

A Legal Analysis of the Protection of Minority Shareholders under the Nigerian Companies Act¹

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Abstract

This article focuses on the dichotomy between majority and minority shareholders in Nigerian corporations. Therefore, the article examines the manner in which the majority shareholders abuse their powers to the detriment of the minority shareholders of such corporations. The authors argue that majority shareholders in many corporations usually use their voting power and influence to oppress, maneuver and impose their decisions on the minority shareholders. The article also provides that there are onerous impediments for minority shareholders to enforce their rights under the Companies and Allied Matters Act, Chapter C20 LFN, 2004. The article concludes that there is a need for certain provisions of the aforementioned Act, such as section 301, to be amended in order to protect the interest of minority shareholders, who are usually passive investors. The article recommends that legislative measures should be employed to rectify the observed flaws in order to protect the interest of the minority shareholders and all other shareholders fairly.

Keywords: minority shareholder protection; majority shareholders; oppression; directors, corporate governance.

Introduction

The terms “company” and “corporation” are used interchangeably in Nigeria (Fadahunsi, 2019, pp. 6-8; Nicholls, 2005, pp. 5). It is pertinent

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to state that while the Companies and Allied Matters Act, Chapter C20 LFN, 2004 (Companies Act), mentioned “company” in its various sections, most government owned companies’ names end with “corporation”, for example, the Nigerian National Petroleum Corporation and the Nigerian Railway Corporation. In this article, the terms “company” and “corporation” will be used interchangeably. It is, however, important to note that this article only deals with companies that are registered under the Companies Act.

The concept of corporate governance has evolved to encourage the active and equal participation of shareholders and other stakeholders, such as auditors and regulators in corporate decision making processes (Claessens and Yurtoglu, 2012, pp. 1-50; Zivkov, Postma and Hermes, 2006, pp. 280-281; Organisation for Economic Co-operation and Development (OECD), 2005; Cadbury 1992, pp. 13). Corporate governance is defined as the system of rules, practices and processes by which a firm is directed and controlled, which involve balancing the interests of the corporation’s various stakeholders (Chen, 2001, pp. 53–72; Arslan, and Alqatan, 2020, pp. 1-14; Padachi, Ramsurrun and Ramen, 2017, pp.3-4; Musaa, Musováa, and Debnárov, 2015, pp. 1024; L’Huillier, 2014, pp. 306; World Bank, 2012, pp. 9; Khan, 2011, pp.1-4; Zivkov, Postma and Hermes, 2006, pp. 280-281; OECD, 2005; OECD, 2004, 2005; Vagneur, 2004, pp. 1-2; O’Donovan, 2003, pp. 17; Cadbury, 2000, pp. 8; Cadbury, 1992, pp. 14). These corporate stakeholders include the company’s shareholders, directors, employees, customers, suppliers, financiers, the government and the host community (Chen, 2001, pp. 53–72).

Corporate governance facilitates effective, efficient and prudent management that can deliver long-term success for the company (Institute of Chartered Accountants in England and Wales (ICAEW), 2020; Arslan and Alqatan, 2020, pp.1-14; World Bank, 2012, pp. 9; Claessens and Yurtoglu, 2012, pp. 5-50; Khan, 2011, pp.1-4; Cadbury, 2000, pp. 8). This suggests that the ultimate purpose of corporate governance is to provide the appropriate governance measures and processes that focus on long term and sustainable development of the corporation rather than on short term or transient gains (Arslan and Alqatan, 2020, pp. 1-14; Claessens and Yurtoglu, 2012, pp. 5-50). Thus, World Bank, (2012, pp. 9-12), Amao and Amaeshi (2008, pp. 119-120) and Aka (2007, pp. 291) argue that there is a need for companies in Nigeria to adopt the principles of “good corporate governance” in order to prevent corporate bankruptcy and mismanagement of shareholders’ funds (see also Cadbury, 2000, pp. 1; 11-12). The importance of good

corporate governance in Nigeria and other countries is further underscored by the advent of the corona virus (covid-19) pandemic which has led to the liquidation of many companies and the mismanagement of shareholders' funds in many countries to date.

