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AN APPRAISAL OF THE NATURE OF SHARES, THE SHAREHOLDERS' RIGHTS AND LIABILITY UNDER THE COMPANIES AND ALLIED MATTERS ACT, 2020

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Abstract

Shares confer membership of a company on its holders with the corresponding rights and liabilities. However, the nature of shares, rights and liabilities of shareholders appears to be one of the recondite areas in corporate law. Consequently, the crux of this paper is to appraise the nature, rights and liabilities of shareholders under the Companies and Allied Matters Act, 2020. The paper copiously demonstrates shares as interest of a shareholder in a company measured by a sum of money as well as bundle of rights and liabilities. The extant Companies Act provides a galaxy of rights and liabilities of shareholders. The paper also discusses the numerous challenges/obstacles which shareholders face in the process of enforcing their rights. The paper highlights the need to reconsider and amend the provisions of the law to address these challenges. It notes the existing and highly commendable efforts under the Companies and Allied Matters Act 2020 particularly, the innovations pertaining to the right of a shareholder to be entitled to damages for any loss incurred on account of the breach of that right and the fact that erring directors are personally liable for damages to the aggrieved shareholders.

Keywords: Shares, Rights, Liability, Damages

1. Introduction

The term share has assumed varying legal colourations over time. During the period of the old Deed of Settlement of company, the partnership property vested on the trustees with members having a kind of "shares" which entitled them to equitable interest in the assets of the company. The snag with this arrangement is that the nature of this equitable interest is not exactly clear as members of the company could not lay claims to the assets of the company while the company is still inexistence and they could also not stop directors from disposing off assets of the company.[1]

Legal ingenuity enabled these unincorporated associations to operate with many of the advantages of incorporation by use of trusts. The company would be formed under a deed of settlement under which the subscribers would agree to be associated with an enterprise with a prescribed joint stock divided into a specified number of shares, the provisions of the shares, the provisions of the deed would be variable with the consent of a specified majority of proprietors... and the company's property would be delegated and vested in a separate body of trustee, some of whom would often be directors also.[2] When incorporated companies replaced the Deed of Settlement of companies, the same view of the company shares which held sway during the Deed of settlement era persisted. However, in case of incorporated company, the company was seen as holding its assets in trust for members of the company. In effect, the company is now a trustee, with the shareholders part owners of the said company.[3] This view of share is in accordance with the separate legal entity of companies. Accordingly, once the company is registered, it becomes a legal entity distinct and separate from its members:

> According to Section 42, 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

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[1] Gower and Davies *Principles of Modern Company Law* (Eight edn, India, Sweet and Maxwell, 2008) 816

[2] Gower and Davies *Principles of Modern Company Law* (Sixth edn, USA, Sweet and Maxwell, 1997, 29

[3] Masajuwa, F. U. 'Shares and Class Rights in Nigeria's Company Law: A Critical Overview' [2009] *Igbinedion University Law Journal* (8) 54.

be a body corporate by the name contained in the memorandum, capable forthwith of exercising all powers and functions of an incorporated company including the power to 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 this Act.[4]

Commenting on this view and nature of shares, Chianu,[5] Observed that: one inescapable effect of the formation of a company is that the members relinquish all proprietary and other interests in the monetary or other consideration which they may have given for their shares and which becomes wholly vested in the company. In effect, therefore, the members' rights of ownership of their assets are completely reconstituted and the powers conferred by membership substituted for powers of direct control of assets. In *Chief Nye John George will V Madam Grace Ekin,*[6] the Court of Appeal Port Harcourt Division held that, the property and assets of a company are not the property of its directors or shareholders. The facts of this case were that the applicant and the respondent's wife were the only shareholders and directors of the company after marriage. The respondent wife commenced the action to assert title to a house which was acquired in the estranged husband's name but with company's fund. The parties used the company's funds indiscriminately for family up keep, purchase of clothing and sponsorship of chieftaincy ceremony. Upon divorce, they shared the company's assets without regard to the company's obligations to creditors as well as the company's duty to pay tax. The Court of Appeal further held inter-alia,

> From the way the plaintiff's claim was presented, it would appear that the plaintiff equated herself with Stonye Nigeria Ltd. Simply put, the plaintiff is saying that Stonye Nigeria is me. This explains why company funds were used as private funds in total disregard of the company law applicable. An incorporated company must be regarded as separate entity from any one of its holders.

