

EFFECTIVE COMPANY AND CORPORATE LEADERSHIP IN THE NIGERIAN COMMERCIAL BUSINESS TERRAIN IN THE 21ST CENTURY: A MYTH OR REALITY?

By

Prince Pius Imiera*

ABSTRACT:

The principal objective in the formation or incorporation of companies is to foster the spirit of entrepreneurship, business enterprise, efficiency, generation of employment with a view to enhancing economic welfare of the people and for the social and economic development of the society. In addition, it is a general principle of law under Nigerian jurisprudence that a company is not birthed until its certificate of incorporation (hereinafter COI) is issued by the Corporate Affairs Commission (hereinafter referred to as CAC). The brain child or the people behind every company before it comes into existence are called the promoters, who in any case, eventually still own or become first directors, subscribers or shareholders of the company. The promoter under CAMA enters what is referred to as pre-incorporation contracts on behalf of the yet-to-be formed company. Under the law, when the company finally comes into existence, the contract done on its behalf may or may not be ratified by the company through its directors. However, under section 18(2) of CAMA, 2020, one person may now form or incorporate a company and become the sole shareholder or director as against section 20(2). With this present position under section 18(2) of CAMA, will corporate governance and leadership be a reality or a myth? The research questions in this article are: when the company eventually comes into existence after the issuance of COI, how will the company be managed or administered under section 18(2)? will the leadership of the company bring the desired goals of establishing a company with a one man show? in corporate governance, are there lessons to learn by corporate and/or company leaders in the present Nigerian business environment?

Keywords: *corporate leadership, corporate governance, directors, company, promoters, business ethics, business practices, etc.*

1. Introduction

Effective decision making is one of the skills a leader should possess in order to achieve the desired objectives,¹ the corporate world is not exempted from this truth. It is for this reason it is said that:

“Making decisions, however big or small, are a fundamental part of leadership, as a leader one

* Prince Pius Imiera Ph.D, LL.B, LL.M, B.L, BA, MA, Philosophy Faculty of Law, Achievers University, Ondo State, pius4me1964@gmail.com 07030420038

¹ L. Kase, Great leaders are great decision-makers, [2010] *Graziadio Business Review*, 1.

needs to develop strong decision-making skills and have the conviction to stand by your decisions, whilst also recognizing the need to adapt when those decisions do not lead to the desired outcome, it is a unique balancing act and great leaders understand how to balance emotion with reason as well, leaders must possess qualities and characteristics that influence their organizational decision making style.”²

To this end, company and corporate leadership is indicative of the laws regulating business decision making which are applied or used in the management and administration of companies, including company social responsibility³ The responsibility of ensuring that these laws are properly carried out are placed on the shoulders of the shareholders and directors of the company.⁴ However, the question of accountability, business ethics and good business practices arise in the course of corporate leadership.

Active company leadership is a very important instrument at the disposal of corporate directors or managers in the ever-changing business terrain and the ever-growing economies the world over.⁵ In the past, big corporate entities, at both local and international levels, have gone bankrupt and collapsed as a result of bad leadership and lack of the requisite skills and knowledge in corporate governance.⁶ Scholars have taken judicial notice of companies that were doing well but went under-ground due to inefficient leadership, examples include but not limited to the Enron and Worldcom in the USA and Saambou Bank and Fidentia in South Africa at international level respectively.⁷ At the local scene,

² N. Bhatnagar, ‘Leadership and decision making- two skills in one kit’ [2017] *International Journal of Science Technology and Management*, (6) (1) 684.

³ Y. Singh and S. Sandhu, ‘Corporate social responsibility and business ethics for good corporate governance’ [2016] (6) (3) *International Journal of Engineering and Management Research*, 123.

⁴ J. Chen, ‘Board of directors: what it is, what its role is?’ <<http://www.investopedia.com>>--->BusinessLeaders.> accessed on 24 November 2023.

⁵ O. S. Agyemang, ‘Prospects and Challenges of Corporate Governance in Ghana’ [2013] (3) (5), *International Journal of Scientific and Research Publication*, 1.

⁶ C. E. Halliday and O. Nwanya, ‘Corporate Governance: A Veritable Mechanism for Combating Corporate Corruption’ [2013] (5) (1) *Port Harcourt Law Journal*, 14.

⁷ Okara 187.

Nigeria was not spared of bad corporate governance which led to the collapse of banks and other financial institutions; as far back as 1990s, unethical financial practices became the order of the day.⁸

Company or corporate governance or leadership may be defined as the procedures or ways through which companies are governed.⁹ In addition, company leadership is the system by which companies are directed and controlled.¹⁰ Corporate leadership takes a definitive dissection into how directors and corporate managers are to demonstrate transparency and make a full disclosure where necessary in the management of companies affairs.¹¹ It is noted that effective leadership in the management of corporate activities is a resultant output of good performance by all officers who stand in a fiduciary position¹² with the company in the exercise of corporate functions.

This article dissects the idea of corporate governance and leadership with particular focus on the Nigerian business terrain, business ethics and practices with a view to finding out whether or not corporate governance and leadership is a myth or reality in our work space.

