

## **A CRITICAL APPRAISAL OF THE DOCTRINE OF CORPORATE PERSONALITY UNDER THE NIGERIAN COMPANY LAW**

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### **INTRODUCTION**

The purpose of this work is to examine the practical, statutory and judicial application of the unique doctrine of corporate personality under the Nigerian Company law, its varying legal implications on corporate governance, comparison with the English doctrine of Corporate personality, when the veil of incorporation will be pierced as well as dichotomization of the doctrine through the extraction of the doctrine of human personality acting as the mouthpiece of the Company's activities.

### **BRIEF HISTORICAL BACKGROUND OF COMPANY LAW IN NIGERIA**

The history of Nigerian Company Law could be briefly traced to the Joint Stock Companies Act 1855 which introduced the principle of limited liability of Companies and the role of Deed of Settlement was highly practised in the United Kingdom<sup>1</sup>.

With the reception of English laws into Nigeria due to Colonialism, the first legislative attempt was made in 1912 to stem the practice of going to England for the position of the law on controversial Company issues. However, the Companies Ordinance of 1912 was only in force in the colony of Lagos. The

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<sup>1</sup> O. Orojo: Company Law and Practice in Nigeria, 3rd Edition, Mbeyi & Associates (Nig) Ltd, 1992 @ page 17

amalgamation of Southern and Northern Nigeria in 1914 brought about the extension of the Ordinance to the entire Country.

Progressively, the Companies Decree 1922 repealed both 1912 and 1917 Ordinances. The 1922 Ordinance was based on the United Kingdom Companies Act 1929. In 1968, a new Companies Decree was promulgated to replace the 1922 Companies' Ordinance. The Company Act 1968 was mainly based on the United Kingdom Companies Act 1948 as part of the recommendations of the Jenkins Committee<sup>2</sup>. The 1968 Companies Act being a federal law was listed in the Exclusive Legislative list of the 1979 constitution. To boost the innovations of the Companies Act 1968, the Nigerian Enterprise Promotion Act 1977<sup>3</sup> and the 1968 Act made copious provisions for the first time on matters such as mandatory provisions for accounts and greater accountability of Directors and Part X made inputs towards checking the excesses of company officers.

Defects in the 1968 Act gave birth to the Law Reform Commission set up in 1987 headed by his Lordship Hon Justice Dr Olakunle Orojo (Rtd) who together with his colleagues on the Commission ushered in the present Companies and Allied Matters Act 1990<sup>4</sup> hereinafter referred to as CAMA and other amendments such as the Investment and Securities Act 2007<sup>5</sup>.

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<sup>2</sup> See the Preamble to the 1968 Companies Act

<sup>3</sup> Now Cap N 1 17 Laws of the Federation 2004

<sup>4</sup> Cap 59 Laws of the Federation 1990

<sup>5</sup> Investment and Securities Act Cap No 29 of 2007

## **THE DOCTRINE OF CORPORATE PERSONALITY**

This is a universal legal concept, which postulates that an incorporated company is, as a matter of law a separate legal entity distinct from the individual(s) who are its shareholders and directors and are in control of its operations. The business (and the debts and other obligations) of the company is the company's business (and debts and obligations) and not the shareholders' or directors'.

This concept was laid down under the common law in the celebrated case of *Salomon Vs Salomon and Co Ltd*. In that case Salomon a leather merchant and boot manufacturer in 1892 formed a limited company to take over his business. Salomon and six other members of his family subscribed to its memorandum for one share each, and two of his sons were appointed directors. The Company paid about £39,000 to Salomon for the business, the mode of payment being to give Salomon £10,000 in debentures secured by a floating charge on the Company's asset and £20,000 shares of £1 each, the balance of £9,000 was paid to Salomon in cash. The business did not however prosper and when it was wound up a year later its liabilities (including debenture debt) exceeded its asset by £8,000. The liquidator representing the unsecured creditors claimed that the Company's business was in actual fact still Salomon's liability for debts incurred in carrying it on and therefore Salomon should be ordered to indemnify the Company against its debts and payment of the debenture debt to him should be suspended until the Company's other creditors are paid. The trial judge agreed with the reasoning of the liquidator and he further held that all the subscribers of the memorandum

(except Salomon) held their shares as mere nominees because Salomon's motive in forming the Company was to use it as an agent to manage his business for him. A similar position was taken at the Court of Appeal and Salomon went further to contest the issue at the House of Lords where Lord McNaughten stated the position as follows.<sup>7</sup>

“When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate “capable forthwith’, of exercising all the functions of incorporated company”. Those are strong words; there is no period of minority on its birth, no interval of incapacity. I cannot understand how a body corporate such as this made capable by statute can lose individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The Company is at law a different person altogether from the subscriber... Nor are the members (subscribers) liable...”