It is obvious from above decision that shares do not confer right of ownership of the property of the company on its holders hence the property belongs exclusively to the company. Accordingly, the shareholders have nothing to share except dividends when declared or return of capital on winding up. Other views on the meaning of shares include those that see shares in relation to the rights it confers on those holding it, such as right to dividends, return of capital on winding up, voting etc.[7] These sets of rights, it is contended, emanate from the memorandum and Articles of Association, which constitute a kind of contract between the company and its members and thus, define rights conferred by shares.[8]

As Gower observed, today it is generally stated that a share is a chose – in – action.[9] This however, is not helpful, for chose –in- action is a notoriously vague term used to describe a mass of interests which have little or nothing in common except that they confer no right to possession of a physical thing, and which range from purely personal rights under a contract to patents, copy rights and trademarks.[10]

Farewell J. in *Borland's Trustee V Steel*[11] defined shares as:

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4 Section 42 of CAMA, Laws of the Federation, 2020

5 Chianu, E., *Company Law,* (Abuja, Law Lords publication, 2012) 224

Chianu, E., *Company Law,* (Abuja, Law Lords publication, 2012) 224

7 Masajuwa, F.U. (n3), 54

8 Gower and Davies (n1)

9 Ibid

10 Ibid, 816. See also, *Colonial Bank v Whinney* (1886) 2 APP. Case, 426

11 (1901) 1 CH, 288

> The interest of a shareholder in the company measured by a sum of money in the first place, and of interest in the second but, also consisting of series of mutual covenants entered into by all the shareholders interse in accordance with the articles and Memorandum of Association. The contracts contained in the articles of association are one of the original incidents of the share. A share is not a sum of money... but is an interest measured by a sum of money, and made up of various rights contained in the contract including the right to a sum of money of a more or less value.

A share therefore, represents a unit of the bundle of rights and liabilities which a shareholder has in a company as provided in terms of issue and articles. The asset of the corporation is not assets of the shareholders. The only entitlement of shareholder is to a dividend declared and paid in accordance with the applicable laws and rules of the corporation, and to a share of the capital of the corporation on winding up. Share according to section 868 (1) is the interests in a company's share capital of a member who is entitled to share in the capital or income of such company, and except where distinction between stock and shares is expressed or implied includes stock.[12] Thus, a share confers certain rights on its shareholders depending on the class of shares which the shareholders subscribed to where such class exists.

2. Classes of Shares

Under section 143(1), a company has the power, subject to its Articles, to issue shares up to the total number authorized by its memorandum.[13] Equally, the shares issued may be in different classes which include, preference shares, founders or deferred shares and ordinary shares.[14]

2.1 Preference Shares

A preference shares is defined in section 686(1) as a share by whatever name designated, which does not entitle the holder of it to any right to participate beyond a specified amount in any distribution whether by way of dividend or on redemption, in a winding up or otherwise.[15] With regards to dividend, the preference shareholder is entitled to a specified percentage of the dividend if declared. The right as to capital may entitle it to the return of capital on winding up in priority to ordinary shares. As a general rule, the preference shareholder does not participate in dividend beyond the specified percentage or in capital beyond its full value, but it is possible to create participating preference share.[16] Preference shares have special rights attached to them. For example, they may have fixed dividends which may be cumulative or non-cumulative, redeemable or irredeemable convertible or participatory.[17] Preference shares are usually expensive and may in certain circumstances; carry the right to more than one vote per share.[18]

2.2 Founders or Deferred Shares

These are shares taken up by the founders or promoters of the company. It is usually the cheapest. In other words, it costs less than the other types of shares. It carries no fixed return and as the name implies, payment of dividend and return of capital are deferred until payment has been made in respect of other classes of shares. Whatever is left after the ordinary and

[12] Section 868 of *Companies and Allied Matters Act,* Laws of the Federation 2020
[13] Section 143 of CAMA, Laws of the Federation 2020
[14] Ibid
[15] Ibid
[16] Orojo, J.O., *Company Law and Practice in Nigeria* (5th edn, USA, Lexis Neris Butter worths, 2008) 128
[17] Aiska Umar and Sylvester Imhanobe, *Quick Reference Material* (Abuja, Temple Legal consult, 2003) 118.
[18] Ibid 119

preference shareholders have been settled are usually left for the founders shareholders.[19] This class of shares is not common and is not attractive to investors.

