and reality demands it. In the same vein, in Nigeria, the courts in exceptional circumstances disregard or look beyond the corporate personhood shield and have regard to the realities of the situation. Thus, in *Oyebanji v State*,⁶⁰ the Supreme Court held that an allegation of crime lifts the veil of corporate existence and unmask the face of the suspected criminal to face prosecution. The apex court further held that where the veil is lifted, the Law will go behind the corporate entity so as to reach out to individual member of the company whose conduct or act is criminally reprehensible. For the purpose of this paper, we shall look at veil lifting in two ways as follows:

Veil Lifting by Courts

Under Common law, it is instructive to refer to the case of *Adams v Cape Industries Plc*,⁶¹ where the English Court of Appeal in summary, brought to limelight some common law grounds that have evolved through case law as an equitable remedy, namely: Agency, Fraud, Façade or Sham, Group Enterprise and Injustice or Unfairness. The above grounds have been invoked widely by English courts in subsequent English cases. In *Beckett Investment Management Group v Hall*,⁶² in interpreting a clause in an employment contract in the context of a group of companies that formed a single economic unit or entity, the English Court of Appeal considered that it was inappropriate to be inhibited by considerations of corporate personality. Similarly, in *Stone and Rolls v Moore Stephens*,⁶³ the House of Lords was split 3:2 as to whether a firm of Auditors should be held liable for negligence due to the fraud committed. Again, in *Prest v Petrodel*,⁶⁴ the United Kingdom Supreme Court as per Sumption J. confined the lifting of veil to only two situations, namely, (a) the concealment principle, akin to the sham or façade exception; and (b) the evasion principle, being the fraud exception. Also in Nigeria, in line with their English counterparts the courts in exceptional circumstances and where expedient can unveil a company to see the members behind it as decided in *Ohanenye & Ors v Ohanenye & Sons Ltd & Anor*.⁶⁵ Again in the case of *Adewumi v Adebest Telecommunications Nigeria Limited*,⁶⁶ the court of Appeal held that the theory of lifting or piercing or going behind the corporate veil empowers the legislature and the Courts in exceptional circumstances and where expedient, to unveil or unmask a company to see the individuals or members behind it. This is also the decision in *Public Finance securities Ltd. v Jefia Limited*.⁶⁷ The above judicial authorities shows that courts in Nigeria are prepared in exceptional circumstances, to disregard the corporate veil and have regards to the realities of the situation. However, as shown above, the courts have not come out with clear cut indicators or consistent formula in lifting the veil of incorporation since the decisions of the courts varies from one case to the other as the justice of a case demands. For the purpose of this paper we shall consider some circumstances as follows:

Exceptional Circumstances for Veil Lifting by Courts

Evasion of Taxes and Contractual Obligations

The thorny issue of tax evasion is of serious concern to nations, tax practitioners, legal luminaries, other stakeholders, *etcetera* and cuts across jurisdictions the world over. Umenweke,⁶⁸ an erudite professor of law in assessing tax evasion in Nigeria observed that tax evasion is of serious concern and one way of looking at the seriousness of this crime is to examine its economic cost. He stated further that revenue losses owing to tax evasion are enormous, as there appears to be big gap between actual and potential income tax collections by the various levels of government. In effect, the end total of tax evasion is less revenue to the taxing authority and also a shift of the tax burden on the less fortunate members of the community. Thus according to him, in a developing economy like Nigeria, where all hands should be on deck to revitalize the economy, the prevalent seriousness of tax evasion is indeed injurious. However, it is worthy of note here that the question whether tax evasion can be a ground for lifting or piercing the corporate veil has not been explicitly addressed by the courts in Nigeria. In *Marina Nominees Ltd v Federal Board of Inland Revenue*,⁶⁹ the facts of this case explicitly pronounced in *Bauchi State Government & Ors v Arewa Ceramics Ltd & Ors*.⁷⁰ The Supreme Court had opportunity to make further pronouncement in the area of piercing the corporate veil in Marina's case, but failed to do that.

Evasion of Contractual Obligation

In *Tafida & Anor v Garba*,⁷¹ the court held that the 1st Appellant who entered into contract with the Respondent cannot now claim that he is not bound or liable to the contract since he was the alter ego of the 2nd Appellant. The court referred to *Jones v Lipman*⁷² where the veil of incorporation was lifted because a vendor of land sought to evade specific performance of the contract of sale by conveying the land to a company which he formed. Also, in *Oyebanji v State*,⁷³ the Supreme Court of Nigeria supported the above position when

⁵⁸ A Dignam & J Lowry, *Company Law* (7th edn, Oxford: Oxford University Press, 2012) p 31

⁵⁹[2006] 1 ALL ER 571

⁶⁰(2015) LPELR - 24751(SC)