On the above premise of the Learned Lord Justice, it is submitted that this ratio settles the doctrine of corporate personality, which confers the toga of *personae juris* on a company. It is able for instance to create a *personae juris*

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<sup>6</sup> (1897) AC 22

<sup>7</sup> At p. 51

capable of enjoying legal rights to own property, has a perpetual succession and its liabilities limited. In buttressing this position, the court in the case of *Lee v Lee's Air Farming Ltd*<sup>8</sup> and *DHN Food Distributors Ltd v Tower Hamlets Lbc*<sup>9</sup> held that the shareholders of such Companies are separate Legal personalities *inter se*.

In the words of Gower<sup>10</sup>, the concept of Corporate Personality was inter-alia introduced cater for circumstances which tends to accumulate all the debts and liabilities upon an individual. The doctrine therefore act as a shield and helmet to such individual(s) who owns all or substantial amount of shares of a company.

However, another dimension, which cannot be overlooked, was enunciated by *Denning L.J in Bolton (Engineering) Co. Ltd. v Graham and Sons*<sup>11</sup> 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 also has hands, which holds the tools and act in accordance with direction from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will

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<sup>8</sup> (1960) 3 ALL E.R 420

<sup>9</sup> (1976) 3 ALL E.R 462

<sup>10</sup> Gower: Modern Principles of Company Law

<sup>11</sup> (1934) 1 K.B 57

of the Company and Control what it does.....”

The above assertion by the Learned Lord Justice connotes the independent legal personality of the Company as fundamental to the whole operation of business through Companies. The legal personality concept under the Company therefore affects its structure, existence, capacity, powers, rights and liabilities.

The above reasoning was given approval in the celebrated case of *Lennards Carrying Co. v Asiatic Petroleum Ltd*<sup>12</sup> where *Viscount Haldane L.C* said:

“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 center of personality of the Corporation.

This ratio is on all fours with the decision earlier considered in *Lee v Lee Air Farming Ltd*<sup>13</sup> where the court held that Lee is a mere agent of the Company.

### **THE CONCEPT OF LIFTING THE VEIL**

Under the English doctrine there are a number of exceptions to the separate legal personality principle; i.e. where the courts are prepared to lift the ‘mask’ or ‘veil’ of incorporation and look at what has really been going on behind the scenes in the company. To rely on the dictum of *Devlin J*, in *Bank Handel v*

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<sup>12</sup> (1915) A.C 705 at 713-714

<sup>13</sup> *Supra*

*Slatford*<sup>14</sup> who opined as follows:

“... the legislature can forge a sledge hammer capable of cracking open the corporate shell...”

and Gowers complements this by further opining that:

“... the courts have sometimes been prepared to have a crack...”<sup>15</sup>

It could however be deduced from the above reasoning that the veil of incorporation can be pierced either by statutes or the courts to avert fraud and injustice on the person of the company.

In answer to the statutory flavour of lifting the veil, under the English law, section **165** of the UK Companies Act 1948 was given approval in the judicial conclusion of the master of the Rolls: Denning M.R where he lend credence to this by asserting in *Norwest Holst v Secretary of State for Trade*<sup>16</sup> that;

“The whole management and control is in the hands of the directors. They are self-perpetuating oligarchy; and are virtually unaccountable.... The question is asked: quis custodiet ipsos custodies? Who will guard the guards themselves...”

The answer to this poser was put forward by the Learned Lord Himself<sup>17</sup> in

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<sup>14</sup> (1953) 1 Q.B 248 at 278

<sup>15</sup> *Ibid* Gowers 4th Edition

<sup>16</sup> Denning L.J Master of the Rolls

<sup>17</sup> Op. cit

the case of *Waller Steiner v Moir*<sup>18</sup> as follows:

“It is because this legislations are beyond the reach of ordinary individuals that this legislation has been passed so as to enable the Department of Trade appoint inspectors to investigate the affairs of the Company”

The whole essence of the appointment is to ensure that the veil is lifted for economic realities.

