MINORITY RIGHTS AND PROTECTION: PROSPECTS AND CHALLENGES FOR CORPORATE GOVERNANCE IN NIGERIA*

Abstract
The legal authority for management and direction of a company, vests with the board of directors, whose duty it is to supervise the general course of business, and to use its powers in the best interest of the company. However, ultimate power resides in the shareholders as the board is brought into managerial office by them through general elections in annual general meetings. Yet whenever the shareholders are dissatisfied with the manner the board of directors is conducting and managing the affairs of the company, such management can be ousted through voting it out during another election. By this, shareholders need no longer be content to sit on the sideline and watch as their shares in a company plummet; they are rather standing up and holding management accountable. This study seeks to explore the theory and practice of the 'minority rights and protection; the prospects and challenges for corporate governance in Nigeria.

Keywords: Minority Rule, Corporate Governance, Majority Rule, Corporate Governance, Legal Personality of Company

1. Introduction

It is a truism that decisions in a company are done by the way of resolutions; whether ordinary or special. These decisions relate to the organization and management of such companies. It is the majority decisions as against the miniority view that gets implemented at the end of the day in a company. This is called corproate democracy, and was expressed by Dr. J.O. Orojo[1]. The administration and control of the company is vested in the shareholders' majority votes duly exercised in accordance with the memorandum and artcles of assocaition of the company[2]. It is democracy in that it is the decision of the majority of the shareholders of a company who vote in affirmation that eventually gets carried out while also recongizing the fact that the minority will have their say. This principle of corproate democracy or governance or subtly put majority Rule was enunciated in the common law loccus classicus *Foss v Harbottle*[3]. F and T were shareholders in a company formed to buy land for use as a pleasure park. The defendants were the other directors and shareholders of the company. F and T alleged that the Defendants had defrauded the company and that some of the defendants had sold lands belonging to them to the company at an exorbitant rate and therefore asked the court to make the defendants account for the losses to the company. Wigram V.C in the case *Mozley v Alston* held that: 'the action of F and T could not be sustained since the Company's Board of Director was still in existence and it was still possible to call a general meeting of the company, and so there was nothing to prevent the company from obtaining redress in its corporate character'[4]. This in essence means that where a wrong is done to the company, only the company can sue to remedy such wrong. It is for majority of members of the company to decide whether to treat such a wrong which ought to be redressed or to overlook same without redress. Whatever their decision, is deemed the decision of the company and therefore binding on all the members in including any dissenting shareholder. The rationale behind the above decision lies in the fact that if every individual member of a company is permitted to sue anyone who had injured the company through breach of duty, there would be as many suits as there are shareholders. Since the company is a corporate personality, it would be its own plaintiff. This prevents multiplicity of actions, waste of time and resources. This rule applies not only to companies but also to unincorporated associations as was held in the case of *Cotter v National Union of Seamen*[5] *and Mbene v Ofili*[6], see also *Solomon v Salomon & Co. Ltd*[7] and Lee v Lee's Air Farming Ltd[8].

2. Explanation of Key Terms

For the purpose of clarity, some key terms are hereunder explained.

Legal Personality of Company

The Independent Legal personality of a company is very fundamental to the whole operation of business through companies and as such, this legal concept affects its structure, existence, capacity, power, rights and liabilities. One consequence of the artificial nature of a company as a legal person is that inevitably decision for and actions by it has to be taken by natural persons who are either its primary organs (the Board of Directors or the members at general meeting), or its officers, agents or employees of the company. In *Bolton (Engineering) Co. Ltd v Graham Sons,*[9] Denning L.J Characterized the position as follows: 'A company may in many ways be likened to a human body, it has a brain and nerve center which controls what it does. It has hands which hold the tools and act in accordance with directions from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to work and cannot be said to represent the mind and will. Others are directors and managers who represent the directing mind and will of the company and control what it does'. Furthermore, in acts imputed to the company, Aderemi JCN in the case of *Delta Steel (Nigeria) Ltd v America Computer Technology Inc*[10] explained as follows:

> In cases where the law requires the personal acts or faults of an individual so as to make a legal fiction like a company, the directors, managers, or the managing directors are in the eyes of the law, the directing mind and will of the company, they control what the company does, the state of mind of the special class of employees is the state of mind of the company.