One of the corporate governance challenges in Nigeria is the use of majority shareholding by the majority shareholders to oppress the minority shareholders. For instance, the majority shareholders in Nigeria usually influence corporate decision making, constitution of boards of directors and declaration of dividends to the detriment of the minority shareholders (Fadahunsi, 2019, pp. 16-22; Esser and Delpont, 2016, pp. 3; Nelson, 2015, pp. 98-100; Agyemang, Aboagye and Frimpong, 2015, pp. 43; L'Huillier, 2014, pp. 301; Bolodeoku, 2007, pp. 447). In addition, some unfair practices are employed by majority shareholders in Nigeria. For instance, majority shareholders may instruct their directors to fix the venue of the general meetings at a place that is inconvenient for most of the minority shareholders to attend and vote (see section 216 of the Companies Act). Nelson, 2015, pp. 104; Amao and Amaeshi, 2008, pp. 11, maintained that directors usually fix venue of meetings at inconvenient locations when controversial issues are on the agenda.

A shareholder is a person who holds some shares in a company's share capital and it includes a personal representative of a deceased member and those to whom shares have been transferred lawfully through the offer and acceptance of shares in a company's prospectus (see sections 79 and 302 of the Companies Act). Although, the Companies Act, did not provide a definition of a minority shareholder, it protects minority against the negative effects of the majority shareholders (section 300 of the Companies Act). Minority shareholding denotes shareholders who may not necessarily be few in a numerical sense, but whose proportion of shares is too small to confer any power to vote, exert control and influence over corporate decision (*Merriam-Webster Legal Dictionary*, <https://www.merriam-webster.com/legal/minority%20shareholder> accessed 28 May 2020; Sadhana and Kannappan, 2018, pp. 888; Aderibigbe, 2016, pp. 105). However, few shareholders, may constitute the "majority shareholder", not in numerical strength, but based on the number of shares they hold in the corporation (Fadahunsi, 2019, pp. 1-100; Wolff, 2012, pp. 149-151; Hayden and Bodie, 2008, pp. 446-449). Thus, majority shareholders are those who hold a controlling stake in a corporation.

The rule governing corporate decision making in Nigeria is corporate democracy, whereby the decision taken by the majority shareholders binds all shareholders. Sometimes the majority shareholders

use their voting power to ensure that the corporation embark on related party transactions, which benefit corporate insiders such as management, directors and/or controlling entities or shareholders only (OECD, 2012, pp. 20-118). For instance, in *Access Bank Plc v Akingbola* (2012, EWHC 2148, para 148), the High Court of England and Wales held that the directors who were also the majority shareholders, engaged in related party transactions which contribute significantly to the collapse of the Nigerian Intercontinental Bank.

The remedies available to the minority shareholders are those provided under section 300 of Companies Act. However, the minority shareholders could also adopt what McDonnell (2011, pp. 67; 75), termed the “Wall street rule” and dispose their shares. Adopting the “Wall street rule”, may result in the minority shareholders selling their shares at a discount and at a time that they would not have otherwise disposed the shares. The disposal of shares is currently fraught with uncertainty, especially with the volatility and illiquidity of the financial markets and companies owing to the covid-19 pandemic (Baker, Bloom, Davies, Kost, Sammon and Viratyosin, 2020, pp. 1-12; Alade, Adeusi and Alade, 2020, pp. 17-21; Ashraf, 2020, 1-4). Moreover, in cases where the interest of the minority shareholders must be acquired by the majority, setting a fair value for the shares by the court is very difficult, as different valuation methods yield diverse values (Young and Janos, 2019, pp. 197-200; Hlatshwayo, and Zulu, 2019, pp. 2-8; *Dr. Kuku & Ors v Dr. Geoffrey Ohen & Ors* 2012 FHC/L/CP/25/12; *Oceanic Int. Bank v Victor Odili & Ors*, 2008, CA/L/171M/08). In this regard, the Companies Act should be amended to enhance the protection of minority shareholders from oppression by majority shareholders. Moreover, good corporate governance measures preserves and promotes the direct link between effective minority shareholder protection and economic growth in Nigeria and other countries (Guillen and Capron, 2016, pp. 133). Thus, a country that has effective mechanisms to protect minority shareholders is likely to attract more foreign direct investment (FDI) than a country without such remedies (Mhembere, 2019, pp. 7-9; Guillen, 2016, pp. 133).

