AN EVALUATION OF THE PROTECTION AFFORDED MINORITY SHAREHOLDERS IN NIGERIA UNDER THE COMPANIES AND ALLIED MATTERS ACT, 2020

Njoku Kingsley Uche*

ABSTRACT

The foundational principle of Nigerian corporate law, derived from the English case of Foss v Harbottle, dictates that the company is the proper plaintiff for wrongs committed against it. In that case, two members of a company alleged that its directors fraudulently sold their land to the company. The two members filed a case to compel the directors to remedy the loss suffered by the company. The Court held that the action would fail because the wrong was against the company; therefore, the company was the proper plaintiff. This rule seeks to preserve the distinct legal personality of a company, prevent a multiplicity of lawsuits, and uphold the democratic principle of majority rule. To prevent abuse of this rule, Sections 343, 344, 346 of CAMA 2020 codifies specific exceptions that allow the minority in a company to seek redress in Court.The aim of this paper is to determine the extent to which the rights of minority shareholders are protected under CAMA 2020. Using the doctrinal research methodology, this paper found that the ambiguity in some provisions of CAMA 2020 hinders the quest to balance the interests of the majority and the minority. The paper recommends, amongst others, that the Act should be made unambiguous regarding the length of pre-action notice required for Derivative Action like what obtains in other jurisdictions such as Singapore where 14 days' notice is required. These measures would strengthen equity and justice in the internal affairs of Nigerian companies.

Keywords: Company, Majority, Minority, Rights, Shareholders.

1.0 Introduction

The rule of corporate democracy dates back to the nineteenth century with the non-interference of chancellors in the internal regulation of partnerships. This was out of respect for their internal remedial mechanisms, especially in cases of mismanagement.[1] This rule later received judicial backing in the locus classicus case *of Foss v Harbottle*,[2] where two minority shareholders of Victoria Park Company, as Plaintiffs, filed an action on behalf of the company against the directors and promoters over an alleged sale of properties of the said company at

* Ph.D. Student, Faculty of Law, Nile University of Nigeria, Abuja. Email: njokuuche10@gmail.com Mobile No: +234(0)8035884563

[1] D Ejesu 'Company Law: Majority Rule and Minority Protection', *Social Science Research Network Electronic Journal., (2023) (9) (2).*

[2] (1843) 67 ER 189

an inflated rate. The reliefs sought by the Plaintiffs, inter alia, were for the guilty parties to be held accountable to the company and a receiver appointed. The court, in dismissing the claim, held that when a company is wronged by its directors, it is only the company that has the *locus standi* to sue. This principle was later well-articulated by Jenkins L.J. in *Edwards v Halliwell & Ors*, [3] thus:

> The rule in *Foss v. Harbottle* as I understand it comes to no more than this. First, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is *prima facie* the company or the association of persons itself. Secondly, where the alleged wrong is a transaction that might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of the members of the company or association is in favour of what has been done, then *caditquaestio*; no wrong had been done to the company or association and there is nothing in respect of which anyone can sue. If, on the other hand, a simple majority of members of the company or association is against what has been done, then there is no valid reason why the company or association itself should not sue. In my judgment, it is implicit in the rule that the matter relied on as constituting the cause of action should be a cause of action properly belonging to the general body of corporates, or members of the company or association, as opposed to a cause of action which some individual member can assert in his own right.

The above decision which has been codified in the Companies and Allied Matters Act (CAMA)[4] provides that where an irregularity is made in the course of a company's affairs or any wrong is done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

The scope of this rule is twofold; the company will ultimately be the plaintiff to sue in respect of wrong done to the company; and the court will not intervene in the affairs of a company where the irregularity being complained about is within the scope of powers of the majority shareholders to remedy or ratify by means of an ordinary resolution.[5]

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[3] (1950) 2 All ER 1064
[4] s.341 Companies and Allied Matters Act, 2020
[5] AR Agom, 'Shareholders Activism in Corporate Governance, Modern Practice', *Journal of Finance & Investment Law*, (2000) (4) (4).