***By Priscilla Ngozi NNAWUBA, PhD,** College of Law, Gregory University Uturu, Abia State, Tel: 08037578367, Email: priscillannawuba@gmail.com

[1] J O Orojo, *Common Law and Practice in Nigeria* (5th ed., South Africa: Lexis Nexis, Butherworths 2008) 208.
[2] Ibid
[3] (1843) 2KB 461; 67 ER 189
[4] (1847) 1 Ph 790
[5] (1929) 2 Ch. 58
[6] (1968) NCLR, 293
[7] (1897) Ac 22, (2012) All FWLR at 266
[8] (1963) 3 All ELR 420.
[9] (1961) AC 12 PC
[10] (1999) 4 NWLR (pt597) 53 at 66

A different consideration may also apply, as to the liability of the individual especially in criminal matters. In *Adeniyi v The State*,[11]'the Court re-emphasized the fact that the law draws a clear distinction between the company as the artificial person and the natural person with life and limbs who operates it'. It then observed that while the act of an individual can be taken as the act the company, in appropriate cases where directors represent the mind and will of that company and can be regarded as the alter ego of the company, rendering the company liable for its acts, it will be absurd and dangerous to make the individual criminally liable for the acts apparently done for or by the company with the express provision of the statute rendering them so liable.

Majority Rule

The common law principle of majority rule has been codified under section 299 of the Companies and Allied Matters Act[12]. This section provides thus: 'Subject to the provisions of this Act, where irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct'. The Supreme Court in *Okoya v Santill*[13] per Agbaje JSC held that for the rule in *Foss v Harbottle*[14] must relate to a wrong done to the company which would otherwise escape redress and in such action the complainants cannot have a larger right to relief than the company itself would have if it were the plaintiff and cannot complain of acts which are valid if done, with the approval of the majority of the shareholders' votes or are capable of being confirmed by the majority votes except that the minority can maintain such an action where the acts complained of a fraudulent character or beyond the powers of the company[15]. This limb of the Rule was taken from the partnership law and establishes that the majority can bar an action started by the minority in the name of the company, if the company can lawfully ratify the act in question. Basically, if the majority can lawfully ratify, then it is a waste of time and resources for minority to proceed with the action[16]. Simply stated, if there is some internal irregularity in the management of affairs of the company, for instance, misuse of corporate opportunity, or failure to call for poll or no proper notice of meeting, the rule is that it can be put right by shareholders in general meeting; court will not allow the proceeding to commence. In Nigeria, management of company is superintended by the Board of Directors as with other companies all over the world. The Companies and Allied Matters Act[17] and such other laws such as Investment and Securities Act[18], to a great extent regulate the overall mechanism of company management.

Company Directors

A company being an artificial person, its management has to be entrusted to human agents which are directors. The company directors are variously described as directors, governors, governing body, governing committee, or any other similar expression. Section 244 (1) of the Act[19] provides that directors of a company registered under the Act are persons duly appointed by the company to direct and manage the business of the company. Where a person is not duly appointed a director acts as such, his acts do not bind the company, but where the company describes a person as a director, there is in favour of any person dealing with the company a rebuttable presumption that all persons who are described as directors, whether as sales executive or otherwise have been duly appointed[20]. If a person not duly appointed acts or holds himself out as a director, he is guilty of an offence and punishable by imprisonment or fine or both, and the company can restrain him from continuing so to act[21]. His act will not bind the company and he will be personally liable[22]. Where it is the company that holds him out as a director, the company is bound by his act[23] and is liable to a fine and both the person and the company should be restrained[24] as held in *Olufosoye v Fakorede*[25].

Corporate Democracy

The decisions of a company take the form of resolution which must be passed at a general meeting of the company, but in case of a private company, a written resolution signed by all the members entitled as if, it has been passed at a general meeting[26]. A resolution may be ordinary or special.

***Ordinary resolution*:** An ordinary resolution is one which has been passed by a simple majority of votes cast by members of the company either in person or by proxy at a general meeting as held in *Bushell v Faith*[27]. A special notice may be required for an ordinary resolution. For instance, an ordinary resolution for the removal of a director provides that special notice must be given.

***Special Resolution*:** This is a resolution which is passed by a majority of three fourth of the votes of the members either in person or by proxy at a general meeting of which less than twenty-one days of notice has been duly given[28]. All in all, resolution of company is decided by majority votes at a general meeting, and the majority decision is the company decision.