2. Principles of corporate governance and leadership examined

There are professional ethics across every facet of human endeavor,¹³ and there are no exceptions to corporate leadership and governance in this regard.¹⁴ Corporate leadership is majorly focused on the practices and procedures for

⁸ Halliday 14.

⁹ J.E.O. Abugu, 'Issues and Problems in Corporate Governance in Nigeria' [2015] (6) (3) *The Gravitas Reviews of Business Governance in Nigeria*, 1.

¹⁰ Cadbury Adrian Report of the Committee on the Financial Aspects of Corporate Governance 1992, section 25.

¹¹ Okara 8.

¹² D. O. Patrick, 'Directors as fiduciary under Nigerian company law' [1997] (6) (2) *Tilburg Foreign Law Review*, 181-196.

¹³ Z. Menbarrow, 'The importance and necessity of professional ethics in the Organization and the Role of Managers' [2021] (18) (1) *Psychology and Behavioral Science International Journal*, 1.

¹⁴ V. Sankhat 'Corporate Governance - ethics and practical approach' [2022] *International University of Applied Sciences*, ii.

ensuring that a corporate entity is managed in order to actualize its set objects as contained in the memorandum and articles of association.¹⁵

The principles of company or corporate leadership sets out and assign responsibility and duties to all the players or members in the organization.¹⁶ Efficient corporate leadership survives when they are guided and placed upon some salient principles.¹⁷

These principles include but not limited to:

- (a) the right of shareholders;
- (b) the equitable treatment of shareholders;
- (c) the role of stakeholders in corporate governance;
- (d) the role of regulators;
- (e) disclosure and transparency;
- (f) the responsibilities of the board of directors; and;
- (g) the role of auditors and audit committee.¹⁸

Directors in the company are seen as stewards under the principles of corporate leadership,¹⁹ as a result, they are the corporate executives working on behalf of the shareholders.²⁰ In addition, directors as stewards of the company place high premium on the role of top management which integrate their objectives as part of the organization.²¹ Furthermore, corporate executives as stewards, become satisfied with intrinsic rewards, contented and motivated when the goals of the organization are successful and achieved.²²

¹⁵Jenn, 'What is the importance of leadership?' <<https://www.indeed.com/career-advice/career-development/importance-of-leadership>> accessed on 24 November 2023

¹⁶ Okara 2.

¹⁷ P. E. Oyong, 'An Analysis of the Legal Framework for Corporate Governance in Nigeria' [2009] *Nigerian Legal Research Journal*. 118.

¹⁸ D. A. Guobadia and E. Azinge, (eds) *Globalization, National Development and the Law (Nigeria 2005)* National Institute of Advanced Legal Studies 162.

¹⁹ Lacera, 'Corporate governance and stewardship principles' [2017] *Harvard Law School Forum on Corporate Governance*, 1.

²⁰ S. Conmy, 'What are the duties of a company director?' *Corporate Governance Institute* <<https://www.thecorporategovernanceinstitute.com/what...>> accessed on 24 November 2023

²¹ T. F. Guluma, 'The impact of corporate governance measures on firm performance: the influences of managerial over-confidence,' [2021] *Future Business Journal* (7) (1) 1.

²² J. H. Davis, F. D. Schoorman, and L. Donaldson, 'Toward a stewardship theory of management' [1997] (22) (1) *Academy of Management Review*, 20-47.

In addition, corporate leadership principles view directors as stakeholders in the organizations having other people to render service to; these other people include the company's employees, item suppliers, the host communities and the business partners.²³ It will be a good business practice therefore, for the management to give stakeholders the attention due to them, as this will foster community service and encourage companies to engage in corporate social responsibility in the jurisdiction they operate.²⁴

Precedent upon the foregoing, company or corporate leadership in the Nigerian business environment is founded on the following instruments:

- (1) the laws regulating corporate affairs in Nigeria;²⁵
- (2) corporate organs;²⁶
- (3) regulatory institutions;²⁷ and;
- (4) regulatory instruments.²⁸

3. General principles for corporate leadership in Nigeria

The CAMA 2020 is the enabling law used to establish, to register companies and regulate corporate affairs and leadership in the Nigerian commercial and business space.²⁹ The Act is the tool put in place to provide some systems for good corporate management, which include the appointment of directors by the

²³ H. Hung, 'Directors' role in corporate social responsibility' [2011] (103) *Journal of Business Ethics* 385-402.

²⁴ E. S. Asemah, 'Corporate social responsibility and the performance of select food and beverage companies in plateau state, Nigeria,' [2015] *A Thesis in The Department of Communication Arts, Faculty of Arts, University of Uyo*, 8.

²⁵ Companies and Allied Matters Act 2020; Insurance Act, Cap 117 LFN 2004; Central Bank Act 2007; Investment and Securities Act 2007, Nigeria Deposit Insurance Corporation Act, Cap N 102 LFN 2004.

²⁶ CAMA Ss. 88 (b); 269-340; 401-415.