**i. ISSUANCE OF BILLS OF EXCHANGE**

In piercing the veil, section **631** of the Bill of Exchange Act<sup>19</sup> provides that if any officer of a Company issues or direct the issuance of any bill of exchange, promissory notes, endorsements, cheques or order of money or goods without the name of the Company properly written, the individual shall be held liable by virtue of Section **63 (4) (c)** and credence was lend to this in *Max Form Spa v Mariani and Goodville*<sup>20</sup> where it was held that where an officer signed a Bill of Exchange in which the Company was described by a trade name; and the drawee and signatory were different, the signatory could be held to have signed on behalf of the drawee and was therefore liable.

**ii. PUBLIC POLICY**

Also, the courts are always ready to lift the veil of incorporation where such veil tends to be used as a shield contrary to public policy. Hence, in *Daimler Co.*

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<sup>18</sup> (1978) 3 ALL E.R 217 @ 292

<sup>19</sup> See Exchange Control Act 1962 (Now cap 113 L.F.N 1990)

<sup>20</sup> (1981) 2 Lloyd's Rep 54, C.A

*Ltd. v Continental Tyre and Rubber Co. Ltd*<sup>21</sup> the House of Lords lifted the veil after considering the fact that all except one of the directors were Germans who possess an enemy character.

### **iii. EVASION OF TAXES**

The veil of incorporation will further be pierced when a company uses its legal personality to evade the payment of tax. According to Gowers,<sup>22</sup> each case where they have regarded the subsidiary as agent of the parent can be matched with another in which they have refused to do. He further posited that the cases revealed no consistent principle beyond a refusal by the legislature and judiciary to apply the logic of the principle laid down in *Salomon v Salomon and co Ltd*<sup>23</sup> where it is too flagrantly opposed to justice, convenience or interests of the revenue.

### **iv ILLEGALITY**

Where the law will be employed as an instrument of fraud, the doctrine of corporate personality cannot be used to protect an illegal venture and this was the reasoning behind the decision in *Merchandise Transport Ltd v British Transport Commission*<sup>24</sup>

### **V AGENCY**

Suffice to add that the courts have been careful in the construction of

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<sup>21</sup> (1916) A.C 307

<sup>22</sup> Supra

<sup>23</sup> Supra

<sup>24</sup> (1962) 2 Q.B 173

implied agency relationship to seek some indicia of real agency relationship such as control by the holding company over the management and finances of the subsidiary's affairs. It is submitted that within the corporate parlance agency is a means of avoiding the corporate personality principle where the justice and circumstance of the case so demands.

## **Vi TRUST**

Invariably, under the same guise, where a company is holding share in trust for third parties and the management of the company is in the hands of the trustees, the court may lift the veil of incorporation so as to appropriate the company's property with the terms of the trust. Hence, in *The Abbey, Malvern Wells Ltd v Ministry of Local Government and Planning*<sup>25</sup> Dankwerts J accepted the fact that a company held all its property on charitable trust when all the shares in it were so held and its article of association provided that the trustees were to be its governing body.

## **Vii LIFTING THE VEIL UNDER THE FEPA ACT 2004**

Section **37** of the Federal Environmental Protection Act Cap 131 1990<sup>26</sup> provides that where any offence against the FEPA Act or any regulations made thereunder has been committed by a body corporate or by a member or a partnership or other firm or business, every director or officer of that body corporate or any member of the partnership or any person concerned with the management of that business or firm shall, on conviction, be liable to a fine not exceeding N500,000.00 for such offence, and, in addition the body corporate, firm or partnership shall be directed

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<sup>25</sup> (1951) Ch 728

<sup>26</sup> Cap F 10 L.F.N. 2004 (as amended)

to pay compensation for any damage resulting from such breach thereof or to repair and restore the polluted environmental area to an acceptable level as may be approved by the Federal Environmental Protection Agency.

In effect, this is another instance where the corporate veil will be lifted where a company wants to hide under the corporate veil to pollute the environment.