2.3 Ordinary Shares

These are shares which have no special rights or restrictions attached to them. They bear the main financial risk of the business so that if the company is unsuccessful, they bear most of the loss, but if it succeeds they are offered a greater reward. They are sometimes referred to as the "equity or risk" capital. On winding up, after payment of all liabilities of the company and returning the capital of other classes, the ordinary shares are entitled to all the surplus assets except where preference shares have a right of participating in the distribution of such assets. Commenting on this, Gower, states that,

> Ordinary shares as the name implies constitute the residuary class in which is vested everything after the special rights of preference classes, if any, have been satisfied. They confer right to the equity in the company and in so far as members can be said to own the company, the ordinary shareholders are its proprietors. It is they class who bear the lion's share of the risk and them who in good years take the lion's share of the profits after the directors and managers have been remunerated.[20]

What is deducible from the above is that, it is the practice for the Articles of Association of a company to issue shares with such rights and restrictions as the company may by ordinary resolution determine. Accordingly, the membership of a company and therefore, the shareholding, confers certain rights on the members and subjects them to certain obligations depending on the class of the share. These rights and obligations also depend on whether the rights are individual or corporate.

3. Rights of a Shareholder

Section 138, provides that subject to the provisions of this Act, the rights and liabilities attaching to the share of a company or any class thereof shall:-

(a) be dependent on the terms of the issue and the company's articles and
(b) notwithstanding anything to the contrary in terms or the articles include the right to attend any general meeting of the company and vote at such a meeting.[21]

In *Kotoye V Saraki,*[22] the Supreme Court of Nigeria made this point clear when it stated that by being registered as a holder of shares in a company, the registered holder becomes entitled to certain rights, benefits and privileges. The right of the shareholder will generally include the following;

(a) Right to receive notice and attend general meeting and vote at the meeting
(b) Right to dividend
(c) The right to participate in the distribution of the assets of the company in the event of the company being wound up. That is, return of capital on winding up.
(d) Right to protect his/her membership right.
(e) Right to ensure that the company is run successfully/lawfully.

[19] Orojo, J.O. Company and practice in Nigeria(n16) 128
[20] Gower and Davies (n1) 262
[21] Section 138 of *Companied and Allied Matters Act,* Laws of the Federation, 2020
[22] (1994) 7-8 SCNJ, 524 at 575

(f) Right to receive a copy of the memorandum and Articles of Association and of every balance sheet to be laid before the general meeting.
(g) Right to inspect and obtain copies of minutes of general meeting.
(h) Right of a shareholder to transfer his/her share(s)
(i) Right to obtain copies of financial statement.

These rights will be examined seriatim.

3.1 Right to Notice, Attendance and voting at General meetings:

Every member of a company is entitled to notice of the general meeting.[23] In *Ayodele and Another V Foam Nigeria Ltd,*[24] the Court declared as null and void a purported meeting of a company because a member was not served notice of the meeting. The right of a shareholder to vote either in person or by proxy is one of the incidents of company membership. The Article of Association, apart from conferring this right, may also stipulate the manner and extent of its exercise.· The right to vote is a very important one. As the directors invariably hold a strong position of *defacto* control within the company, voting is often the source of corporate control. This power of control through vote is not a species of property which may be bought and sold at ease other than the beneficial interest in shares or stock.[25] An unrestricted power to vote at the general meeting of the company normally on the rule of one vote for every share registered in the name of the member is, therefore, one of the important and one of the most cherished rights attaching to an ordinary share. To ensure due compliance with the rule of one vote for every share registered in the name of a member, section 140 (1) stipulates that, unless otherwise provided by any other enactment, any share issued by a company shall carry the right on a poll at a general meeting of the company to one vote in respect of each share, and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote.[26]

However section 168(1) allows preferences shares to have a right to more than one vote and this section is not affected by section 140(1) above.[27] The control of company by shareholders' votes is commendable. However, sharp practices and manipulation of share dealing and company fraud appears to render the rights of shareholders ineffectual. The prohibition of non-voting and weighted shares under section 140 (1) is, therefore, a step in the right direction.