²⁷ Corporate Affairs Commission; Central Bank of Nigeria; Nigeria Deposit Insurance Corporation; Nigerian Stock Exchange; Investment and Securities Tribunal.

²⁸ Members in General Meetings, Board of Directors, Managing Directors.

²⁹ Preamble: An act to repeal the companies and allied matters act, cap. C20, laws of the federation of Nigeria, 2004 and enact the companies and allied matters act, 2020 to provide for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names together with incorporation of trustees of certain communities, bodies, associations; and for related matters.

company,³⁰ removal of directors by ordinary resolution,³¹ duties³² and liabilities of directors,³³ provisions for auditors³⁴ and audit committee,³⁵ disclosure provisions,³⁶ compulsory involvement of shareholders in making or taking corporate decisions.³⁷

Viewed from another angle, the CAMA 2020 imported into its provision some common law rules and principles, which made a clear space for several duties of directors, prominent among which are:

- (a) that a director owes a fiduciary relationship towards the company;³⁸
- (b) directors should act in the best interest of the company at all times;³⁹
- (c) directors to exercise their powers for the specified purpose and not collateral purpose;⁴⁰
- (d) that the duties of a director should not conflict with his personal interest;⁴¹ and;
- (e) that a director must discharge his duties honestly and in good faith, with all degree of skill and care which a reasonable and prudent director will exercise in comparable circumstances.⁴²

The purpose of the various statutory provisions above is very clear, one of which is to establish and ensure a code of corporate leadership. It can be deduced therefore that the standards of corporate leadership or governance and its ideals are adhered to by corporate managers. Also, when these ideals are complied with, it brings and enhances.⁴³

- (a) the protection of the corporate interest of companies;

³⁰ CAMA S. 271.

³¹ CAMA S.288.

³² CAMA S.278.

³³ CAMA S. 276.

³⁴ CAMA S. 401.

³⁵ CAMA S. 404

³⁶ CAMA S. 303.

³⁷ Patrick 272.

³⁸ CAMA S. 305 (1) (2).

³⁹ CAMA S. 305 (3) (4).

⁴⁰ CAMA S. 305 (5).

⁴¹ CAMA S. 306.

⁴² CAMA 2020, S. 308.

⁴³ Okaro 186.

- (b) safety of members;
- (c) protection of employees from unfair dismissal;
- (d) protection of creditors and the public; and;
- (e) profitability of the organization.

Several years back, both Securities and Exchange Commission and the CAC made a request that the code of best practice on corporate leadership and governance in Nigeria be released providing for:

A code to make provisions for the best practice to be followed by public quoted companies and for all other companies with multiple stakeholders registered in Nigeria in the exercise of power over the direction of the enterprise, the supervision of executive actions, the transparency and accountability in government of these companies within the regulatory framework and market and, for other purposes connected therewith.⁴⁴

4 The ethics and principles of corporate leadership

Every profession or trade has its own ethics guiding its corporate governance. In the corporate world and as it relates to company management, these are the ethics and principles which in the final analysis produces:

- (a) Accountability - maintaining the integrity of financial statements and reporting;
- (b) Ensuring that one is answerable for one's actions;
- (c) Openness, honesty, transparency - acting with sincerity, clarity, uprightness and candour;
- (d) Independence - ability to take decisions without influence;
- (e) Responsibility- acting responsibly and taking responsibility for one's actions;
- (f) Integrity and ethical conduct- maintaining conducts that commands the trust;
- (g) Respect for others;

⁴⁴ J. O. Orojo, *Company Law and Practice in Nigeria*, (5th edn: Lexis Nexis Group, 2008) 282.

- (h) Doing things right even when it appears one can get away with doing otherwise; and;
- (i) Reputation and/or reputational risk- include being perceived as being upright and of good character.⁴⁵

5 Non-compliance to business ethics by corporate leadership

The ethics and principles for corporate leadership stated in the preceding section presupposes that a sound system of corporate governance provides the assurance that managers and directors of corporate entities comply and adhere to the principles of accountability and transparency.⁴⁶

However, it is sad to note that directors have placed personal goals over and above corporate matters⁴⁷ in the Nigerian business space, and as a result mismanaged corporate funds.⁴⁸ It is also noted that sometimes it is difficult to enforce failure of compliance with directors' duties and the ethical principles as stated above, this difficulty in compliance was reflected in the case of **Percival v Wright**,⁴⁹ where the English court held *inter alia* that directors only owe duties of loyalty to the company, and not to individual shareholders. This principle has been codified in the United Kingdom's Company Act 2006.⁵⁰ To make matters worse, the shareholders are unable to enforce non-compliance to these principles notwithstanding the several avenues provided for shareholders' activism in this regard, with particular reference to section 354 of CAMA.⁵¹ The inability of shareholders or any other officer to invoke the relevant provisions of the Act in respect of non-compliance to business ethics and principles has given rise to

⁴⁵ N. Ezeako, 'The Governance Platform- Corruption and Economic Crimes: Corporate Governance to the Rescue,' (2012) 17th January *THISDAY Newspaper*, 14.