[11] (1992) 4 NWLR (pt 234) 248 CA.
[12] CAMA Cap C 20 LFN 2020
[13] (1990) 2 NWLR (pt 131) 172 at 230
[14] (1864) - (1842) HAR 461 at 494 (2012) FWLR (pt655) 289
[15] Dr. J O Orojo, opp. Cit. 1
[16] J Nyeruka, *Handbook on Nigerian Company Law and Practice*, (pt I), RSUST, PH, Nigeria (2005) p239.
[17] CAMA Cap C 20 LFN 2020
[18] Cap 124 LFN 2004
19 Ibid CAMA Cap C 20 LFN 2020
[20] CAMA, Cap C 20 LFN 2020, section 244(2)
[21] Ibid section 244(3).
[22] Ibid, section 250
[23] Ibid, section 250
[24] Ibid section 244 (4)
[25] (1993) I NWLR (pt272) 947
[26] Ibid section 234
[27] (1970) AC 1090 at 1108
[28] Ibid section 233

The minority decision does not prevail over the majority decision, and the majority shareholders in the general meeting is the company hereto referred to as corporate democracy just like democracy in political general election where the people's mandate forms the government in real life political elections.

3. Protection of Membership Rights

Nature of Membership Rights
The rights and obligations depend on whether the rights are individual or corporate.

Individual Rights of Membership
There are rights that are attached personally to the status of membership. They are protected by law and the shareholders cannot be deprived of their enjoyment by the company or any group of' members lawfully. These will include right to vote where the shares carry voting rights, the right to refuse to consent to an increase in shareholding, and the right to exercise various statutory rights. For example, in *Pan Atlantic and Forwarding Agencies Ltd. v Aleyi Dieno*,[29] The Court of Appeal held that 'the right to have a proper notice of a meeting and to have a meeting held with a prescribed quorum to take valid decision is a right of the individual and not of a corporate nature'. With regard to the remedy for breach, the member can sue in his personal capacity since the injury is done to him in his individual personal capacity. He does not require the consent or approval of any other member to sue as held in P*ender v Lushington*[30]. The individual members who are suing sue in their own right to protect from invasion, their own individual rights as members as held in *Edwards v Halliwell*[31].

Corporate Membership Right
Aside the individual membership rights, there are qualified minority rights that is rights that can be exercised not by a single individual but by a number of individual members acting in co-operation, for instance by a resolution, and as a result of these rights the member is bound by the decision of the majority. He has the right to take part in the decision-making process in accordance with the right attached to his shares, but he cannot have his way in the face of the majority shareholders.

Shareholders in a general meeting are entitled to consider their own interests and to vote in any way they honestly believe proper in the interest of the company, subject to equitable consideration which was relied upon in *Clements v Clements Bros Ltd*[32]. In that case, the defendant was the owner of fifty-five percent of the issued shares of a family company and also one of the directions of the company. The plaintiff the defendant's niece held forty percent of the shares but was not a director. The defendant proposed, inter alia, resolution to increase the capital so that the plaintiffs' shares would fall below twenty-five percent of the total, thus depriving her of the right to vote a special resolution. Foster, J held that, the defendant was entitled to exercise her majority vote as an ordinary shareholder in any way she wished, but that the exercise must be subject to equitable consideration which could make it unjust to exercise them in a particular way. Accordingly, the resolutions were set aside. The court observing inter alia, that the resolutions were *'*...specifically and carefully designed to ensure not only that the plaintiff can never get control of the company but to deprive her of what has been called her negative control. Also in *Estmanco (Kilner House) Ltd v Greater London Council*[33] Megarry VC in his judgment, while accepting the general proposition that, the shareholders do not owe any fiduciary duties, affirmed that, they must not perpetrate a fraud on the minority and that they are required to act in what they believe to be in the best interests of the company as a whole. Again where directors have controlling shares, there is a greater danger of the interest of the minority being disregarded by the use of their legitimate power as shareholders. Care should also be taken in distinguishing between an individual right and a corporate right of a member as Olatawura, JSC observed in *Globe Fishing Industries Ltd. v Coker*[34]. "The dividing line between personal and corporate right is very hard to draw, and perhaps the most that can be said is that the court will incline to treat a provision in the memorandum of Articles as conferring a personal right on a member only if he has an interest in its observance distinct from the general interest which every member has in the company adhering to the terms of its constitution *'*Quoting with approval in *Pennington's Company Law*[35].