3.2 Right to Dividend

The right of the shareholder of a company to the payment of dividend where such has been declared is equally one of the most important rights attaching to company membership. The principle governing the payment of dividend is that they are paid out of profits. Section 426(1) provides that, a company may in general meeting declare dividends in respect of any or other period only on the recommendation of the directors. [28] Section 426 (3) provides that the general meeting shall have the power to decrease the amount of dividend recommended by the directors, but shall have no power to increase the recommend amount.[29] Section 46(5) provides that subject to the provisions of this Act, dividends shall be payable to the shareholders only out of the distributable profits of the company.[30]

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[23] Section 243 (1) CAMA 2020
[24] Brenda, H, *Company Law,* (Oxford, Oxford University press, 203). 391
[25] Section 243(1) of *Companies and Allied matters Act,* 2020
[26] Ibid
[27] Section 140 (1) CAMA 2020
[28] Ibid
[29] Asomugha, E.A. *Company Law in Nigeria Under Companies and Allied Matters Act,* (Lagos, Mayodele Ajayi Enterprises, 1994) 101
[30] CAMA 2020

Implicit in the above provisions of the Act as articulated above is that the right of the shareholder to dividend is not automatic. It is dependent on the whims and caprices of the directors, despite the fact that the general meeting declares dividend. The general meeting can only reduce but cannot increase the dividend payable as recommended by the directors. This position appears most unsatisfactory as it gave directors an unlimited power to do what they pleased with the profits of the company. Section 432,[31] provides that dividends shall be special debts due to, and recoverable within 12 years, and actionable only when declared. This provision also did not help the situation.[32] Apart from the limitation on the period within which the right to sue will lapse, the right to sue will arise only if dividend was declared in the first place.

3.3 Right to Return of Assets on Winding Up

A shareholder has the right to participate in the distribution of surplus assets in the event of winding up of the company. Section 480 is very eloquent on this. It provides that;

> Subject to the provisions of this Act as to Preferential payments, the property of the company shall, on its winding up, be applied in satisfaction of its liabilities pari-passu, and subject to such application shall unless the articles otherwise provide, be distributed among the members according to their right and interests in the company.[33]

The effect of this section is that the nature and extent of this right both for the preference and ordinary shareholders will forever depend on the provisions of the articles and to a great extent on the construction put by the Court on these provisions. It is the surplus left after liabilities of the company have been settled that will be distributed among the shareholders in accordance with the rights attached to each by the articles and the companies Act. As Birds observed,[34] the liquidation process may result in a surplus remaining after the expenses, costs and debts have been paid in full, although it would be comparatively rare for it to happen. Where there is a surplus, the question arises as to its distribution. The distribution of any surplus must take into account the rights conferred on the members by the terms of the company's Memorandum and Articles of Association.

Shareholders are therefore, left at the mercy of the directors in order to get any profit from their investments. Thus, in spite of the innovations made under the present Companies and Allied Matters Act, investors have not been getting their shares profits of their company through the payment of dividends. We recommend that shareholders should be empowered to have a say in the processes of declaring dividend.

3.4 Shareholders Right to Protect Membership Rights

A member may institute an action to redress a wrong done to him as individual member of the company. Such an action will be a personal one. In other words, such an action must be for the enforcement of a right due to him personally. He may apply to court for an order of injunction restraining the company from any act or omission affecting the applicant's individual rights as a member or for a declaration.[35] This personal action can be brought against the company as any other action. The right to bring a personal action for an injunction or to redress the breach of a personal right of a member of the company by the directors or a majority is now statutory.

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31 Section 426(3) of Companies and Allied Matters Act, 2020
32 Ibid
33 Ibid
34 Boyle and Birds, *company Law* (4th edn, Britian, Jordan publisher, 2002) 692
35 Section 343 *Companies and Allied Matters Act 2020*, Law of Federation of Nigeria

Section 343 provides that, without prejudice to rights of members under section 346 to 351 and sections 352 to 355 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 *ultravires*.
b) Purporting to do by ordinary resolution any act by which its constitution or the Act requires to be 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 duty.
g) Any other act or omission, where the interest of justice so demands.