⁴⁶ G20/OECD 'Principles of Corporate Governance' [2015] 7.

⁴⁷ K. Ryba, 'How to Align Individual, Team, and Organizational Goals for Success' <<https://www.quantumworkplace.com/future-of-work/how-to-align-organizational-goals>> accessed on 24 November 2023

⁴⁸ Abugu 4.

⁴⁹ [1902] 2 Ch 401.

⁵⁰ S. 170. The general duties specified in sections 171 to 177 are owed by a director of a company to the company, a director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard to the likely consequences of any decision in the long term

⁵¹ CAMA Ss.44; 353-357.

several challenges of corporate governance and leadership in Nigeria's business environment in the twenty-first century . These challenges are addressed in the succeeding section.

6 Challenges involved in not complying with ethics and principles of corporate leadership and governance in Nigeria

It is trite law that a corporate organization conferred with legal personality is a mere abstraction,⁵² having no reasoning faculty of its own,⁵³ it has no mind of its own⁵⁴ and as a result, the organization acts through its alter ego,⁵⁵ who are the very essence, the very ego and center of the juristic personality called the company.⁵⁶

The challenges emanating from the non-compliance to ethics, principles and proper corporate governance in Nigeria are traceable to officers and organs of the company.⁵⁷ These officers are made up of human personalities entrusted with the management and administration of the corporate affairs.⁵⁸ These officers and organs include but not limited to:

- (a) The board of directors;
- (b) Members in general meeting; and;
- (c) Managing directors or officers, auditors.⁵⁹

It can be inferred from the foregoing that the challenges in corporate management and non-compliance with the ethical and principles of corporate leadership is

⁵² P. Das, 'Corporate Personality is the laws greatest invention' [2019] *University of Law, UK*, 1.

⁵³ S. K. Ripken, 'Legal Theories of the Corporate Person' [2019] Cambridge University Press, 1.

⁵⁴ M. A. Pickering, 'The Company as a Separate Legal Entity' [1968] (31) (5) *The Modern Law Review* 481-511.

⁵⁵ L. H. Leigh, 'The Alter Ego of a Company' [1965] (28) (5) *The Modern Law Review*, 584-587.

⁵⁶ *Trenco (Nig) Ltd v African Real Estate* [1978] 1 LRN, 153.

⁵⁷ O. D. Nwankwo, 'Roles of the organs and officers of an incorporated company' [2016], *GRIN Verlag Open Publishing GmbH* 1.

⁵⁸ L. Adedeji, 'Company management and administration in Nigeria' [2015] <https://www.9jalegal.com.ng › company-management-and-a...> accessed on 18 January 2024.

The first category of persons to be considered in the management of a company are the directors; section 244 of Nigeria's Companies and Allied Matters Act (CAMA) Cap C20 LFN 2004 describes 'directors' as persons duly appointed by the company to direct and manage the business of the company. The Nigerian Supreme Court also restated the definition given in section 244 as to who a director is in the case of *Bernard Ojeifo Longe v. First Bank of Nigeria (2010) 5 NSCR 1*.

⁵⁹ Oyong 121.

inherent in the weaknesses of the officers and organs in the discharge of their statutory functions; one organ exercising supremacy over the others and abuse of the exercise of corporate powers. These challenges shall be considered hereunder, albeit, in brief, as it relates to company governance in Nigeria.

(i) The challenge of control

There is a general but rebuttable presumption that a company's Annual General Meeting (AGM), members are the *numero uno* organ of the company⁶⁰ and on this premise, the board of directors serve as ordinary agents of the company, and therefore, they are subservient to the members at the AGM.⁶¹ Even though this position seemed to have been changed by case laws, members sometimes in general meeting still intermeddle with the decisions of the directors unless they are contrary to the provisions of the Act or Articles.⁶²

The opinion expressed above takes the common law position which has since been reflected in the Nigerian *Company law Act*.⁶³ The Act provides that the articles of association determine the sharing of powers between the members and the board of directors except as otherwise stipulated by the Act.⁶⁴ Pursuant to the provision of section 87 (3) of the CAMA 2020:

once the management of a company is given to the board of directors, it can exercise the power of

⁶⁰ The Principle of Corporate Personality' (Lawteacher.net, November 2023) <<https://www.lawteacher.net/free-law-essays/company-law/principles-of-corporate-personality-company-law-essay.php?vref=1>> accessed on 24 November 2023. A company in law is a separate person from its subscribers to the memorandum of association. In the principle of corporate personality, a company is classified as a separate person from its member. Therefore, company as a separate legal entity should have perpetual succession, proprietary interest, debts, limited liability and may sue and be sued in its own name. On the other hand, we also note that the main instances of lifting the veil of incorporation are the number of company members, fraudulent trading, evasion of legal obligations, holding and subsidiary company and publication of names. All in all, we can define that the effect of incorporation of a company means it has a separate existence.

⁶¹ *Isle of Wright Railway v Tahourdin* [1883] 25 Ch.D, 320.