⁶¹[1990] Ch. 433 (Court of Appeal)

⁶²[2007] EWCA Civ 613; [2007] All ER (D) 375

⁶³[2009] UKHL 39; [2009] 1 AC 1391 (HL)

⁶⁴[2013] UKSC 34; [2013] 2 AC 415

⁶⁵(2016) LPELR-40458 (CA)

⁶⁶(2011) LPELR-9087 (CA)

⁶⁷[1998] 3 NWLR (Pt.54) 602

⁶⁸ MN Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria* (1st 'edn' Enugu: Nolix Educational Publications, 2008) pp 175 - 176

⁶⁹ (1986) 2 [NWLR] (Pt. 20) 48

⁷⁰ (2019) LPELR- 47490 (CA)

⁷¹(2013) LPELR-22076 (CA)

⁷²(1962) 1 WLR 822

⁷³(2015) LPELR – 24751 (SC)

it held that, as the last Court of the land, it will not allow a party to use his company as a cover to dupe, cheat and or defraud an innocent citizen who entered into lawful contract with the company, only to be confronted with the defence of the company's legal entity as distinct from its directors.

Public Policy

In the old English case of *Daimler Co. Ltd. v Continental Tyre and Rubber Co. Ltd*⁷⁴ the House of Lords disregarded the corporate veil and held that the company though incorporated in England, was capable of acquiring an enemy status and therefore in the circumstance the leave to sign summary judgment handed out to the company by the Court of Appeal should not have been given and the order was unanimously reversed.

Fraud, Façade or Sham and Illegal Acts

Dignam and Lowry⁷⁵ observed that in general, one can describe such circumstances or cases as the 'you know when you see it' cases. These are decisions where there is some injustice involved in maintaining the veil of incorporation, which was placed there deliberately to facilitate the injustice complained against. Furthermore, in *Adejumo v State*,⁷⁶ the court held that where an incorporated body allows itself to be used as an engine or tool for fraud, the veil of incorporation will be lifted and raised so that the actual perpetrators will be held accountable and liable.

Agency

In *Kensington International Ltd v Republic of Congo*,⁷⁷ the Court held that a dishonest transaction involving transfers between related companies was designed to avoid existing liabilities and was therefore a sham. Also in *P & G Co v Global Soap Detergent Industries Ltd & Ors*,⁷⁸ the court on the ways in which agency relationships may arise or can be created, held that it may arise by agreement, subsequent ratification and operation of law. Thus there was finding of agency in the tax case of *Firestone Tyre and Rubber Co Ltd v Lewellin*,⁷⁹ where the court held that an English company which manufactured tyres in England, and used them to fulfill orders for its America holding company, did so as the agent of the latter.

Trust

In the case of *Abbey, Malvern Wells Ltd v Ministry of Local Government and Planning*,⁸⁰ the court held that where all the shares in a company were held on educational trusts and the management of the company was in the hands of the trustees, the court could disregard the corporate veil so as to impress the company's property with the terms of the trust.

Veil Lifting Under Statutes

*Dignam and Lowry*⁸¹ observed that in UK the taxation authorities have been acutely aware of the potential for group structures to avoid taxation by moving assets and liabilities around the group. The Companies Act,⁸² recognises that group structures need to be monitored for disclosure and financial reporting purposes and provides for criminal offence in respect of fraudulent trading.⁸³ Again in UK, civil provisions are now contained in the Insolvency Act,⁸⁴ provided specifically by the legislators to disregard the separate legal personality doctrine and lift the veil of incorporation to determine liability.

Exceptional Circumstances for Veil Lifting by Statutes

In Nigeria, CAMA and other statutes in line with UK Companies Act, explicitly provides for circumstances in which the corporate veil will be disregarded to determine liability of those behind the corporate veil. Some of these circumstances⁸⁵ are discussed below:

Liability for Company Debts where membership is below legal minimum

CAMA⁸⁶ provides that if a public company limited by guarantee carries on business or its objects, without having at least two members and does so for more than six months, every director or officer of the company during the time that it so carries on business with only one or no member is liable jointly and severally with the company for the debts of the company contracted during that period.