It is clear from the above section that shareholders have been statutorily empowered to protect their membership rights. Furthermore, unlike Section 301 (1) (2) and (3)[36] of the Company's and Allied matters Act 2004 where members who institute personal action to enforce such right were not be entitled to damages or any compensation, but only injunction or declaration, Section 344 (1) (a) (b), (2) and (3)[37]of the Companies and Allied Matters Act 2020 entitles a member who institutes a personal action to enforce such right(s) to damages, costs in addition to declaration or injunction. This is clearly provided for in Section 344(1)[38].It states that, where a member institutes a personal action to enforce any right due to him personally or a representative action on behalf of himself and other affected members to enforce the right due to them, he or they are subject to the subsection (2) and entitled to:-

(a) Damages for any loss incurred on the account of the breach of that right or
(b) Declaration or injunction to restrain the company or the directors from doing a particular act.
(c) Where, in proceedings brought under this section, the Court finds the directors or any of them liable for any wrongdoing, the erring director is personally liable in damages to the aggrieved member.
(d) Where any member institutes an action under this section, the Court may award costs to him personally whether or not his action succeeds.
(e) In any proceeding by a member under section 343 of this Act, the Court may, if it deems fit, order that the member shall give security for costs.

The above section specifically provides that a member who institutes a personal action to enforce a right due to him personally or a representative action on behalf of himself and other affected members to enforce any right due to them are entitled to damages to any loss incurred on account of the breach of that right. Such member or members are also entitled to a declaration or injunction restraining the company or directors from doing a particular act. Again, where the Court finds the directors or any of them liable for any wrong doing, the erring directors is personally liable in damages to the aggrieved member(s).Finally, the Court may award costs to such a member personally whether or not his action succeeds.

These innovations/improvement by the 2020 Company's Act is a right step in the right direction. It will stem the tide of abuse of office by the directors and mangers of companies as it

[36] Companies and Allied Matters Act 2004, Laws of the Federation 2004.
[37] Companies and Allied Matters Act 2020, Laws of the Federation.
[38] Ibid

encourages the members to fight for their rights. This is unlike that of the companies and Allied Matters Act 2004 where members who bring action for the enforcement of their rights were not entitled to damages or costs. Such members were only entitled to injunction or declaration.

The provision of the 2020 Act in this regard is commendable. However, Section 344(4) which provides that the Court may order such a member to provide or give security for costs, if the Court deems it fit, should be reconsidered as it may discourage members from bringing action to enforce their rights. Instituting an action in the present Nigeria is expensive in addition to security for costs. This no doubt will be a deterrence to members in the enforcement of their rights.

3.5 Right of Shareholders to Ensure that the Company is Run Lawfully or the Right of Protection Against Illegal and Oppressive Conduct

Over and above the rights of a shareholder discussed above, the shareholder has the right to have the provision of the articles and memorandum of association complied with in the daily management of the company. This right has received the approval of the Court in *Quinn and Axtens Limited V Salmon,*[39] when the Court held that a shareholder had the right in an action brought on behalf of him and all other shareholders except the defendants to obtain an injunction, restraining the company and its directors from the acts which were inconsistent with the provisions of the articles. Thus, where the directors or the majority of the shareholders take actions that is oppressive, unfair or prejudicial to the minority shareholders, a shareholder has a right to challenge such act in the law Court. Section 353[40] is very eloquent of this right. It provides that an application to the Court by petition for an order under section 354[41] may be made by the following persons:-

(a) A member of the company
(b) A director or officer or former director or officer of the company
(c) Creditor
(d) The commission
(e) Any other person who, in the discretion of the Court is the proper person to make application under section 354 of this Act.

Section 354,[42] provides for the grounds upon which an application may be made to the Court. It states that:-

1. An application for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner may be made to the Court by petition.
2. An application to the Court by petition for an order under this section in relation to the company may be made:-

(a) by a member of the company who alleges:-
(i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to or unfairly discriminatory against, a member or members or in a manner that is or has been in disregard of the interests of a member or the members as a whole or
(ii) an act or omission or a proposed act or omission, by or on behalf of the company or a resolution or a proposed resolution of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was

[39] [1909] AC 442
[40] CAMA 2020
[41] Ibid
[42] Ibid

or would be in a manner which is in disregard of the interest of a member or the members as a whole...

(b) the commission in a case where it appears to it in the exercise of its powers under the provisions of this Act or any other enactment that:-

(i) the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to or unfairly discriminatory against a member or members or in a manner which is in disregard of the public interest.

It is obvious from the above sections that there is a condition *sinequanon* that must be fulfilled before a shareholder or shareholders can bring petition under this section. It is to the effect that the act being challenged must be the act of those who are in control or controllers who are in a position to prevent the action being taken to redress the wrong done to the company. Articulating this point more lucidly, Farra opined that;

> There are three types of action which a shareholder who decides to proceed may bring. First, he may bring a personal action, where some personal right has been infringed. Secondly, where the same personal rights of a number of shareholders have been infringed, then a representative action may be brought on behalf of the group. The third form of action is the derivative action, brought by a member of the company, where the wrong doers are in control and prevent the company itself from suing. In this case, the entire benefit of the proceedings will go to the company and not the shareholder who brings the actions[43].