⁶² *M Automatic Self- Cleansing Filter Syndicate Co v Cuninghame* [1906] 2 Ch.D, 34; *Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB, 113.

⁶³ CAMA S. 87.

⁶⁴ CAMA S. 87(2).

management even if the articles of association is silent on the matter.

In other words, it is the board of directors that has the responsibility to over-see to the day to day operations of a company and not the members. It is submitted therefore, that, a legal framework that covers shareholders' supremacy and the right to subject directors' action to review be put in place with a view to improving corporate leadership in Nigeria.

(ii) The challenge of leadership ethics

In the management and operation of company's affairs, the company either succeeds, fails, make good or bad decisions as a result of the type of leadership style adopted.⁶⁵ To this end, the challenge of corporate leadership in Nigeria cannot be separated from the fiend of corruption, greed and apathy in the Nigerian corporate work space. This position was corroborated by the decision of the court in the following words of wisdom:

We lack good leadership in our body politic. A good leader is someone who is able to lead and has the ability to influence his people positively to attain and achieve greater heights for the good of humanity. A good leader is selfless and has only the interest of the people he is leading at heart. A leader's action always has a rippling effect on the society. The leadership's wrong actions can destroy the society and bring it to naught, while the acts of good and seasoned leaders could catapult our country Nigeria to the country, we all dream about...a good leader should adhere to law and observe same.⁶⁶

The import of the above decision is to the effect that where directors, in the management of corporate activities intentionally fall short of their leadership functions and abuse their duties in contravention of statutory responsibility to shareholders, it logically follows that other officers of the company will imitate

⁶⁵ Abugu 8.

⁶⁶ *Balonwu v Obi*, [2007] 5 NWLR (Pt. 1028) 488, 561-562, Paras F-D.

the directors by indulging in sharp practices directed against the corporate objectives.

It stands to reason therefore, that in the event of a board of directors of a particular company falsifying financial records to circumvent payment of corporate taxes, it directly educates and/or teaches company managers to distort figures and pilfer company's funds.⁶⁷

High profile corporate mismanagement, immoral and illegal acts are daily occurrence in the corporate cynosure of Nigeria.⁶⁸ Cases in point are the defunct Oceanic bank, the Nigerian Stock Exchange, Securities and Exchange Commission and within the stock brokers markets.⁶⁹ It is submitted that these fraudulent practices are unethical, and do not serve as precedent for good corporate leadership. To this end, the advocacy for effective leadership based on ethical pedestal is the fulcrum upon which corporate organizational leadership should be built with result-oriented vision and mission statement in our ever-changing business terrain.

(iii) Inadequate and ineffective control mechanisms of directors' power

The CAMA 2020 makes copious provisions for corporate checks and balances with a view to controlling the arbitrary actions of the board.⁷⁰ It is however noted that, regardless of the availability of these checks, more often than not, they are inadequate and ineffective and to that extent, they fail to serve their desired authentic purpose.

This view can be buttressed or supported with the residual powers of the members against the actions and inactions of the board provided for by CAMA. These residual powers include:

- (a) The power of the members in general meeting to act if the board is disqualified or is unable to act because of a deadlock;

⁶⁷ Abugu 8.

⁶⁸ Y. Mishina, B. J. Dykes, E. S. Block, and T. G. Pollock, 'Why "good" firms do bad things: the effects of high aspirations, high expectations, and prominence on the incidence of corporate illegality' [2010] (53) (4) *Academy of Management Journal*, 701.

⁶⁹ S. C. Okaro, 'Corporate Fraud in Nigeria-A Two Case Study' [2013] (6) (3) *International Journal of Research in Management*, 9-17.

⁷⁰ CAMA S. 87.

- (b) The power to institute legal proceedings in the name of and on behalf of the company;
- (c) Power to ratify or confirm any action taken by the board of directors; and;
- (d) The power to make recommendations to the board regarding action to be taken by the board.⁷¹

The section 87 provision is highly commendable but it is sad that practically, it is difficult to enforce, because the deadlock over which the court may assume jurisdiction under the just and equitable clause must not be a partial but complete deadlock, which, in most cases do not exist.⁷²

Furthermore, the courts are unwilling to invoke the doctrine of residual powers in cases where a complete deadlock is present. The ruling of the court in the case of **Bamford v Bamford**,⁷³ supports this principle where the court rejected the erroneous belief that a general meeting has the residual power to perform functions the directors cannot carry out. This pronouncement also found support in **Re-Argentum Reduction (UK) Ltd.**⁷⁴ As a corollary to the foregoing, there is one more ineffective category of check on the power of the board, the *ultra vires* doctrine which is to the effect that: the board of directors act in accordance to the purports of a company's memorandum and articles of association.⁷⁵

Unfortunately, the omnibus provision has made the doctrine of *ultra vires* ineffective as provided by CAMA and empowers directors to do such act *ultra vires* the business of the company.⁷⁶ Legal scholars have argued that, going forward, that the doctrine of *ultra vires* is dead in Nigeria.⁷⁷

(iv) Lack of interest by members in issues of corporate leadership

The CAMA gives prominence and priority to shareholders in the governance and management of corporate or company activities; this is because the Act

⁷¹ CAMA S. 87 (5)(a)-(d).