The rule in *Foss vs. Harbottle,*[6] as codified in Section 341 of the Act has been discovered to be prone to abuse if it is left absolute.[7] The law in its infinite wisdom understands that unchecked power has the tendency of leading to corruption and fraud, and the case of company law is not different.[8] It is evident that the principle in *Foss vs. Harbottle* has given wide and sweeping powers to the majority shareholders in respect of any act done to the company, especially by its directors.[9]

2. Conceptual Clarification of Corporate Democracy

2.1. Majority and Minority Shareholding

A majority shareholder is defined by Dada[10] as a person natural or non-natural who owns more than fifty percent of a company's shares. However, a shareholder need not acquire fifty percent of the share to be a majority shareholder if he controls the company[11].

Unfortunately, there is no definition of "minority shareholder" under the CAMA 2020. Certain unique rights enjoyed by shareholders who hold at least 15% of the issued share capital are mentioned under CAMA. These sections do not suggest that a minority stakeholder is the person who owns at least 15% of the outstanding capital of shares. Analyzing the company's capital structure will allow the minority shareholders to be taken into consideration on an individual basis. In the real sense, minority shareholders are those who own a smaller portion of a business than what is owned by the majority of shareholders. A minority shareholder is a shareholder who owns less than fifty percent of the total shares of the company and therefore, cannot control the management of the company or solely appoint directors[12]. Essentially, the minority shareholders are at the mercy of the majority shareholders who own or control more than half of the company's shares.[13] In essence, they are small investors in companies who typically lack the ability to influence business decisions due to their small shareholding. Abduljaami[14]also described minority shareholders as shareholders

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[6] (n2)
[7]CS Ola, *'Company Law in Nigeria*' (Heinemann Educational Books Nig. Plc, 2002).
[8] YH Bhadmus, *Corporate Law Practice,* (Chenglo Limited, 2013)
[9] D Ciepley 'Democracy and the Corporation: The Long View', *Annual Review of Political Science*, (2023) (10).
[10] JA Dada, *Principles of Nigerian Company Law* (4thedn, University of Calabar Press 2023) p.446
[11] s357 Investment and Securities Act 2025
[12] CS Nwakoby and I Nwakoby 'Dilemma of Minority Shareholders in Nigeria Company Law' *NAUJILJ* [2023] (14) (2)65-74
[13] OC Aduma and CS Ibekwe, 'Protection of Minority Shareholders under Nigerian Company Law' *NAUJILJ* 8 (2) 2017
[14] SH Abuduljaami, 'Treatment of Minority Shareholders'<http://www.shajlaw.com/media/reports/Treatment of Minority Shareholders. pdf > accessed on 25 November 2024.

who do not have controlling interests in the companies. Black's Law Dictionary [15]further defined a minority shareholder as 'a shareholder who owns less than half the total shares outstanding and thus, cannot control the corporation's management or single-handedly elect directors.' These shareholders are at the mercy of the majority shareholders who own or control more than half the company's shares.
According to Nchi[16] a minority shareholder means a shareholder who owns less than half the total shares outstanding and thus cannot control the company's management or single-handedly elect directors.

2.2 Directors

Under the Companies and allied Matters Act[17], director is defined as a person who has been duly appointed by the company to direct and manage the business of the company. This includes a shadow director[18], a person in accordance with whose instructions the directors are accustomed to act other than on purely professional advice. The directors are in charge of the day-to-day affairs of the company. Nchi[19] defined director to mean a person who directs, manages, orders, or authorizes or guides, a principal or chief administrator of an entity.

According to Ola[20] the management of a company is usually entrusted to a body of persons called directors who run the affairs of the company effectively and efficiently. The board of directors is the most important decision-making body within the company.[21] From the foregoing, it is clear that the board of directors is the live-wire, the directing mind and will of the company, which ensures that the purpose for which the company is set up by the shareholders is achieved.