Explaining the purport or implication of section 994(1) of the United Kingdoms's Companies Act, 1989 which is in *pari matria* with section 354[44]of our Act, Gower, posited that this approach might be thought to fit in well with the view of the Jenkin's committee that the harm to the shareholders in such cases is indirect and that the wrong to them consists, not in the wrong done to the company but in the controllers use of their position to prevent action being taken to redress the wrong done to the company.[45] Section 355(1) (f) provides that the Court to whom an applications is made has power to make 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 if the application is well founded.

The position of our Companies Act is in accord with the modern practice in this area of law. The rights and liabilities of a shareholder of a company have to some extent been affected by the all ubiquitous principle of the rule in *Foss V Harbottle.*[46] The general principle encapsulated in this doctrine is that to redress a wrong done to a company, the only and proper plaintiff is the company itself. Without the rule, it is said that, futile actions, oppressive litigations and multiplicity of suits would ensue with the result that the companies could be torn to pieces by litigation. Also, it is, postulated that a shareholder on becoming a member of the company has impliedly accepted to be bound by the principle of majority rule. This doctrine has been codified in our Companies Act.

Section 341[47] provides that 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 procedural obstacles created by this section for an injured shareholder is

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[43] Gower and Davies, *Principles of Modern Company Law* (8th edn, India, Sweet and Maxwell) 2008) 687

[44] Companies and Allied Matters Act 2020

[45] Gower and Davis, *Principles of Modern Company Law*,(7th edn, sweet and Maxwell, 2003) 515.

[46] Asomuagha, E.M. 115

[47] Section 341 CAMA 2020

enormous. However, despite the wide powers of the controlling shareholders, the majority rule in *Foss V Harbottle,*[48] even at common law was not an inflexible rule and it was relaxed whenever necessary in the interest of justice.[49] Accordingly, 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 been enacted under section 343.These exceptions have been articulated in this paper when we discussed shareholders right to protect their membership rights. Other provisions for redress in the Act include the following:

> Section 571(f)[50] which provides that; A company may be wound up by the Court if the Court is of the opinion that it is just and equitable that the company should be wound up. Section 357[51](1) which provides that, the Commission may appoint one or more competent inspectors to investigate the affairs of the company and to report on them in such a manner as may be directed. Section 357 (2) provides that the appointment may be made:
>
> (a) In the case of a company having share capital, on the application of members holding not less than one-quarter of the class of shares issued.
>
> (b) In the case of a company not having a share capital, on the application of not less than one quarter in number of persons on the company's register.
>
> (c) In any other case, on application of the company.
>
> Section 357 (3) states that the application shall be supported by such evidence as the commission may require for the purposes of showing that the applicant or applicants have a good reason for requiring the investigation.

An evaluation of the relevant sections of the Act with regard to this right of shareholders shows that, the enforcement of this right is fraught with difficulties and limitations, making it almost impossible for its realization by shareholders.

> The limitations of the effectiveness of this provision are not far to see. Firstly, the application should be made by members holding not less than one quarter of the shares of any class issued in case of company having a share capital and one quarter of member in case of company without a share capital.[52]

Apart from the difficulty of mustering the required number of shareholders, the whole exercise is confounded by the fact that the Registrar of companies has a discretionary power to refuse any application under the above section if such application to him appears vexatious or if there are no sufficient facts to enable the applicants to sustain or assert rights on their behalf.

Furthermore, the term oppressive conduct was not defined under the Act and it appears there is no decided case on this subject matter yet. It will also be very difficult for outsider shareholders to gather sufficient information to conduct a successful action against an entrenched multiple prestige directors.[53] It is, therefore, recommended that the oppressive rule of conduct should be defined to guide the Court and shareholders and also ensure certainty.