#### **Viii LIFTING THE VEIL UNDER THE ICPC ACT 2003 AND EFCC ACT 2004**

The Corrupt Practices and other Related Offences Act No 6 of 2003 made provision for varying offences which cut across section 12 – 29 of the Act. Section 2 of the Act under consideration defines a person under the Act to include juristic persons and natural persons. For instance, section 23 of the ICPC Act 2003 provides that without prejudice to any sentence of imprisonment under the Act, a public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence where such gratification is capable of being valued or is of a pecuniary nature or Ten thousand Naira, whichever is the higher.

By implication, officers of a company will be punished where they run foul of the Act as the corporate shield will not avail them due to the doctrine of corporate criminal liability in the statute.

In the same vein, the Economic and Financial Crimes Commission (Establishment) Act No 1 of 2004 made provision for offences relating to corporate bodies and officers administering them. For instance, section 7 of the EFCC Act 2004 empowers the commission to investigate any person, corporate body or

organization which has committed an offence under the Act in relation to economic and financial crimes. Section 14 expressly states that persons who are officers of the bank, financial institutions or other non financial institution who fails to comply with the provisions of the EFCC 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 such imprisonment and fine.

Having discussed the doctrine of corporate personality vis-à-vis the grounds upon which the veil could be lifted under the English and Nigerian company laws, it is submitted that there should not be in existence the absence of statutory definition of misuse of corporate opportunity afforded by the doctrine under the English law: the expression is one that has been carried by judges and academics to generally refer to a situation where a director, officer or third parties interest will not conflict with that of company either directly or indirectly.

## **THE APPLICATION OF THE DOCTRINE UNDER THE NIGERIAN COMPANY LAW**

The Nigerian courts had at various times upheld the doctrine of corporate personality as it applies to corporate administration governance and control. The principle was famously celebrated in the case of *Marina Nominees Ltd v Federal Board of Inland Revenue*<sup>27</sup> where Aniagolu JSC (as he then was) stated as follows:

“..... the truth however is that it is a company

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<sup>27</sup> (1986) 2 NWLR (PT 20) @ Pg 61

registered under the Companies Act having its full legal status on the principles enunciated in *Salomon v Salomon and Co Ltd*<sup>28</sup> and must be subject to all incidents of incorporation.

What transpired in this case was that Peat Marwick Casselton and Co. a firm of accountants acted as secretary to a number of its client companies. In March, 1964 the firm incorporated the Marina Nominees Ltd, the appellant to perform secretarial duties. The company had other objects. It had no staff of its own. All the staff who carried out the secretarial duties were employees of the holding company. A dispute arose between the company; Marina Nominees Ltd and the Federal Board of Inland Revenue as to whether the company should be liable to pay tax on income it earned and the Supreme Court held inter-alia that an incorporated company must be regarded as a separate entity from anyone of its shareholders and subject to all incidents under the Companies Act of a company so registered.

Jurisprudentially, within the Nigerian context the underlying foundation upon which the above position was premised was handed down in the recent case of *Iyke medical Merchandise v Pfizer Inc*<sup>29</sup> where the doctrine of juristic personality was generally appraised and the phraseology " juristic person was recognized to include:

- i. Natural persons, that is to say human beings

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<sup>28</sup> Supra

<sup>29</sup> (2001) FWLR (PT 53) 62

- ii. Corporations aggregate and corporations sole with perpetual succession.
- iii. Companies incorporated under the companies Act,
- iv. Certain unincorporated associations granted the status of legal personae by law such as:
  - a. Registered Trade Union
  - b. Partnership and
  - c. Friendly societies or sole proprietorships

This doctrine was concretized in (iii) above with all the attendant incidents of incorporation and within the Nigerian context. The case of *A.C.B v Emostrade Ltd*<sup>30</sup> recently decided by the Supreme Court; per *UWAIFO JSC* also held that

“What was needed to be proved as to the juristic personality of the plaintiff was whether there was evidence that it was duly incorporated”

The answer to this judicial poser is that upon production of the certificate of incorporation the company wears the elegant corporate personality cloak. To buttress this, the court in *Habib Nig. Bank Ltd v Ochete*<sup>31</sup> stated that as from the moment of incorporation, it legally assumed a separate and distinct personality from the plaintiff and his wife as well as others behind it. It is thus submitted that from that moment it puts on a corporate veil beyond which no one can penetrate

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<sup>30</sup> (2002) FWLR (PT 104) 540

<sup>31</sup> (2001) FWLR (PT 54) 384

except it is lifted in a manner authorized by law. It could own property and accept transfer of assets and liabilities in its corporate name.