The number of directors and names of the first directors of a company shall be determined in writing by the subscribers of the memorandum of association or a majority of them, or the directors may be named in the articles[22]. Unlike the previous Companies and Allied Matters Act where a company must have a minimum of two directors at any time, the current Act[23] provides that a company may have a single director. A director of a company stands in fiduciary relationship towards the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf.[24]

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[15] B A Garner, Black's Law Dictionary (9thedn, Minnesota: West Publishing Co., 2009) 1500.
[16] SI Nchi, *Nigerian Law Dictionary* (Bar and Bench, 2022) 1677
[17] s 269 Companies and Allied Matters Act, 2020
[18] s 270 Companies and Allied Matters Act, 2020
[19] SI Nchi, *Nigerian Law Dictionary* (Bar and Bench, 2022) 546
[20] CS Ola, *Company Law in Nigeria* (Heinemann Educational Book 2022) 277
[21] PL Davis and S Worthington, *Gower's Principles of Modern CompanyLaw* (Tenth edn, Sweet and Maxwell 2016)
[22]s 272 Companies and Allied Matters Act, 2020
[23] s 18(2) Companies and Allied Matters Act, 2020
[24] s 305(1) Companies and Allied Matters Act, 2020

In Nigeria, the importance of directors to the running of a company was reemphasized in the case of *U.T.C. (Nig.) Plc v Phillips*[25] where the Court of Appeal held that:

> A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It has hands which hold the tools and act in accordance with directions from the centre. 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 and will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such.

Furthermore, as posited by Berle and Means[26], where powers are conceded to the directors to act for the corporation as a whole, the obvious assumption is that these powers are intended to be used only on behalf of all the members of the company. They are not intended to be granted for the benefit of one set of participants as against another. To do so would be to violate every intendment of the concept of corporation.

Legal Framework Governing Internal Democracy in Nigerian Companies

Before the concept of democracy, rulers operated above the law. However, with the wide acceptance of democracy, the people collectively agree on laid down rules which become binding on them, and essentially attain the force of law.[27]

The basis for the rule in the English case of *Foss v Harbottle*[28] is the application of the principle of democracy to company law, and the exceptions to the rule were designed to guarantee adequate protection of the minority. In Nigeria, there are a number of laws that have been put in place to uphold democracy, and by extension, protect the minority in Nigerian companies. These laws include the Companies and Allied Matters Act 2020, the Investment and Securities Act 2025, The Federal High Court Act 2004 as well as the Constitution of the Federal Republic of Nigeria 1999. These laws have contributed in no small measure, albeit imperfectly, towards the development of a strong company law regime in Nigeria. In this paper, the history and evolution of some of these laws have been examined, seeking to identify their contributions as well as areas for possible

[25] (2012) 6 NWLR (Pt 1295) 136
[26] AA Berle, and CG Means, *The Modern Corporation and Private Property* (The Macmillan Company, 1932), p. 274
[27] W Grant, *Introduction to the Political Economy of Corporation*, (London Macmillan; 1985).
[28] (n2)

improvement, especially in the area of corporate democracy and protection of the minority in Nigerian companies.

3.1. Companies and Allied Matters Act, 2020

The Companies and Allied Matters Act 2020 repealed the 2004 Act (formerly the Companies and Allied Matters Decree No.1 of 1990).

Section 341 of the 2020 Act which is a replica of the provisions of Section 299 of the repealed Act mostly reiterates the rule in the age-long case of *Foss v. Harbottle*[29] which upholds majority rule to the sheer disadvantage of the minority. The Section[30] states that 'where an irregularity is made in the course of a company's affairs or any wrong is done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct'.

On the other hand, Section 343 CAMA codifies the exceptions to the Rule in *Foss v. Harbottle* by stating that the Court on the application of any member, may by injunction or declaration restrain the company from entering into any transaction which is illegal or *ultra vires*; purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution; engaging in any act or omission affecting the applicant's individual rights as a member. Furthermore, it restrains directors from committing fraud on either the company or the minority shareholders; where the directors fail to take appropriate action to redress the wrong done. The Court also intervenes 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 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. Unfortunately, these exceptions encoded in Section 343 of CAMA 2020[31] hardly provide the desired comfort and protection that the minority shareholders deserve.