⁷² *Re Farnat Produce and Shipping Line v Establishment De Commerce General* [1971] 1 ANLR, 247.

⁷³ [1970] Ch. 212.

⁷⁴ [1975] 1 All ER, 608.

⁷⁵ CAMA S. 44(1).

⁷⁶ CAMA S. 44(3).

⁷⁷ K. Aina, 'Ultra Vires Doctrine is Dead' [2005] 4, *University of Ibadan Journal of Private and Business Law*, 18-37.

encourages company directors to balance the competing interests between the employees and those of the shareholders.⁷⁸ For example, in public companies, the AGM is not necessarily an avenue used to control the day-to-day management of the company.

Even when some shareholders have the opportunity to control the affairs of the company, the minority shareholders in the public companies do not assist the majority shareholders garner the support which would make their objection to corporate decisions meaningful.⁷⁹

Another example why members exhibit dislike or lack of interest or apathy for corporate leadership is the practice of proxies.⁸⁰ Additionally, directors sometimes intentionally schedule the annual general meetings at locations that are outside the reach of shareholders, thereby frustrating members from attending and opposing issues not favorable to them at meetings, this with all intent and purpose makes members display hatred towards corporate leadership and governance in Nigeria.⁸¹

Pursuant to the various challenges posed to members, which discourage them in showing interest in corporate management, it is submitted therefore at this juncture, that the time for urgent legal reform is overdue in respect to the venue of annual general meetings and how such corporate activities are conducted at the proceedings.⁸² To this end, proceedings at AGM must only be conducted at the *locus in quo* or at the headquarters of the company which will be easily accessible to the shareholding members of the company.⁸³

(v) Challenges in the division and/or separation of corporate ownership from control

In the management and leadership of corporate affairs, the principle of principal-agency relationship exists, this is why separation of ownership and control is pivotal in company administration. The agency-principal relationship that exists

⁷⁸ CAMA S. 288.

⁷⁹ Okara 192.

⁸⁰ Abugu 9.

⁸¹ Okara 192.

⁸² Nigerian Code of Corporate Governance 2018 (NCOCG 2018).

⁸³ NCOCG Principle 21.

between the members and the board of directors was well captured in the words of a renowned economist:

*Directors being managers of other people's money than their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private company, frequently watch over their own. Negligence and profusion, therefore, must always prevail more or less in the management of the affairs of a joint stock company.*⁸⁴

The truth to be deduced from the above opinion is that in corporate governance, the directors and managers have other persons to serve aside from those people subscribing to the company's shares. These other persons are the employees of the company, those supplying items or materials to the company and the host communities where the company is domiciled.⁸⁵ The company owes it host community social responsibility, such as provision of water to the community, employment of young people in the area, constructing good roads for the community. When the company provides any of the responsibilities enumerated above, it enhances good corporate leadership practice which in the final analysis, cushion the tension that exist between the shareholders and stakeholders.⁸⁶ In this connection, fulfilling social duties to host community by a company is a strategic tool in the hands of the corporate managers to actualize company goals, thereby making corporate governance very transparent during decision making for a long-term business objective.

(vi) Statutory restrictions on members' rights and powers

In addition to the challenges faced by members as enumerated above, the CAMA imposes many other restrictions on the rights and powers of the members thereby reducing the effectiveness of the members in discharging their oversight functions

⁸⁴ A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (University of Chicago Press: 1976), 264-265.

⁸⁵ H. Y. Bhadmus, *Corporate Law Practice*, (3rd edn, Enugu: Chenglo Limited, 2015) 268.

⁸⁶ O. A. Onwumere, 'The Evolving Interplay between Corporate Governance and Corporate Social Responsibility and its Legal Implications on Multinational Companies' [2018] (10) (1), *Journal of Corporate Governance*, 2111.

with a view to monitoring and cutting the excesses of the board of directors in carrying out their responsibilities such as right to vote.⁸⁷

The restrictions placed on members include:

- (a) The rights to attend and vote in meetings;⁸⁸
- (b) The right to requisition extra ordinary general meetings;⁸⁹
- (c) The right to approve and declare dividend;⁹⁰
- (d) The right to demand voting by poll⁹¹ which is only available to members for the election of the chairman of the meeting and adjournment;⁹² and;
- (e) The right to appoint and remove directors/auditors.⁹³

It is noted also that the members do not possess absolute rights to appoint directors, although, they are statutorily authorized to appoint first directors of the company,⁹⁴ the appointment of subsequent directors⁹⁵ is most times high jacked by the board under the pretense of filling a casual vacancy in the board arising out of death, resignation, retirement or removal.⁹⁶ These statutory restrictions are a clog in the wheel of progress of good corporate and leadership practice in Nigeria's business landscape.⁹⁷ It is for these restrictions that some codes of corporate governance were formulated in Nigeria to serve as guide to leaders in the business world.