Protection of Individual Membership Rights
A member may institute an action to redress a wrong done to him as an individual member of the company, by making an application to the court for an order of injunction restraining the company from any act or omission affecting the applicant's individual rights as a member[36] as was held in *Pender v Lushington*[37] or for a declaration. Where a member institutes a personal action, he will not be entitled to any damage but to a declaration for doing a particular Act[38]. However, sometimes the personal membership rights of two or more members may have been infringed/ they may bring individual actions or one of them may bring a representative action to enforce the right due to them, by an injunction restraining the company and directors from doing the infringing Act[39]. For the purpose of instituting an action either in a personal capacity or in a representative capacity under Sections 300 or 301, "member*'* includes the personal representative of a deceased member, and any person to whom shares have been transferred or transmitted by operation of law.

[29] Suit No. CA/L/106/84of 15th January 1985 (unreported)
[30] (1877) 6 Ch.D 70 at 80
[31] Supra
[32] (1976) 2 All ER 268
[33] (1982) 1 All ER 437
[34] (1990) 7 NWLR (pt162) 265 at 280
[35] 4th ed. p588
[36] CAMA Cap C 20 LFN 2020 section 300
[37] Supra
[38] Ibid Cap C20, LFN 2004, Section 301 (1)
[39] Ibid section 301 (2)

Protection of Corporate Membership Rights under the Rule in *Foss v Harbottle*

The administration and control of the company is vested in the shareholders majority vote duly exercised in accordance with the memorandum and articles of association of the company, thus where a wrong is done to the corporate right of a member or where wrong is done to the company, it is for the company, or the majority of members to decide whether it should be treated as a wrong which should be redressed or whether it will be overlooked and the majority validly decide not to redress such wrong. The rule is now set down in section 299 of the Act which provides that: 'Subject to the provision of this Act where irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company, can rectify the irregular conduct'. The procedural obstacles which the rule creates for an injured shareholder is immense as in *Edwards v Hailiwell*[40]. The rule has been held to apply not only to incorporated bodies, but also to unincorporated associations. It was applied to trade unions in *Cotter v National Union of Seamen*[41] and *Mbene v Ofili*[42] on the ground that, it was a body possessing a constitution or a set of rules and regulations entitling it to sue and be sued as a legal entity as in *Abubakri v Smith*[43]. Exceptions to the rule in Foss v Harbottle at common law various devices were adopted to reduce the harsh effects of the rule in *Foss v Harbottle* through the creation of various exceptions by the courts in the interest of Justice. These exceptions have now been enacted under section 300 of the Act.

Exceptions to the Rule in *Foss v Harbottle*

At Common Law, only 4 exceptions existed to the rule in Foss v Harbottle, the additional 2 provided for under *section 300 of the Nigerian Companies Law,* were new innovations introduced by the Nigerian legislation. *Section 300* of the *Act* provides thus

> Without prejudice to the rights of members under sections 303 to 308 and sections 310 to 312 of this Act or any other provisions of this Act, the court, on the application of any member, may by injunction or declaration restrain the company from the following, a) Entering into any transaction which is illegal or ultra vires. b) Purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution. c) Any act or omission affecting the applicant's individual rights as a member d) Committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done e) Where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and f) Where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of.

Entering into any transaction which is illegal or ultra vires

If a company does any act which is illegal or ultra vires its powers, an individual member of the company can bring an action to set aside such illegal or ultra vires acts and the Rule in F*oss v Harbottle* will not apply. In *Hutton v West Cork Railway Co*[44], the company was about to be dissolved. A resolution was passed by the shareholders to the effect that money would be paid by the company to its officials as compensation for loss of office, and to other Directors who had never received remuneration for their work. The Court of Appeal held that payment of this sort would be invalid as a company being wound up has no power to make such a payment and that an individual member of the company can bring an action to set it aside. This therefore means that if a company enters into any transaction that is illegal or ultra vires its powers, an individual member of the company can bring an action to set it aside as held in *Parke* v *Daily News*[45].

Purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution

Where the shareholders of a company by ordinary resolution purport to *do* an act which by its constitution or the Act is required to be done by special resolution, an individual member of the company can validly bring an action to set it aside. In *Edwards v Halliwell,* some members of the National Union of Vehicle Builders sued the Executive committee for increasing fees. Rule 19 of the union constitution required a ballot and a two-third approval level by members. Instead a delegate meeting had purported to allow the increase without a ballot. Jenkins L.J granted the members' application holding that doing by an ordinary resolution an act which ought to be done by special resolution constitutes one of the exceptions to the Rule in *Foss v Harbotlle.* Also in *Cotter v National Union of Seamen*[46], it was held that a company should not be able to bypass a special procedure or majority in its own articles. Where this is done, an individual member of the company can bring an action to set it aside. This is aimed at preventing the majority from ratifying by a wrong procedure an act which is in itself wrong.

Any act or omission affecting the applicant's individual rights as a member

Where an act or omission affects the applicant's individual rights as a member of a company, the Courts have always held that such an individual can bring an action to remedy the omission or set such act aside. In *Edwards v Halliwell* Jenkins L.J, held that the purported increment in fees without following due process was an invasion of the personal rights of the applicants as it altered the amount they pay in fees. It was a personal right that the members paid a set amount in fees and retain membership as they stood before the purported alterations as held in *Pender v Lushington*[47].

Committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done

Where a fraud is committed on either the company or the minority shareholders and the directors fail to take appropriate action to redress the wrong, then an individual member of the company can sue to redress same under the Common Law. This can

[40] Supra
[41] Supra
[42] Supra
[43] (1973) 5 SC 31
[44] (1883) 23 Ch.D 654

[46] Supra
[47] Supra

arise where certain members of the company appropriate the company's properties to themselves, where the majority obtained certain advantages by dealing with the company's property, where the directors divert to themselves a contract which should have gone to the company and later purported to ratify their act at a general meeting, where the directors and controlling shareholders made an ill-motivated gift of company's property to others, where the directors have negligently benefitted themselves at the expense of the company, where there was an abuse or misuse of power by the majority etcetera. In *Wallersteiner v Moir (No. 2)*[48], Dr. Wallersteiner who owned 80% of the shares in a company in which Mr. Moir was a minority shareholder used the company's money to acquire another company called Hartley Baird Ltd for himself thereby committing fraud on the company and in contravention of the prohibitions on financial assistance under the English Companies Act[49]. Mr. Moir circulated a letter to that effect to the other shareholders and Dr. Wallersteiner sued him for libel. Mr. Moir counterclaimed asking for £500,000 to be repaid. The libel suit was struck out for want of diligent prosecution and £235,000 awarded against Dr. Wallersteiner. He was also given leave to defend the remaining issues including that of fraud. At a stage, Mr. Moir, having run short of resources applied for money to continue the claim for fraud against Dr. Wallersteiner. Because it is the company that enjoys or will enjoy the benefit of any recovery made in the course of the action, the Court of Appeal held that it will also bear the reasonable costs of the litigation. In *Cooks v Deeks*[50], the first 3 directors of Toronto Construction Co wanted to exclude Mr. Cook, the *4th* director from a business with the Canadian Pacific Railway Company for building a railway line at the Guelph Junction and Hamilton Branch. Each of the directors held a quarter of the shares of the company. So the first 3 directors passed a shareholders resolution declaring that the company is not interested in the contract and went ahead to subsequently take the contract in their own names as against the company. Mr. Cook claimed that the contract did belong to the Toronto Construction Co and the shareholder resolution ratifying their actions should not be valid because the 3 directors used their votes to carry it. The Privy Council advised (held) that the 3 directors had breached their duty of loyalty to the company, that the shareholder ratification was a fraud on Mr. Cook as a minority shareholder and invalid. As a result, the profits made on the contractual opportunity were to be held on trust for the Toronto Construction Co. In *Daniels v Daniels*[51], Templeman J, held that the exception to the rule in *Foss v Harbottle enabling* a minority shareholder to bring an action .against a company for fraud, where no other remedy was available, should include cases where even though there was no fraud expressly alleged, there was a breach of duty by the directors and majority shareholders to the detriment of the company, and the benefit of directors. He went on to add that a minority shareholder who has no other remedy may sue when directors use their powers intentionally or unintentionally, fraudulently or negligently, in a manner which benefits themselves at the expense of the company. In that case the minority shareholders of a company had brought an action against two directors who were the majority shareholders. It was alleged that the company, on the instructions of the directors, sold the company's land to one of the directors, who was the spouse of the other at an undervalue price. The spouse then sold the land later on for a much greater sum hence the minority action for fraud.