As noted above, Section 343 of the CAMA 2020 simply reproduced Section 300 of the repealed CAMA 2004 which stated as follows:

Without prejudice to the rights of members under sections 303 to 308 and sections 310 to 312 of this Act or any other provisions of this Act, the court, on the application of any member, may by injunction or declaration restrain the company from the following-

a) entering into any transaction which is illegal or ultra vires;
b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution;

[29] (n2).
[30] s.341 Companies and Allied Matters Act, 2020.
[31] Previously s.300 Companies and Allied Matters Act, 2004.

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.

The only difference between Section 300 of CAMA 2004 and Section 343 of the CAMA 2020 would be the inclusion of section 343(g.) which provides for 'any other act or omission, where the interest of justice so demands.'

On another note, section 346 (1) CAMA 2020 provides that an applicant may apply to court for leave to bring an action in the name or on behalf of a company or a company's subsidiary, or to intervene in an action to which the company or the company's subsidiary is a party, for the purpose of prosecuting, defending, or discontinuing the action on behalf of the company or the company's subsidiary. The processes for commencing the action are contained in section 346 (2) under which no action may be brought unless the court is satisfied that: - (a) a cause of action has arisen from an actual or proposed act or omission involving negligence, default, breach of duty or trust by a director or former director of the company; (b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1); (c) the directors of the company do not bring, diligently prosecute, defend or discontinue the action; (d) the notice contains a factual basis for the claim and the actual or potential damage caused to the company; (e) the applicant is acting in good faith; and (f) it appears to be in the best interest of the company that the action be brought, prosecuted, defended or discontinued. The foregoing was applied by the Supreme Court of Nigeria in the case of *Agip (Nig.) Ltd. v. Agip Petroli International*[32]and more recently in the case of *Chief IketitiEsiso& Ors. v. Mrs. Mary Esiso & Ors*.[33] where the Court of Appeal per MisituraOmodere Bolaji-Yusuff, JCA held as follows:

> A derivative action is a legal procedure by which a shareholder or a member of a company institutes an action on behalf of the company against the directors or officers of the company for a wrong done to the company. The shareholder or member of the company stands in the place of the company and the benefit goes to the company and not

[32] (2010) 5 NWLR (Pt 1187) 349.
[33] (2024) LPELR – 62465 (CA) (Pp. 19-21, paras. E-C)

> the individual directly. Adequate notice must be given to the directors of the company, the shareholder or member of the company must be acting in good faith and show that the action is in the interest of the company. These are statutory conditions for a derivative action as stated in Section 303 of CAMA which provides that: 1. Subject to the provisions of Subsection (2) of this section, an applicant may apply to the Court for leave to bring an action in the name or on behalf of a company or to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company. 2. No action may be brought, and no intervention may be made under Subsection (1) of this Section, unless the Court is satisfied that: a. The wrong doers are the directors who are in control and will not take necessary action. b. The applicant has given reasonable notice to the directors of the company of his intention to apply to the Court under Subsection (1) of this Section if the directors of the company do not bring, diligently prosecute, or defend or discontinue the action. c. The application is in good faith and d. It appears to be in the best interest of the company that the action be brought prosecuted, defended or discontinued." See *AGIP (NIG) LTD. v. AGIP PETROLI INT'L(SUPRA)* where the Supreme Court explained what constitutes a derivative action and the requirements thereof as follows; "A derivative action, also known as a shareholder derivative suit, is a lawsuit brought by a shareholder on behalf of a company against a third party. Often, the third party is an insider of the corporation, such as the directors or executive officers.

The provision of Section 346(2) of the Companies and Allied Matters Act 2020 makes it clear that no derivative action may be brought unless the Court is satisfied inter alia that the applicant is acting in good faith. Unfortunately, it is difficult to prove good faith except to simply prove that the application is meritorious and supportable. The major disadvantage of this condition is that it is difficult to prove because the right of action ordinarily belongs to the company, and where the directors have decided not to act, any action by any other person is likely to be viewed as personal and malicious. This requirement also gives the court a wide discretion to shut out meritorious applications on the simple ground that it was not brought in good faith.