7 Rules and/or codes for effective corporate leadership in Nigeria's commercial affairs

It is a common and popular saying that "power corrupts and absolute power corrupts absolutely."⁹⁸ As noted earlier, there been high profile cases of directors' abuse of corporate powers due to inadequate corporate governance rules and

⁸⁷ CAMA S. 239 (2).

⁸⁸ CAMA Ss. 235-240.

⁸⁹ CAMA S. 239 (2).

⁹⁰ CAMA S. 239.

⁹¹ CAMA S. 249 (1).

⁹² CAMA 225 (5).

⁹³ CAMA Ss. 272-273, 288, 401.

⁹⁴ CAMA S. 272.

⁹⁵ CAMA S. 273 (1).

⁹⁶ CAMA S. 274.

⁹⁷ Okara 190.

⁹⁸ J. Dalber-Acton, 'Power corrupts and absolute power corrupts absolutely' <<https://www.dictionary.com.power>> accesses on 23 November 2023

codes both at the international⁹⁹ and local levels.¹⁰⁰ The non-availability of codes to regulate the fiend of corruption and abuse of power in the corporate work space led to the enactment of rules by states to ensure sanity.¹⁰¹

At the local scene, the Code of Corporate Governance for Public Companies came to the fore in 2003, which later became the Securities and Exchange Commission Corporate Governance Code 2014.¹⁰² The 2014 Code was re-edited and upgraded to the National Code of Corporate Governance 2016.¹⁰³ The 2016 version of the Code was later revised which presently metamorphosed into the Nigerian Code of Corporate Governance 2018.

These rules and Codes addressed very salient areas in respect of Corporate Governance with a view to curbing the absoluteness in the display and show of naked power by corporate managers.

One of the major philosophies behind the Code of Corporate Governance and leadership is to ensure that companies adopt the ‘Apply and Explain’ approach in implementing and monitoring compliance with the 2018 Code.¹⁰⁴ To this end, the ‘Apply and Explain’ approach expects that all the principles and ethics discussed earlier are applied and to that extent, corporate entities are required to demonstrate how the particular activities carried out by the company best achieve the intentions and objectives purposed by the Corporate Governance principles as contained in the Code.¹⁰⁵

Furthermore, CAMA did not make provisions for a separate and special office of a chairman,¹⁰⁶ instead, it provides that:

⁹⁹ The United States ENRON, WorldCom, and Saambou Bank and Fidentia in South Africa.

¹⁰⁰ The scandal of Cadbury Plc the defunct Oceanic bank are cases in point in Nigeria.

¹⁰¹ Cadbury Report on the Financial Aspect of Corporate Governance of 1992.

¹⁰² Okara 193.

¹⁰³ Okara 193. The Code was essentially a consolidation and refinement of different sectoral codes on corporate governance and was issued in three parts: The Code of Corporate Governance for the Private Sector; the Code of Corporate Governance for Non-Profit Entities; and the Code of Corporate Governance for the Public Sector. The Code of Corporate Governance for the Private Sector was made mandatory while that for Non-Profit entities was made to operate on a ‘comply or justify non-compliance’ basis as is practiced in the UK Code of Corporate Governance.

¹⁰⁴ Paragraph C of the Nigerian Code of Corporate Governance.

¹⁰⁵ Okara 193.

¹⁰⁶ Abugu 11.

‘The chairman, if any, of the board of directors shall preside at general meetings...’¹⁰⁷ nonetheless, the chairman of the board is saddled with abundant powers and duties.¹⁰⁸

It is argued that it will be a herculean task for an ‘individual’ to be the chairman of the board and simultaneously occupy the position of the managing director of the company, this violates one of the principles of natural justice, *nemo iudex in causa sua*.¹⁰⁹ It is for this reason that Corporate Code 2018 provides:

“That for all public companies with listed securities, the positions of the chairman of the board and managing director shall be separate and held by different individuals.”¹¹⁰

The message conveyed in the preceding section is simple: it is that there should be no over concentration of powers in one person which may deprive the board of directors the requisite checks and balances in the performance of their statutory functions.¹¹¹

8 Rethinking the relationship between corporate leadership and the community of operation

Corporate leadership and governance is built on the ethical norms and principles of accountability in corporate practice,¹¹² while on the other hand, corporate social responsibility is directed at balancing the goals of shareholders of a company, the interest of stakeholders having governance powers such as business ethics; codes of conduct and interaction between the stakeholders in the community where the company operates.¹¹³ It can be deduced from the foregoing

¹⁰⁷ CAMA S. 265 (1).

¹⁰⁸ CAMA S. 265(3) (a)-(e).

¹⁰⁹ Latin phraseology that no one should be a judge in their own cause, it is one of the cardinal rules of natural justice that no one should act as a judge in a case in which they have a personal or vested interest.

¹¹⁰ Principle 3.3 of the Nigerian Code of Corporate Governance 2018.

¹¹¹ CAMA S. 290 (1).

¹¹² Okara 195.