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[48] Orojo, J.O. (n16) *Company Law and Practice in Nigeria,* (5th edn, London: Butterworths 2008) 209

[49] [1843] 2 Hare 461

[50] CAMA 2020

[51] Ibid

[52] Asomuagha CM, (n29) 110

[53] Ibid 112

3.6 Right to receive a copy of the memorandum and articles of Association and of every balance sheet to be laid before the general meeting

According to section 47(1),[54] A company shall, on being required by any member, send to him a copy of the memorandum and articles, a copy of any enactment which alters the memorandum , subject to payment, in the case of a copy of the memorandum and of the articles, of the cost of producing the said documents (such cost not to exceed ₦500, each or such other amount that the commission may prescribe or such lesser sum as the company may prescribe and, in the case of a copy of enactment, of such sum not exceeding the published price thereof as the company may require.

Section 47 (2) provides that if a company defaults in complying with this section, the company and every officer of the company who is in default is liable to such penalty as the commission shall prescribe by regulation. Section 388 provides that in respect of each year, the directors shall, at a date not later than 18 months after incorporation of the company and subsequently once at least in every year, lay before the company in a general meeting copies of the financial statements of the company made up to a date not exceeding nine months previous to the date of the meeting.

A community reading of the above sections shows that shareholders are entitled to copies of the memorandum and articles as a matter of right as well as subsequent alterations and enactments. It is also mandatory for the directors to lay down before the shareholders in the company's general meeting the financial statements of the company annually. These provisions are commendable in that shareholders are enabled to be abreast with the financial transactions in respect of their company. It will enable them to make observations on the financial statements laid down before them by the directors. This will compel the directors to be careful in the management of the company's finances.

3.7 Shareholders Right to Obtain Copies of Financial Statements

Every shareholder of a company is entitled to receive a copy of the financial statements of the company. Section 392[55] is very eloquent on this. It provides that,

(1) Any member of a company, whether or not entitled to have copies of the company's financial statements sent to him, and any holder of the company's debentures is entitled to be furnished on demand and without charge with a copy of the company's last financial statements.

(2) If, when a person makes a demand for any documents with which he is entitled by this section to be furnished, default is made in complying with the demand within 7 days after its making, the company and each officer are liable to a penalty as the commission shall specify in its regulations, unless it is proved that the person has already made a demand for, and been furnished with a copy of the documents.

3.8 Shareholders Right to Inspect Minute Books and to have Copies of it

It is also the right of shareholders of company to inspect the minute books of the company as well as to have copies of the minutes if such shareholder(s) desires to have it. Section 267[56] is very clear on this right. It stipulates that,

(1) The books containing the minutes of proceedings of any general meeting of a company held on or after the commencement of this Act shall be kept at the registered office of the

[54] CAMA 2020
[55] Ibid
[56] Ibid

company, and shall during business hours...be open to inspection by members without charge...

(2) Any member shall be furnished within seven days after receipt of his request in that behalf by the company, with a copy of any such minutes certified by the secretary at a charge not exceeding N100 for every page.[57]

3.9 Right of a Shareholder to Transfer Shares

The right to transfer shares is exercisable by every holder of shares in a company. This is because the shares of every registered company are transferable through legislative provisions. Thus, the right is exercisable even where there is no specific authority or permission in the memorandum or articles of association. Section 175 provides that,

(1) The transfer of a company's share shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall be without restriction, and instruments of transfer shall include electronic instrument transfer.

(2) Subject to any restrictions of a company's articles as may be applicable, any member may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.[58]

However, in case of private companies the right of transfer is circumscribed. Section 22(2) provides for this. It provides that, every private company shall by its articles restrict the transfer of its share.[59]

4. Liabilities of Shareholders

The liability of a shareholder of a company depends largely on the type of the company of which he/she is a member as the liability will vary according to whether the company is limited by shares or limited by guarantee or is unlimited.

Section 21 provides for types of companies. It provides that an incorporated company may either be a company:

(a) Having liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by each member.

(b) Having the liability of its members limited by the memorandum to such amount as the members may respectively under take to contribute to the assets of the company in the event of its being wound up in this Act termed a company Ltd by guarantee.

(c) Not having any limit on the liability of its members ie unlimited liability company.

4.1 Company Limited by Shares

Where the liability is limited by shares, the member's liability is limited to the amount remaining unpaid on the shares held by him or her. Section 21(1) (a) provides that, an incorporated company may be either a company – (a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, in this Act termed "a company limited by share".[60] The importance of limited liability of members in a company limited by share is further reinforced by section 54.This stipulates that, save to the extent to which a member of a company agrees in writing at any time to be bound thereby, and anything to the contrary in the memorandum or articles notwithstanding, the member shall not be bound by any alteration made in the memorandum or articles of the company requiring him on or after date of alteration to:-

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[57] Ibid

[58] Ibid

[59] Ibid

[60] Ibid, see also the case of Chief R.A. Okoye V Santilli and other (1994) 4SCN, (pt11), 333

(a) take or subscribe for more shares than he held at the date on which he became a member or

(b) increase his liability to contribute to the share capital of the company

(c) pay money by any other means to the company.