Furthermore, Section 346 (2) (b.) of the Act is vague on the length of Notice that should be given to the Directors before the commencement of Derivative Action. This gives room to a lot of ambiguity and varying subjective interpretations. Evidently as seen above, some of the provisions of the Companies and Allied Matters Act (CAMA) 2020 constitute major impediments to attaining meaningful

and effective democracy in Nigerian companies where the majority would have its way and the minority has its say.

Looking at the attitude of the Courts in Nigeria when interpreting the provisions of the CAMA relating to minority rights, it would seem that nothing has changed over the years as the Courts still hold rigidly to the spirit of the Rule in *Foss v. Harbottle*. In the 2022 case of *Agatha Ebele Enendu v. Alh. Hamisu Mustapha Turaki & Ors*.[34] the Court of Appeal had this to say on the principle of the rule in *Foss v. Harbottle*:

> In *Yalaju-Amaye vs. Associated Registered Engineering Contractors LTD (1990) LPELR (3511)* 1 at 36-37, Karibi-Whyte, JSC stated: "The rule in *Foss v. Harbottle* (supra) as formulated was very clearly explained in Edwards v. Halliwell (1950) 2 All E.R. 1064 at 1066 where Jenkins, L.J, stated it as follows- 'The rule in *Foss v. Harbottle*, as I understand it, comes to mean no more than this. First, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is prima facie the company or the association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of the company or association is in favour of what has been done, then cadit quaestio. Thus, the company or association is the proper plaintiff in all actions in respect of injuries done to it. No individual will be allowed to bring actions in respect of acts done to the company which could be ratified by a simple majority of its members..." See also Section 299 of the Companies and Allied Matters Act, 1990 (now Section 341 of the Companies and Allied Matters Act, 2020) and the cases of *A-G Lagos State vs. Eko Hotels LTD (2006) LPELR (3161) 1 at 82-83, Tanimola vs. Surveys and Mapping Geodata LTD (1995) 6 NWLR (PT 403) 617* and *Project Vision Actualizers LTD vs. Ilushin Estates LTD (2021) LPELR (55629)* 1 at 43." Per Ugochukwu Anthony Ogakwu, JCA (Pp 41-43, paras. B-E)

The above position has also been reinforced by the Supreme Court of Nigeria in the more recent case of *Mainstreet Bank Registrar Limited & Ors. v. Temitope O. Oshinuga& Ors.*[35] where the Court demonstrated its inclination to maintain the

[34] (2022) LPELR – 57527 (CA).
[35] (2024) LPELR – 62980 (SC).

status quo such that only the company can ratify or sue where an irregularity has been committed in the course of its affairs or a wrong has been done to the company, respectively.

3.2.Investment and Securities Act, 2025

The Investment and Securities Act (ISA) of 2025 was preceded by the Investment and Securities Act, 1999 and the Investment and Securities Act, 2007 which gave birth to the current legislation. The new Act which was signed into law on March 31, 2025, by President Bola Ahmed Tinubu regulates investment and securities business in Nigeria, regulates securities exchanges, registration of securities of public companies, and renders assistance to promoters and investors seeking to establish securities exchanges and capital trade points.[36]

The Act repeals the Investment and Securities Act 2007 and contributes significantly to the protection of minority shareholders in Nigerian companies as it introduces reforms that seek to enhance transparency, fairness, and investor confidence in the system. These reforms make investments safer and allow for more innovative financial products, strengthening investor protection and fostering transparency in line with global best practices.

As it relates to upholding corporate governance and protection of shareholder rights, while the Companies and Allied Matters Act (CAMA) 2020 principally governs company law and shareholder rights, the ISA 2025 complements CAMA by focusing on the capital market aspects and reinforces principles that indirectly benefit minority shareholders. Some of these include the establishment of the Securities and Exchange Commission (SEC)[37] which is responsible for administering the provisions of the Act, and empowering the commission to assess whether all shareholders involved in a transaction are treated fairly and equitably. This is crucial for minority shareholders who are often at a disadvantage in dealings with majority shareholders or the company's management.

Furthermore, by modernizing Nigeria's regulatory structures and bringing them into alignment with international best practices, the ISA 2025 fosters a more attractive, reliable, and efficient capital market. This indirectly creates an environment where minority shareholders (even in private companies) are better protected, and their investments enjoy more security.