The doctrine further postulates that only a company can bring an action for any wrong done against it since it has its own name by virtue of its incorporation<sup>32</sup>. The legal implication also appears to be that a company not registered in Nigeria is a legal person and may sue in a Nigerian court. This postulation was given judicial approval in the case of *Kitchen Equip W.A. Ltd v Staines Catering Equip Int Ltd*<sup>33</sup>

In the light of the above, it has been held in the Nigerian case of *Philips v Abou Diwan*<sup>34</sup> that the shareholders are not the individual owners of the company's property and have no powers as individuals to dispose of the company's property. This in essence implies that the liability of individual shareholders is limited to the number of shares subscribed to and does not cover the unsubscribed assets of the shareholders since they are distinct from the company's assets.

A company operates through its officers and agents who act as its alter ego. The ratio of *Denning L.J.*<sup>35</sup> in the case of *Bolton (Engineering Co. Ltd v Graham and Sons*<sup>36</sup> to the effect that a company can be likened to a human body buttressed the above position. This was also upheld by Aniagolu JSC (as he then

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<sup>32</sup> Ramachand v Ekpeyong (1975) 5 S.C. 29

<sup>33</sup> UNREPORTED FCAL/17/82

<sup>34</sup> (1976) 2 FRCR 24

<sup>35</sup> Ibid @ p. 15

<sup>36</sup> Supra

was when he quoted Viscount Haldane L.C.'s ratio in the case of *Lennards Carrying Co. v Asiatic Petroleum Ltd*<sup>37</sup> in *Trenco Nig. Ltd. v African Real Estate Ltd*<sup>38</sup> to the effect that a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent or its officers.

In addition, in the case of *Government of Midwestern State v Mid Motors Nig. Co. Ltd*<sup>39</sup> it was held that as a legal person a company can sue and be sued but the action must be in the name by which the Company is registered<sup>40</sup>. Statutorily, under the Companies and Allied Matters Act 1990<sup>41</sup> the doctrine was given a respectable cloak as CAMA<sup>42</sup> enthused in section **37**

“As from the date of incorporation mentioned in the Certificate of incorporation, the subscriber 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 capable forthwith of exercising all the powers and functions of an incorporated Company including the power to

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<sup>37</sup> (1915) AC 705 at 713 – 714

<sup>38</sup> (1978) 1 LRN 146 @ 15336.

<sup>39</sup> (1977) 10 S. C. 43

<sup>40</sup> *Njemanze v Shell B.P. Port-Harcourt* (1966) 1 All NLR 8.

<sup>41</sup> Cap 59 LFN 1990.

hold land and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company in the event of its being wound up as is mentioned in the Act.

The Nigerian version of the organic theory was also buttressed in the case of *Adeyemi v Lan & Baker Nig. Ltd*<sup>43</sup> where the court held that one of the consequences of a Company's incorporation is that a Limited Liability company only exists in the eye of the law, it can only operate by means of human beings; usually a company acts through its human agents such as directors, managers and officers whose actions can be attributed to that of the Company.

However, a person will be personally liable for a Contract made in his own name without disclosing either the name of or the existence of a principal to the other Contracting party even though he may in fact be acting on a principal's behalf. Once a person puts himself as a contracting party, whether as an agent or a principal, he will continue to be liable even after the discovery of the agency by the other party. The only condition in which such an agent will be free from personal liability is a clear and unequivocal election by the other contracting party that the searchlight to detect such an illegality or fraud is to look to the principal alone.

The above assertion will lead us to the circumstances where the Corporate

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<sup>42</sup> Ibid @ pg 5

<sup>43</sup> (2000) 7 NWLR (PT. 663) 33

Shell will be cracked but before we arrived at that juncture, it is apposite to appreciate the position in *Sotuminu v Ocean Steamship (Nig) Ltd*<sup>44</sup> where the court held that a solicitor may institute an action in the name of the Company without the Company authorizing the action but the court has the power to have such suits struck out. Hence, the court buttressed this assertion in *Ramachand v Ekpeyong*<sup>45</sup> that only the Company can bring an action for any wrong done to it; since it now has its own name by virtue of incorporation.