4.2 Liability on Winding-up

Section 117 (4) (a-e) is eloquent on this. It provides that in the event of a company being wound up, every present or past member shall be liable to contribute to the assets of the company to the amount sufficient for payment of its debts and liabilities and for the costs, charges and expenses of the winding up and for the adjustment of the rights of the members and past members among themselves but subject to the following qualifications:

(a) a past member shall not be liable to contribute if he has ceased to be a member for a period of one year or upwards before the commencement of the winding up.

(b) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions require to be made by them in pursuance of this section.

(c) in the case of a company limited by shares, no contribution shall be required from any member or past member exceeding the amount, if any unpaid on the shares in respect of which he is liable as a present or past member.

(d) in the case of a company limited by guarantee, no contribution shall be required from any member or past member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up.

(e) Any sum due from the company to a member or past member, in his capacity as a member, by way of dividend or otherwise shall not be set-off against the amount for which he is liable to contribute in accordance with this section but any such sum shall be taken into account for the purposes of final adjustment of the rights of the members and past members amongst themselves.[6162]

5. Conclusion and Recommendations

In the light of the above discourse, it is very obvious that shareholders have a variety of rights provided by the Act and other relevant laws for the protection of the shareholders rights. The shareholders also have corresponding rights and liabilities. However, the enforcement of these rights is fraught with a lot of challenges. These challenges should be reconsidered with a view to modifying them to allow shareholders free access to these rights. The enforcement of the shareholder's right to dividend as provided by sections 426(1) and 426(3) of the extant Companies and Allied Matters Act shows that the right to dividend is not automatic. The shareholders cannot declare dividend unless recommended by the directors. The implication is that shareholders are not entitled to any dividend unless recommended by the directors. They are also empowered to reduce the dividend as recommended by the directors but cannot increase such dividend. Thus, the right to dividend by the shareholder is dependent on the whims and caprices of the directors. The implication is that the right to dividend as presently constituted is a caged right and not right per se. Right is something due to a person by just claim, legal guarantee etc. Consequently, we recommend that once the auditor's report shows that there is a robust profit, shareholders should be empowered to use their discretion to declare dividend, in view of the fact that they contributed the money for the business.

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[61] Ibid

Again, shareholder's right to protect their membership rights has an obstacle attached to it. The commendable innovations made by section 343 notwithstanding, the provision of section 344 (1) (4) which provides that, in any proceeding by a member under section 343 of this Act, the Court may, if it deems fit, order that the member shall give security for cost, is a cog in the wheel of the efforts of the members to protect their membership rights. This is due to the fact that instituting an action in Nigeria today is very expansion in addition to security cost. This definitely will be a deterrence to members in their enforcement of their rights. It also conflicts with section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, which provides that in the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within reasonable time in a court or other tribunal established by Law and constituted in such a manner as to secure its independence and impartiality. If such security is awarded or imposed on a shareholder, it appears to be conflict with the shareholders right to assert his or her rights via the court.

Furthermore, the right of shareholders to ensure that the company is run lawfully or the right of protection against illegal and oppressive conduct has some challenges which have stultified its efficacy. The conditions that must be satisfied before a shareholder can bring a petition under sections 354 and 357 are enormous and difficult to satisfy. The mustering of the required number of shareholders before an action could be brought is a serious challenge to shareholders. The Registrar of Companies is empowered to refuse any application from shareholders if such application to him appears to him vexatious or if there are no sufficient facts to enable the applicants to sustain or assert their rights. The challenge here is that it would be extremely difficult for outside shareholders to gather sufficient information to conduct a successful action against the insider directors. It is recommended that this requirement should be expunged and replaced with the law which empowers the shareholders to demand and obtain information they needed to bring such action against the directors like the Information Act.
Finally, the term oppressive conduct was not defined under the extant Companies Act. Accordingly, it is recommended that the term oppressive conduct should be defined to guide the court, shareholders and ensure certainly in application.