Essentially, the Investment and Securities Act 2025 provide a robust regulatory framework that strengthens the hand of the Securities and Exchange Commission, broadens investor protection mechanisms, and lays emphasis on

[36] s. 3 Investments and Securities Act 2025.
[37] s. 1 Investments and Securities Act 2025.

transparency and fairness in the Nigerian capital market, all of which are crucial for safeguarding the interests of minority shareholders of companies in general.

3.3. Federal High Court Act, 2004

The Federal High Court is a court of coordinate hierarchy with the High Courts of the various states of the Federal Republic of Nigeria. However, the Federal High Court Act[38] clearly provides that the Federal High Court shall have original jurisdiction in respect of civil causes and matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of incorporated companies under the Companies and Allied Matters Act.

The foregoing is on all fours with the provision of the Constitution[39] which states that notwithstanding anything to the contrary contained in the constitution, and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters-

a. relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party.

b. connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation.

c. connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs, exercise duties, and export duties.

d. connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action against Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures. (Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank).

[38] s. 7 Federal High Court Act Cap F12 LFN 2004
[39] s 251 Constitution of the Federal Republic of Nigeria 1999

e. arising from the operation of the Companies and Allied Matters Act or any enactments replacing the Act or regulating the operations of companies incorporated under the Companies and Allied Matters Act.

f. any Federal enactment relating to copyright, patents, designs, trademark, and passing off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities, and industrial standards.

g. any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterways as may be designated by any enactment to be an international waterway, all Federal ports (including the constitution and powers of the ports authority for Federal ports) and carriage by sea.

h. diplomatic, consular, and trade representation

i. citizenship, naturalization and aliens, the deportation of persons who are not citizens of Nigeria, extradition, immigration into and, emigration from Nigeria, passports, and visas.

j. bankruptcy and insolvency.

k. aviation and safety of aircraft.

l. arms, ammunition and, explosives.

m. drugs and poisons.

n. mines and minerals (including oil fields, oil mining, geological surveys, and natural gas).

o. weights and measures.

p. the administration or the management and control of the Federal Government or any of its agencies.

q. subject to the provisions of the Constitution, the operation, and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies.

r. any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

s. such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly".

In essence, Section 7 (1) (c.) (i) of the Federal High Court Act basically mirrors the provision of the Constitution of the Federal Republic of Nigeria[40] as far as the jurisdiction of the Federal High Court is concerned with regard to all matters relating to the Companies and Allied Matters Act and the regulation of companies incorporated under the Act. It therefore goes without saying that matters relating to the protection of minority shareholders in Nigerian companies as seen in this paper, would naturally be adjudicated upon by the Federal High Court.

Challenges Encountered by Minority Shareholders in Bringing Action on Behalf of The Company

Following the majority rule principle, the majority shareholders of the company have wide powers to ratify any act done to the company by any of the directors of the company.[41] This principle as we have seen, which stems from the status of a company as a legal personality, is rooted in the belief that before a company ratifies an act purportedly done for it or on its behalf, it would take a rational and critical look as to how it affects its interest.[42] It therefore envisages that the company in the general meeting of its shareholders will always put the interest of the company in prospect whenever an issue as to whether any wrongful act done to the company should be ratified or not.[43]

It follows that the general meeting as one of the organs of the company is an independent organ divorced from the control and undue influence of the board of directors or a director (who normally will be the culprit in this respect) and can reach an uninfluenced decision.[44] However, in reality, experiences have shown that the reverse is the case.[45] Many times, the general meeting is a stooge of the board of directors which they use to extend the scope of their authority

[40] s. 251 (1) (e.) Constitution of the Federal Republic of Nigeria 1999

[41] KN Nwonyuku 'Corporate Governance and Profitability of Listed Food and Beverages Firms in Nigeria', *Industrial Engineering Letters*, (2016) (6) (3).

[42]GA Yakasai 'Corporate governance in a Third World country with particular reference to Nigeria' *Corporate Governance: An International Review,* (2001) (9) (3), 239.

