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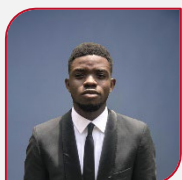
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AN ANALYSIS OF THE EFFICACY OF MINORITY PROTECTION UNDER NIGERIAN COMPANY LAW

Introduction

The protection of the minority shareholders within the domain of corporate activity constitutes one of the most difficult problems facing modern company law. It is not unusual to find majority shareholders running a company in an illegal or oppressive mode irrespective of provisions of the laws regulating the operation of companies in Nigeria or managing the company in an oppressive manner detrimental to the rights of the minority shareholders. Focusing on the effectiveness of these statutory provisions in safeguarding minority shareholders' interests, the analysis reveals strengths and weaknesses in our legal landscape. The remedy for oppressive and unfairly prejudicial conduct, considered a versatile tool for addressing shareholder grievances, takes centre stage in this discourse. Through an examination of its specific clauses and judicial interpretations, the article aims to reveal the practical realities of protecting minority shareholders in Nigeria.

Minority shareholders are individuals or entities that own a relatively small percentage of shares in a company compared to the majority shareholders. These minority shareholders typically do not have significant control over the company's decision-making processes, as their ownership stake is comparatively smaller. However, they still have rights and interests as shareholders, including the right to receive dividends, attend and vote at shareholders meetings, and access information about the company's affairs. Minority shareholders are often protected by laws and regulations governing corporate governance and shareholders rights to ensure fair treatment and prevent abuse by majority shareholders or company management. These protections may include provisions for transparency, disclosure, and avenues for redress in case of oppression or unfair treatment.

General Principle

Upon incorporation, a company becomes a legal person of its own with a personality separate from that of its members. The personality of the company is however run by its human organs, namely the members in general meeting and the board of directors. Only these two organs can act or authorize an act to be done for the company. Section 87 of the Companies and Allied Matters Act (“CAMA”), 2020 (As Amended).

Therefore, where an 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. See section 42 and 341 of CAMA 2020; see also the case of *Abubakar v. Smith* (1973)6 EC 31.

Prior to the enactment of the CAMA, the Courts took cognizance of the rule in *Foss v. Harbottle* (1843 2H. 416 (also reported as 67 E.R. 189)). In this case, the plaintiffs, Foss and Turton were shareholders of the Victoria Park Company which bought land for use as Pleasure Park. Harbottle and others were directors and shareholders in the company. Some of the directors had sold their own lands to the company at inflated prices. The plaintiffs sued to have the directors refund the excess price for exploiting their position to defraud the company. The court held that the wrong was done against the company and not to the plaintiff in their individual capacity. So, the plaintiffs could not sue on behalf of the company without its authorization.

Notably, the courts had started introducing some measure of relief under their equitable and inherent powers to reduce the hardship of the rule in *Foss V. Harbottle*. These exceptions have now been codified in the CAMA.

Exceptions to the General Principle

There are however exceptions to the aforementioned provisions of the law. Any member of a company may apply to the Court where a company or its officers commit certain acts such as:

- 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;
- 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 duty; and

- g. Any act or omission where the interest of justice so demands. Section 343 of CAMA 2020.

Interestingly, a member under this heading includes the personal representative of a deceased member; and any person to whom shares have been transferred or transmitted by operation of law.

Reliefs

The law recognizes certain actions that can be brought by minority shareholders against the company which are:

- Personal Action
- Representative Action
- Derivative Action

The remedies available to personal and representative actions are either damages for loss or breach of right, injunction, or declaration. The provision, however, allows a member to institute a personal action to enforce a right due to him personally, in such circumstance, he shall be entitled to damages for loss incurred on account of the breach of that right and a declaration or injunction to restrain the company and/or the directors from doing a particular act. However, in a derivative action, an applicant can 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.



Also, CAMA 2020 comes equipped with a powerful tool which is the remedy for oppressive and unfairly prejudicial conduct, designed to safeguard the rights of minority shareholders against unfair or prejudicial treatment. This remedy empowers a

diverse range of actors beyond just minority shareholders to petition for relief when a company engages in oppressive, unfairly prejudicial, or discriminatory conduct. This includes directors, officers, creditors, and even the Corporate Affairs Commission (CAC) acting on behalf of members. Section 353 of CAMA 2020.

Accordingly, if the court is satisfied that the petition is well founded, the court may make one of the following orders amongst others:

- That the company be wound up.
- Regulate the conduct of the affairs of the company.
- Direct an investigation be made by the Corporate Affairs Commission.
- Appoint a receiver or a receiver and manager of property of the company.
- Restrain a person from engaging in specific conduct or from doing a specific act or thing. Section 355 of CAMA 2020.

However, solidifying clarity in practice remains a challenge. Case studies like **Ogunade v. Mobile Films (West Africa) Ltd (1976) 2 FRCR 101** reveal inconsistencies in applying CAMA's terminology. The court upheld the need for a continuous pattern of intentional harm for "oppression," potentially neglecting singular acts of significant harm. It underscored the importance of upholding principles of corporate governance and fairness in the conduct of business affairs, even in closely held companies where majority shareholders may wield significant control. Conversely, cases like **Aero Bell Nig. Ltd. v. Fidelity Union Merchant Bank Ltd (2018) LPELR-45338(CA)** applied "unfair prejudice" to the singular act of declaring lower dividends, highlighting its broader reach. This lack of consistent guidelines generates uncertainty for potential applicants and undermines the deterrent effect on dominant shareholders.

Conclusion

It is no doubt that the principle of majority rule is a democratic corporate rule which seeks to maintain equilibrium amongst shareholders in terms of their varying shareholding strength. While CAMA's oppression remedy presents a promising framework for protecting minority shareholders, its effectiveness hinges on overcoming critical challenges. Enhancing clarity surrounding key terms, addressing the underutilization of the CAC's powers, and fostering consistent judicial application of the remedy are all crucial steps. The flexibility of the remedy for oppressive and unfairly prejudicial conduct lies in its broad scope and the substantial discretion granted to courts in crafting tailored remedies. These can range from drastic measures like winding up the company to more targeted interventions like regulating the company's future conduct, mandating the purchase of a member's shares by other members of the company itself, varying or setting aside disadvantageous transactions, restraining specific conduct or actions and requiring specific actions or compliance.