Responsibility for fraudulent trading

CAMA's⁸⁷ provision for fraudulent trading is in *pari materia* with UK's Act as discussed above.⁸⁸

⁷⁴ (1916) 2 AC 307 (House of Lords)

⁷⁵ A Dignam and J Lowry, *Company Law* (7th edn, Oxford: Oxford University Press, 2012) p 39

⁷⁶(2019) LPELR- 46833 (CA)

⁷⁷[2008] 1 All E.R. (Comm) 934

⁷⁸(2012) LPELR- 8014 (CA)

⁷⁹(1957) 1 WLR 464, HL

⁸⁰(1951) Ch. 728

⁸¹ A Dignam & J Lowry, *Company Law* (7th edn, Oxford: Oxford University Press, 2012) p. 32

⁸² UK Companies Act 2006 s. 399

⁸³*Ibid* s.993

⁸⁴Insolvency Act, 1986 ss 213 - 214

⁸⁵I. Akomolede, *Fundamentals of Nigerian Company Law* (Lagos: Niyak Print & Publications, 2008) p 37-41

⁸⁶ Companies and Allied Matters Act, 2020, s. 118

⁸⁷ *Ibid* s. 672

⁸⁸ Insolvency Act, 1986 s.213

Liability for inaction to redeem decline in Number of Directors

Also CAMA⁸⁹ provides that where a director or member of a company not being a small company who knows that a company carries on business after the number of directors has fallen below two for more than 60 days is liable for all liabilities and debts incurred by the company during that period when the company so carried on business.⁹⁰

Personal Liability of Directors and Officers

Furthermore, CAMA⁹¹ provides that where a company receives money by way of loan for specific purpose and fails to apply the money or other property for the purpose for which it was received, every director or other officer of the company who is in default is personally liable to the party for a refund of the money or property so received.

Group Financial Statement of Holding Company

In line with UK Act, 2006, CAMA⁹² also acknowledges that a subsidiary company though owned and controlled by the Holding company, but in law, they are two separate legal entities. However, there are circumstances where the separate legal personalities of the companies will be ignored and the subsidiary company treated as the holding company.

Violation of Non Profit Making Requirement of Companies limited by Guarantee

Again CAMA⁹³ provides that whereby any company limited by guarantee carries on business for the purpose of distributing profits, all officers and members who are cognizant of this shall be jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business.

In addition to the above, apart from CAMA, there are other statutes in Nigeria that disregard the corporate veil to determine liability of its members. A notable intervention is the enactment of NESREA.⁹⁴ The Act provides that where a person violates any regulations made under a specific provision of the Act,⁹⁵ he commits an offence and shall on conviction, be liable to a fine of N200,000.00 and imprisonment for a term not exceeding one year or both and additional N20,000.00 for each day. In the case of a body corporate, a fine of N200, 000.00 and additional fine of N50, 000.00 per day the offence subsists. For violation relating to public health, in the case of a body corporate, the offender is liable to a fine not exceeding N50, 000.00 and additional fine of N10, 000.00 for every day the offence subsists.⁹⁶ In the same vein, The Corrupt Practices and other Related Offences Act⁹⁷ made provision for varying offences in the Act where upon infringement the corporate veil can be disregarded to determine liability of offending members or directors since by virtue of the express provision of the Act,⁹⁸ a person is defined to include juristic and natural persons.⁹⁹ Also, the Economic and Financial Crimes Commission Act¹⁰⁰ provides for offences relating to corporate bodies and officers controlling their operations. For example, section 7 of the Act empowers the EFCC to investigate any person, corporate body or organization in relation to an offence committed under the Act touching on economic and financial crimes. Section 14 expressly provides that persons who are officers of banks, financial institutions or other non-financial institutions who infringes on the provisions of the Act shall be liable on conviction to imprisonment not exceeding 5 years term or to a fine of Five hundred thousand naira (N500, 000.00) or to both.

7. Conclusion

As shown in this paper, it is obvious that in Nigeria the Legislature and the courts in exceptional circumstances and where expedient can unveil a company to see the members behind it with a view to determining liability of defaulting members or directors. That notwithstanding, the rudiments of *Salomon's* corporate personality doctrine is still very much intact and remains in force in modern day Nigeria corporate law practice. Despite the observed departure by the Courts and Legislature from the entrenched principles on a case by case basis, through lifting the veil of Incorporation, this paper concludes that the significance of *Salomon v Salomon*, appears unshakeable and remains solid as a construct, in modern globalised business world. In contemporary corporate law regulation in Nigeria, the basic premise of the decision in *Salomon's* case is not outdated and remains relevant as seen from the recent judicial pronouncements in the country and under the express provisions of the new Companies and Allied Matters Act, 2020.

⁸⁹ Companies and Allied Matters Act, 2020 s.271 (1) (2)

⁹⁰ *Ibid* s.271 (3)

⁹¹ *Ibid* s. 316

⁹² *Ibid* ss. 379 - 381

⁹³ *Ibid* s. 26 (3) (11)

⁹⁴ National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2010.

⁹⁵ *Ibid* s.20(1)

⁹⁶ *Ibid* s.23(1)

⁹⁷ Cap C31 Laws of the Federation of Nigeria, 2004

⁹⁸ *Ibid* s. 2

⁹⁹ *Ibid* s. 23

¹⁰⁰ Cap E1 Laws of the Federation of Nigeria, 2004 ss. 7 and 14