Where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders

This may arise where the machinery for convening the meeting is not readily in place or where urgent action is needed and it will be too late to wait for a formal meeting requiring notice. In such a situation, an individual member of the company can maintain an action in order to remedy the wrong or save the situation.

Where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty

The case *of Daniels v Daniels*[52] also applies here as one of the directors benefited from the fraud of underselling the company's land to the director who later resolved it at a much higher value. By *section 301 of the Companies Act,* such a member instituting any action under the exceptions to the rules in *Foss v Harbottle,* whether for himself or in a representative capacity shall not be entitled to any damages but to declaration or injunction restraining the company and/or the directors from doing a particular act. However, the court may award costs to such a person whether or not his action succeeds. In any of the instances above, where one can sue under the exceptions to the Rule in *Foss v Harbottle,* the applicant can institute the action in his own name or in a representative capacity, if also representing other applicants (shareholders) and leave is not needed before the action can be commenced. It is only a member of a company that can institute an action under *section 300 of CAMA.* The personal representative of a deceased member and persons to whom shares have been transferred to or transmitted to by operation of law are included into the meaning of who a member is for the purposes of instituting actions under the exceptions to the Rule in *Foss v Harhotile* .

Derivative Action

Derivative action envisages a situation whereby an applicant sues or defends an action in the name or on behalf of a company. This is different from members' direct action under sections *300 to 302 of the Companies Act,* in which an applicant sues in his own name or in a representative capacity for other applicants. The action ordinarily should be by the company for the wrong done to it but because it had refused to do so, then the right to sue by an applicant would be derived from the right of the company to sue, hence the name derivative action. *Section 303(1)* provides:

> Subject to the provisions of subsection (2) of this section, an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company. Leave of court must be sought and same granted before an applicant can institute or intervene in an action on behalf of the company. In practice however, the application for leave is filed alongside the suit. The leave to intervene or institute an action can only be granted if the court is satisfied that: a) The wrongdoers are the directors who are in control, and will not take necessary action; b) The applicant has given reasonable notice to the directors of the

[48] (1975) 2 WLR 389 at 395
[49] (1948) sections 54 and 190
[50] (1916) 1 AC 554 PC
[51](1978) 2 All E.R 89
[52] Supra

company of his intention to apply to the court under subsection (1) of this section if the directors of the company do not bring, diligently prosecute or defend or discontinue the action; c) The applicant is acting in good faith; and d) It appears to be in the interest of the company that the action be brought, prosecuted, defended or discontinued.[53]

If an applicant fails to prove any of the items listed above in an application for leave, the court will not grant him leave as held in *Unipetrol (Nig) Plc v Agip (Nig) Plc* [54]. Where the application for leave is successful and the applicant instituted or intervened in any matter for or on behalf of a company, the court may at any time make one or any of the following orders: a) An order authorizing the applicant or any other person to control the conduct of the action; b) An order giving direction for the conduct of the action; c) An order directing that any amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to former and present security holders of the company instead of to the company; d) An order requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.[55] For purposes of derivative actions, the following are persons who can apply to court for leave to institute or intervene in an action for or on behalf of a company; a) A registered holder or a beneficial owner and a former registered holder or beneficial owner of a security of a company; b) A director or an officer or a former director or officer of a company; c) The commission; or d) Any other person who in the discretion of the court is a proper person to make an application under section 303 of the Act.

4. Relief on Grounds of Unfairly Prejudicial and Oppressive Conduct

Where the affairs of a company are run in an illegal or oppressive manner, the following persons can make a petition to the court in order to checkmate such excesses or preserve the interests of the petitioner:

i. A member of the company (including the personal representatives of a deceased member and any person to whom shares have been transferred to or transmitted by operation of law);
ii. A director or officer or former director or officer of the company;
iii. A creditor;
iv. The commission; or
v. Any other person who, in the discretion of the court, is the proper person to make an application under section 311 of the Act:[56]

A member can petition to court if:

a) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against the member or members or in disregard of the interests of the member or members as a whole.
b) an act or omission or a proposed act or omission, by or on behalf of a company, or a resolution or proposed resolution of a class or members, was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members or in a manner in disregard of the interests of a member or the members as a whole.