[43] J Franks, C Mayer and L Renneboog, 'Who disciplines management in poorly performing companies?', *Journal of Financial Intermediation*, (2001) (10), 209-248.

[44] N Apostolides, 'Directors Versus Shareholders: Evaluating Corporate Governance in the UK Using the
AGM Scorecard', *Corporate Governance: An International Review,* (2007) (15) (6), 1277-1287

[45] AO Dabor, DT Isiavwe, and MA Ajagbe 'Impact of Corporate Governance on Firms' Performance', *International Journal of Economics, Commerce and Management,* (2015) (3) (6).

and influence in the company by getting it to sanction or ratify their otherwise irregular or ultra vires acts.[46]

The truth is that the board of directors will usually comprise the most influential shareholders of the company or those with the highest number of shares, because of their substantial interest in the company, they usually see it as their personal belonging which they can use or manipulate as they like without a care about the interest of other shareholders or the company.[47] In other words, they are the company and the company is them, thus making nonsense of the principle of the independent legal personality of a company.[48]

In Nigeria, it is common to hear people brag 'This is my company, I can run it as I like' and this mentality is not limited to private companies but also affects public liability companies.[49] The crisis in the banking sector which led to the sack and prosecution of some chief executives of some banks in Nigeria is evidence of how deeply rooted fraud is in the corporate management of our companies; a situation where few people incorporate a company and float shares so as to acquire the hard-earned money of the unsuspecting members of the general public for their personal use.[50]

In the words of an eminent law lord, Lord Denning, in the case of *Northwest Holst vs. Secretary of State for Trade*,[51]:

> It sometimes happens that public companies are conducted in a way that is beyond the control of the ordinary shareholders. The majority of shares are in the hands of two or three individuals. These have control of the company's affairs. The other shareholders know little and are told little.

In Nigeria, there are many stories about shareholders who are not issued share certificates for many years.[52] If they are not able to get their share certificates,

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[46]ibid
[47] AS Hayati, and MA Hasani, 'A Legal Perspective of Shareholders' Meeting in the Globalized and
Interconnected Business Environment', *Global Conference on Business and Social Science,* (2014) (8) (9).
[48] TO Odusanya, 'Corporate Personality and Piercing the Corporate Veil', Social Science Research Network Electronic Journal, (2021) (22).
[49] A Enofe, and D Isiavwe, 'Corporate Disclosure and Governance in the Nigerian Banking Sector: An Empirical Evaluation', *The International Research Journal of Social Science and Management, Singapore*, (2012) (9).
[50] C Ogbechie, and DN Koufopoulos, 'Corporate Governance and Board Practices in the Nigerian Banking
Industry' *Social Science Research Network,* (2010) (9).
[51] [1978] EWCA Civ J0201-1

how can they expect to receive dividends or notices of general meetings?[53] The point being advanced here is that in many cases, one can hardly determine what actually constitutes the majority as to rightly ratify any wrongful act of the directors.[54]

It thus means that if any possible acts of the directors can be ratified on the authority of the rule in *Foss vs. Harbottle*,[55] it will amount to fraud against both the company and minority shareholders, who may not really be a minority in terms of number, but simply because they are not influential in the affairs of the company.[56]

In view of the foregoing challenges, it becomes even more frustrating when the extant laws continue to enable the majority to shut out the minority shareholders and preclude them from effectively ventilating grievances even in instances where the law ordinarily permits minority actions such as derivative action. This is evident in the attitude of our Courts in recent times post CAMA 2020 regarding derivative actions. In the case of *Adeogun-Phillips v Gateway Portland Cement Ltd. & Anor.*[57]the Court perYargataByenchit Nimpar, JCA held that:

> ...this suit has been found to be a derivative action, and failure to seek leave has divested the Court of jurisdiction for failure to comply with a condition precedent. The judgment is a nullity because where a Court lacks jurisdiction, no matter how beautiful the proceedings are conducted, it amounts to a nullity and is of no consequence.