Varieties of exceptions to this sacred doctrine were statutorily codified by CAMA. For instance in cases of investigation into related companies which can be conducted by virtue of section **316** of CAMA upon an inspector being appointed by the commission<sup>46</sup> to investigate the affairs of a Company, the inspector, may if he thinks it necessary for the purpose of his investigation, investigate also the affairs of any other related Company, and report on the affairs of such other related Company so far as he thinks the result of his Investigation thereof are relevant to his main investigation and this provision is in consonance with the ratio of Denning L.J earlier Considered<sup>47</sup> in the case of *Norwest Holst v Secretary of State For Trade*<sup>48</sup> where section **165** of the U.K. Companies Act was applied. It is apposite to submit that the Section was not meant to witch hunt but the court has the power to have such suits struck out. Hence, the court buttressed this assertion to ensure that the veil is unveiled for accountability in the face of economic

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<sup>44</sup> (1972) 12 SC 93

<sup>45</sup> (1975) 5 S.C. 29

<sup>46</sup> Corporate Affairs Commission

<sup>47</sup> Ibid at p. 8

<sup>48</sup> Supra

realities.

In addition, a fair look at section **338** of CAMA elucidate on the dichotomy between holding and subsidiary Companies in the face of lifting the veil so that subsidiaries will not hide under the toga of corporate personality of the holding Company to perpetrate fraudulent practices or deprive the government of revenue accruing to her from the profits made<sup>49</sup>. The section<sup>50</sup> provides

“(1) subject to subsection 4 of this section, a company shall for the purposes of this Act be deemed to be a subsidiary of another company if ...  
The Company is a member of it and controls the composition of its Board of Director, or holds more than half in nominal value of its equity share capital or The first mentioned Company is subsidiary of any company, which is that other subsidiary.”

Having dealt with the differences in both jurisdictions, it is apposite to pierce the veil of incorporation to discover the actual financial return of either Company.

Be that as it may on the legislative sledgehammer, which cracks open the corporate shell, the Courts will not hesitate to unveil the mask of incorporation where it discovers that there exists reckless or fraudulent trading. In the Nigerian

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<sup>49</sup> Marina Nominees Ltd. v FBIR supra

<sup>50</sup> SC 338 (1) CAMA CAP 59 LFN 1990

case of *Nathaniel Adeniji v State*<sup>51</sup> the court held that any business which appears to have been handled recklessly or with intent to defraud, the court may declare that any person who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally liable for all or any of the debts or other liabilities of the Company<sup>52</sup>. It is submitted that the work of the Court have been made easier by Section **506(1)** of the CAMA which provides that if in the course of winding up of a company, the act has been carried on in a reckless manner or with intent to defraud, the creditors of the Company or creditors of any person for any other purpose, the receiver or liquidator or contributory of the company may, if it thinks proper to do so, declare that any person who were knowingly parties to the aforesaid be made personally liable.

The court went further in *Yesufu v Kupper International N.V*<sup>53</sup> that where a director is in the eyes of the law, an agent of the Company, for which he acts, the general principle of agency will apply. The Supreme Court held that where a director enters into a contract in the name of or purporting to bind the company, it is the Company, the principal, which is liable on it, not the director. The director is not personally liable unless it appears that he undertook personal liability. For instance, a Company's director cannot be held liable for the loan granted to the Company in good faith.

Recent developments have shown that the then "Failed Bank Tribunal" was also empowered to lift the veil of incorporation. In the case of *Macebuh v*

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<sup>51</sup> (1992) 4 NWLR (PT 248) 1

<sup>52</sup> SC 93 of CAMA Cap 59 LFN 1990

<sup>53</sup> (1996) 5 NWLR (PT 248) 1

*National Deposit Insurance Corporation*<sup>54</sup> the power of the tribunal to lift the corporate veil was provided in the judgment thus;

“By virtue of Section 3 (3) (6) (ii) of the Failed Banks Decree,<sup>55</sup> the power to lift (was vested in the tribunal) the Corporate veil of a corporate body indebted to a failed Bank to determine the liability of its members who may be liable jointly or severally for the debts owed by the corporate body to the Failed Bank<sup>56</sup> .....”(Italics mine)

The tribunal opined further that the power of to lift the veil as provided above should be exercised where the Tribunal is satisfied on the evidence before it that it is necessary to do so in the interest of justice. It is therefore our respectful submission that no judicial body should hold tight the principle of corporate personality, where the interest of Justice, convenience and evasion of tax obligations will render a person liable for the debt of a corporate body where the above ground exists.