A director, officer, creditor or any other person who in the discretion of the court is the proper person to make an application under sec 311 of the Act can petition to court if:

a) the affairs of the company are being conducted in a manner oppressive or unfairly prejudicial to, or discriminatory against, or in a manner in disregard of the interests of the person; or
b) an act or omission, or a proposed act or omission was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against or in a manner in disregard of the interests of that person.

The Commission can petition if:

a) The affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial or in a manner in disregard of the public interest; or
b) Any actual or proposed act or omission of the company (including an act or omission or its behalf) was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in disregard of the public interest

Where it is proved that the affairs of a company are being run in an illegal or oppressive manner, the Court may make one or more of the following orders:

a) an order that the company be wound up;
b) an order for regulating the conduct of the affairs of the company in future;
c) an order for the purchase of the shares of any member by other members of the company;
d) an order for the purchase of the shares of any member by the company and the reduction accordingly of the company's capital;
e) an order directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorizing a member or members of the company to do any of these acts in the name or on behalf of the company;
f) an order varying or setting aside a transaction or contract to which the company is a party and compensating the company or any other party to the transaction or contract;
g) an order directing an investigation to be made by the commission;
h) an order appointing a receiver and manager of the property of the company;
i) an order restraining a person from engaging in specific conduct or from doing a specific act or thing;
j) an order requiring a person to do a specific act or thing.

[53] CAMA Cap C 20 LFN 2020 Section 303(2) (a-d)
[54] (2002) 14 NWLR (pt787) 312
[55] Ibid section 304
[56] Ibid

5. Investigation of Companies and their Affairs:

The Commission may appoint inspectors to investigate the affairs of a company and report back to it. Such inspectors may be appointed on the application of the company or members holding at least 25% of the issued share capital of the company (for a company having a share capital) or on the application of 25% registered members of a company not having a share capital[57]. The application shall be supported by such evidence as the commission may require for the purposes of showing that the applicant(s) have good reasons for requiring the investigation. The affairs of The Commission will also appoint inspectors to investigate a company where the court so orders. The commission can also on its own volition appoint inspectors to investigate a company[58] where there are circumstances suggesting that:

a) the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or in a manner which is unfairly prejudicial to some parts of its members; or
b) Any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose; or
c) persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members: or
d) the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

The mere fact that a company is being wound up cannot preclude the Commission from appointing inspector: to investigate the company[59]. An inspector appointed to investigate a company may also -investigate a related company if he considers this necessary for the investigation of the company which he was appointed to investigate. It is the duty of all officers and agents of such company to produce all documents and evidence needed by the inspector in relation to the company being investigated and any obstruction of the inspector's work would be treated as contempt of court[60]. The inspector also has the power to call for any director's personal bank account statement wherein any emoluments or part of the emoluments of his office or any money that is connected to the company has been paid into. The inspector submits interim report to the Commission if so directed and must submit final report to the Commission at the close of the investigation. The report does not have the effect of a judgment and so not binding on anybody. However, the report may form the basis of a civil or criminal proceeding against anybody or body corporate indicted in it, and a copy of the report, if certified by the Commission to be a true copy, is admissible in court as the opinion of the inspector in relation to any matter contained in the report[61].

6. Investigation of Company's Ownership

The Commission may appoint one or more inspectors to investigate and report on the membership of any company, where it appears to it that there is good reason to so do, for the purposes of determining the true persons who are or have been financially interested in the success or failure of the company or able to control or materially influence the policy of the company. The ownership of any shares or debentures may also be investigated without necessarily appointing an inspector. The Commission will do this by asking any person interested in those shares or debentures or who has acted as a legal practitioner or agent (subject to the protection of privileged communications) or someone in relation to those shares or debentures to give to the commission any information which such persons have about them. Failure to give such information or deliberately giving false information to the commission in this instant makes such a person liable to fine or imprisonment[62]. Where it appears to the commission that there is difficulty in finding out the relevant facts about any shares and that the difficulty is due to the unwillingness of the persons concerned or any of them to assist the investigation as required by the Act, the commission may in writing, direct that the shares will, until further notice, be subject to the following restrictions:

a) that any transfer of those shares, or in the case of unissued shares any transfer of the right to be issued with them and any issue of them shall be void;
b) that no voting rights shall be exercisable in respect of those shares;
c) that no further shares should be issued in respect of those shares or in pursuance of any offer made to the holders of them;
d) that except in a liquidation, no payment may be made of any sums due from the company on those shares[63].