¹¹³ O. A. Onwumere, ‘The Evolving Interplay between Corporate Governance and Corporate Social Responsibility and its Legal Implications on Multinational Companies’ [2018] (10) (1), *Journal of Corporate Governance*, 2109-2110.

that as two distinct and different mechanisms, the corporate leadership principles deals with corporate decision making while the corporate social responsibility relates with the community on people-friendly business strategies.¹¹⁴

In addition, corporate governance is shown as the platform through which individuals assist in contributing to the financial success of company with view to bringing to themselves returns on their investment.¹¹⁵ When companies engage in community service through corporate social responsibility, it establishes a business strategy implored by the company to achieve their ultimate objectives.¹¹⁶

The CSR lends credence to the responsibility of corporate entities towards the communities and environment of their primary assignment and to this end, adequate consideration is given to the interests of several groups in the host community when the company makes long plan business decisions.¹¹⁷ The conglomeration of both the company and the host community is understood to mean although in a narrow sense, corporate governance,¹¹⁸ as a result, more attention is placed on company's corporate ethics and transparency including but not limited to accountability of companies to their host communities in respect of short- and long-term business decisions. It was for this corporate and community inter-connectedness that scholars reasoned that:

The broader concept of CG which entails due regard to all shareholders and ensuring that companies are answerable to all their key stakeholders has extended to the stakeholder approach of CSR which entails that companies are

¹¹⁴ Okara 195.

¹¹⁵ L. S. Paine, 'A Guide to the Big Ideas and Debates in Corporate Governance' [2019] *Harvard Business Review*, 1.

¹¹⁶ 'Integrating Goals and Objectives with Corporate Social Responsibility' The corporate social responsibility (CSR) movement is not new and has been gathering momentum for well over a decade. CSR is about how companies manage their business processes to produce an overall positive effect on society. This growth has raised questions—how to define the concept and how to integrate it into the larger body of an organization's goals and objectives <<https://courses.lumenlearning.com> › chapter › integrati....> accessed on 24 November 2023

¹¹⁷ Onwumere 2111.

¹¹⁸ M. A. Garzon 'The Concept of Corporate Governance' [2021] (25) (2) *Revista Científica Visión De Futuro*, 178.

the core of a complex web of stakeholder relationships and have an obligation to these different stakeholders.¹¹⁹

As a result of what has been said from the preceding section, it is argued therefore, that the idea of Corporate Social Responsibility intertwines with the following business concepts:

- (a) Corporate governance;
- (b) Ethics; and;
- (c) Accountability and responsibility to the community.¹²⁰

Good corporate governance and leadership is a business strategy utilized by business organizations to bring about continuous responsible activities as a compass to its good intentions as a corporate entity.¹²¹ Most importantly, CSR as it is commonly called, is the intentional combinations of (i) public interest into corporate decision making and (ii) the honor accorded to people, planet and profit.¹²² It is for this reason that in the 21st century corporate environment, duties of a director now include the function to act in the utmost interest of the company in a fiduciary position to the company's suppliers, clients, the host community, the environment and standards of business conduct.¹²³ The question however is: does the duties of director enumerated above portray the true state of affairs in Nigeria, since directors of companies are placed under the duty to act in the best interest of the company, their employees and in the interest of the members,¹²⁴ excluding the interest of other players such as item suppliers, their clients and the environment in general? In the Nigerian business terrain, much is still left to be desired in this regard as effective corporate leadership and governance is a myth and not a reality.

¹¹⁹ D. Jamali, 'Corporate Governance and Corporate Social Responsibility Synergies and Interrelationships' [2008] (16) (5) *Corporate Governance an International Review*, 447.

¹²⁰

¹²¹ A. Kannike, 'Reflections on Corporate Social Responsibility' [2018] (1) (2), *Redeemers University Law Journal*, 636.

¹²² (n 81), 637.

¹²³ United Kingdom Company Act, 2006, S. 172(1) (c)-(f); India Companies Act 2013, S. 166(2).

¹²⁴ CAMA S. 305(4).

9 Conclusion

Corporate governance is indicative of ethical and qualitative leadership exhibited through the board of directors of a company with the major purpose of attaining ethical culture, best performance, effective control mechanisms and legitimacy. As examined earlier, the major players used to achieve corporate governance include but may not be limited to the internal or external players, the board of directors, shareholders, the creditors, auditors, clients, material suppliers, government agencies (CAC, FIRS, SEC etc) and the host communities.

All the corporate game players mentioned above have direct or indirect interest in the over-all success and performance of the company. Directors, as the executives are paid salaries, receive benefits and good reputation. The shareholders receive dividends annually and profits on their investments. Creditors expect interests and money to be paid as at when due. In addition, the host communities and general public also want a piece of the cake in the form of good product and employment opportunities and finally, the big ‘boss’ the government, through its various outlets and agencies expect fat tax returns for social and economic advancement. All of these benefits accruable to the various parties listed above can only become a reality when corporate entities practice and imbibe in their operation good corporate principles and ethical virtues in the dispensation of their duties and decision making.