Procedurally, in *Gresham Life Assurance v The Registrar of Companies*<sup>57</sup> the Nigerian Supreme court held that the veil of incorporation can be lifted in order to determine whether a foreign Company has a place of business in Nigeria or not.

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<sup>54</sup> (1997) 2 F.B.T. L. 4

<sup>55</sup> Failed Banks Decree No 18 of 1994

<sup>56</sup> Page 10 paragraph 2 of the Judgment

<sup>57</sup> (1973) 1 ALL NLR (PT. 1) 617

Furthermore, within the Nigerian Context, it is worthy of note to state that Section **290** of CAMA is an in road to lifting the veil where the directors of a company fail to apply borrowed money for purposes for which it was borrowed, they shall be personally liable by subsection (c) of the same section but the intent to defraud must be proved before they can be liable.

In consolidating the above statutory provision the same Act (CAMA) under its Section **506** provides that where it appears that a Company is being carried out in a reckless manner. The veil of incorporation may be lifted where a Company is a sham or puppet of its controlling shareholders.

In essence, the case of *Olaogun Ent. Ltd v Saeby J & M<sup>68</sup>* is to the effect that there is no local statute, which authorizes a company not incorporated in Nigeria to sue and be sued in its incorporated name.

It therefore follows that a foreign Company can sue and be sued in its corporate or registered name even though it is not locally registered and without the requirement of its suing through an agent. It can therefore sue on its own right.

## **RECOMMENDATIONS**

The present trend in which the Economic and Financial Crimes Commission lifts the veil on erring corporate offenders under sections 7, 14, 15(3) 17, 18 and 20 only to mention a few should be sustained. It is submitted that the Nigerian National Assembly should not in any way tamper with the Anti graft agency laws

as is being canvassed in some quarters.

It is recommended that a Company's status be enhanced so as to be subjected to definitions of persons under our Interpretation laws and other local statutes. For instance the position in the case of *PAN ASIAN AFRICAN CO LTD v NATIONAL INSURANCE NIG LTD*<sup>59</sup> that a company as a legal person can occupy residential premises would be a healthy development for our property laws.

Notwithstanding the notion that decrees are generally obnoxious, innovative decrees such as Failed Banks Tribunal Decree No 18 of 1994 should be invoked to lift the Corporate Veil and it is apt to state that such worthwhile decrees be incorporated in subsequent parliamentary reform.

It is apposite to recommend that unless where a Company's name becomes an issue before the Court, mere incorporation in the Company statute is sufficient evidence for it to assume the toga of a juristic personality coupled with due compliance with other enabling laws<sup>60</sup>.

## **CONCLUSION**

This article discussed the rule in the famous Salomon's case that a Company as an artificial entity is separate and distinct from its members i.e. the individuals who subscribe its shares as well as the Memorandum and Article of Association. The doctrine is therefore sacred because of the various decisions

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<sup>58</sup> (1964) NNLR 30.

<sup>59</sup> (1982) 9 S.C 1

<sup>60</sup> Nigerian Enterprises and Promotion Act 1989, Now Cap. 303 LFN 1990.

(both foreign and local) where civil and criminal liability will arise in respect of company officers as defined under section 650 of CAMA earlier examined in the light of the decisions in a variety of cases such as *Trenco Nig. Ltd. vs. African real Estate*<sup>61</sup> and *Nathaniel Adeniji v State*<sup>62</sup> only to mention a few.

It is observed that practices, statutes and case laws support the toga of *personae juris* of a Company. In this vein, a person suing a Company must sue in the name by which the Company is registered. Hence, to maintain an action, it is not legally required to prove that the Company is a legal person unless an issue has arisen thereof and the certificate of incorporation of such Company will be prima facie evidence of incorporation under the 1990 Act.

On a final note, decisions such as *Banque De L'afrique Occidentale v Habu, Iliasu & Savage*<sup>63</sup> which is to the effect that a Company's debt is different from that of the individuals who own the company is healthy to corporate governance within the Nigerian terrain and other instances of cracking the Corporate shell to lift the veil appears settled.

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<sup>61</sup> Supra

<sup>62</sup> Supra

<sup>63</sup> Supra