It is an offence to go against the above restrictions. One may apply to court to lift or vary them. However, the court may remove the restrictions to enable a take-over to be completed while continuing to impose restrictions upon the proceeds of such transfer being withheld from the transferor.

7. Findings, Conclusion and Recommendations

It is noteworthy that voting is very important as it serves as a voice of the minorities who would have otherwise been unruly governed by the majority. It gives the minority a sense of belonging in the election and controlling force of the corporate body as this affords the opportunity to elect directors of their choice, and to remove any erring director if need be. However, poll is demanded depending on members' shareholding rights. A company acts through human agents as its artificial personality. It has its primary organs which are the members in general meetings and the directorates which he acts through. The general meeting is the supreme legislative authority of company and the directors subject to the articles of association are vested with power of managing the company on behalf of the shareholders. r Gower posits: 'both the general meeting and the Board are organs, rather than agents of the company and both the general meeting and the Board may be the company, the former when acting under the reserved powers, the later when acting under an express or general delegation'. Even at common law, there have been exceptional circumstances when the general meeting may in overall interest of the effective operation of the

[57] Ibid section 314
[58] Ibid section 315(2)
[59] Ibid section 315(3)
[60] Ibid section 319
[61] Ibid section 325
[62] Ibid section 328
[63] Ibid section 329

company exercise the power which the Board should exercise, but failed to do so, or becomes incapable of exercising, as provided in section 63 of the Act[64]. The Act provides that[65]:

Notwithstanding the provisions of subsection (3) of this section, members in general meeting may:

(a) Act in any matter if the members of the Board of Directors are disqualified or are unable to act because of a deadlock of the board of directors.
(b) Institute legal proceedings in the name and on behalf of the company if the Board of Directors refuse or neglects to do so.
c) Ratify or confirm any action taken by the Board of Directors.
d) Make recommendations to the Board of Directors regarding actions to be taken by the Board.

The company law which is the governing legislation in Nigeria has in section 230 provided an avenue for minority shareholders to context either in person or by proxy in general meeting, and just like in general election, proxy contest is a very strong tool for minority shareholders to have a say through coalition, and cumulative voting procedures.

The idea of placing in its entirety upon the company the duty to complain and/or to take action in cases of irregularity, with the excuse that the irregularity could be ratified by the majority resolution, is very fatal, unfair, most times prejudicial to the minority members and sometimes to the majority of the members which is the company at large. In conclusion, although the strict adherence to the principle of corporate democracy otherwise known as the *Rule in Foss v Harbotte*[66], has resulted in practical case of gross miscarriage of justice to the minority shareholders, in many others, substantial justice could not have been done without the principle for a proper understanding and practical application of the principle of legal personality principle. Ever since the *Salomon v Salomon & Co. Ltd,*[67] the separate legal entity of a company from its members has stood as a fundamental principle of law, while the veil of incorporation is 'as opaque and impassible as in none curtain. The following measures are imperative: The principle of shareholders democracy otherwise called the Majority Rule should be restricted to incorporated companies. This is in view of the numerous application problems posed by the effort to extend it to unincorporated associations. It is suggested that for the rule to apply to these associations certain standards must be placed to erase these recognized bottle necks. This may include allowing not more than two members to commence suit for and on behalf of those aggrieved members whether with or without their consent to it in writing. It is also suggested that recognition should be placed on control by numerical strength as is in line with modern democracy, and not on share superiority. It is on recognition of the various shortcomings of strict compliance with majority Rule that provision was made for remedies wherein upon application by any member, they court may by injunction or declaration restrain the majority as provided in the Act[68]. Apart from the various remedies created under our statute, a member who alleges any breach can also rely on section 41(33) to bring action praying court to compel the directors of the company to specifically implement what has been agreed upon under a contract or seal in the Memorandum and Articles of Association of their company. Relying on above, a member can insist on strict conformity with the sealed contract between the company and its members interse.

[64] CAMA Cap C 20 LFN 2020
[65] Ibid section 63(5)
[66] (1843), 2Ha77, (2012) All FWLR at 262
[67] (1897) Ac 22, (2012) All FWLR at 266
[68] Opp. Cit. 10, section 300