Also, in the case of *Agatha Gardens Hotels & Investment Limited v AG&PT Akwa Ibom State & Ors.*[58] the Court reiterated the age-long position of CAMA when it noted that:

> It is well settled law that where a derivative action can be brought by a shareholder of a company, the Court must be satisfied with the following conditions precedent namely that (a) the wrong doers and the directors who are in control and will not take necessary action; (b) the Applicant

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[52] KO Akanbi, and A Abubakar, 'Revisiting the Principle in Foss V. Harbottle: A Comparative Analysis of Nigeria and the United', *Islamic University Multidisciplinary Journal,* (2020) (7) (3).

[53]ibid.

[54] KO Akanbi, 'Perspectives on the Legacy of Salomon v. Salomon on the Nigerian and Malaysian Company
Laws', *Legal Network Series*, (2015) (4) (2), 1-28

[55](n2)

[56] K Aina 'The Derivative Action in Nigeria: A Comparative Review, *The Lord Justice Journal*, (2014) (5) 205.

[57] (2024) LPELR-62108

[58] (2024) LPELR-61979 per H. R. SHAGARI, JCA (Pp. 24-25, paras. D-E)

> has given reasonable notice to the directors of the Company of his intention to apply to the Court if the directors of the company do not bring diligently prosecute or defend or discontinue the action (c) that the applicant's action is in good faith and (d) that it appears to be in the best interest of the company that the action be brought, prosecuted, defended, or discontinued.

These stringent measures and more no doubt continue to militate against the quest to give the minority shareholder a sense of belonging in company affairs.

Findings And Recommendations

The provisions of the Companies and Allied Matters Act 2020 highlighted above with regard to corporate democracy and minority protection have no doubt contributed towards the development and sustenance of corporate democracy in Nigeria. However, this paper finds as follows:

1. The provisions of the Companies and Allied Matters Act 2020 which seek to promote corporate democracy and protect minority rights are a replication of the provisions in the repealed Act which was in existence for over thirty years.

2. The said provisions are inadequate because they inadvertently restrict the rights of the minority shareholders which they are meant to promote and protect.

Considering the lapses noted above, it has become necessary that certain provisions of the Act are amended to further safeguard the ever-dwindling rights of the minority shareholders in companies.

Further to the above findings, this paper makes the following recommendations:

1. Section 346(2) of the Companies and Allied Matters Act makes it clear that no derivative action may be brought unless the Court is satisfied inter alia that the applicant is acting in good faith. Unfortunately, it is difficult to prove good faith except to simply prove that the application is meritorious and supportable. The major disadvantage of this condition is that it is difficult to prove because the right of action ordinarily belongs to the company; and where the directors have decided not to act, any action by any other person is likely to be viewed as personal and malicious. This requirement also gives the court a wide discretion to shut out meritorious application on the simple ground that it was not brought in good faith. It is therefore recommended that this condition (proof of good faith) should be deleted entirely from the

Companies and Allied Matters Act as it creates unnecessary loopholes that litigants and indeed the courts may utilize to discourage serious and meritorious claims. This is most especially in cases where fraud has been committed by the directors who are in control and would not bring an action against themselves; as such, the good faith of the shareholder who decides to bring action ought not to be the most important consideration, as the Court should be more interested in bringing the fraudulent directors to justice.

2. Furthermore, Section 346 (2) (b.) of the Act is vague on the length of Notice that should be given to the Directors before commencement of Derivative Action. It is recommended that the Act is made unambiguous as to the length of pre-action notice required for Derivative Action similar to what obtains in other jurisdictions such as Singapore[59]where 14 days' notice is required.

Conclusion

The provisions of the Companies and Allied Matters Act 2020 relating to corporate democracy and minority protection as discussed above have continued to evolve over the years alongside judicial interpretation of those laws to safeguard internal democracy in matters relating to companies in Nigeria. The minimum measures recommended in this paper after appraising the existing laws would contribute to strengthening equity and justice in the affairs of Nigerian companies which would in turn promote economic stability, investor confidence, and most importantly, profitability, which is the primary objective of companies engaging in business.

Ultimately, effective minority protection is indispensable in the quest to foster investor confidence, promote ethical conduct, and ensure the long-term sustainability of corporate entities.

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[59] s. 216A (3) (a) Singapore Companies Act 1967

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