Given this background, the article discusses the doctrine of majority rule and minority protection of shareholders in Nigeria with a view to identify the inadequacy of the relevant provisions under sections 300 to 311 of Companies Act. This is done, *inter alia*, to recommend possible measures that could be employed by the policy makers to remedy the aforesaid flaws.

Overall Aim

The article explores the gaps and flaws in relevant provisions of sections 300 to 311 of Companies Act regarding the protection of shareholders in Nigeria. This is done to recommend possible measures that could be employed by the policy makers to enhance the protection of minority shareholders in Nigeria.

Methodology

The article employs a doctrinal and qualitative research method. Reliance is placed on the analysis of the relevant Nigerian statutes and the Constitution of the Federal Republic of Nigeria, 1999, Chapter C 23 of 2004.

The Legal Framework for Corporate Governance in Nigeria

The Companies Act is primarily responsible for regulating corporate governance in Nigeria and it regulates all corporations that are registered to operate in Nigeria. Other relevant statutes include the Investments and Securities Act, Chapter I24 LFN, 2004 (Securities Act) and the Banks and Other Financial Institutions Act, Chapter B3 LFN, 2004 (Banks Act), which regulate and promote corporate governance in the securities markets and financial institutions respectively. The Banks Act for instance, establishes standards for banking operations and the conduct of financial institutions' employees in Nigeria. Sections 18 and 42 of the Banks Act prohibit any official of a bank (including directors) from having any interest in an advance, loan, or credit without declaring such interest to the relevant financial institutions in Nigeria. Similarly, all the relevant financial institutions must conduct their services in accordance with the rules and regulations provided in the Companies Act (see section 270(1) of the Companies Act). Likewise, section 19(2) of the Banks Act prohibits banks from appointing an individual who is already a director in another bank or is a director of a company that is entitled to exercise voting rights in excess of 10 percent of the total rights of all shareholders in the affected hiring bank. This suggests that the above provisions are meant to prevent the possible emergence of powerful shareholders and directors capable of controlling and oppressing minority shareholders in different financial institutions in Nigeria.

There are several corporate codes of conduct which regulate corporate governance in specific industries in Nigeria. These codes include, the Code of Best Practices on Corporate Governance, 2003, the Code of Corporate Governance for Banks, 2006 and the Code of Corporate Governance for Licensed Pensions Operators 2008. The above mentioned codes are issued by the Securities and Exchange Commission of Nigeria (SEC), the Central Bank of Nigeria (CBN) and the Pension Commission (PENCOT). The CBN and PENCOT codes are mandatory for the operators in the banking and Pension fund management industries in Nigeria while compliance with the SEC code by the publicly listed companies is voluntary.

The enactment of Financial Reporting Council of Nigeria Act, No. 6 of 2011, however changed the corporate governance structure in Nigeria by granting the Financial Reporting Council of Nigeria specific jurisdiction over corporate governance in Nigeria (sections 23, 50 and 51 of the Financial Reporting Council of Nigeria Act, 2011). However, it seems that the power granted Financial Reporting Council of Nigeria is restricted to setting corporate codes for the corporations in the public sector only. For instance, in *Eko Hotels v FRCN* (2012) UC/FHC/L/CS/1430/2012), the Federal High Court held that there was no legal authority vesting the Financial Reporting Council of Nigeria with the powers to regulate the affairs of a private company.

The provisions of the aforesaid Acts and corporate governance codes mentioned above were mainly aimed at enhancing and promoting good corporate governance practices in the Nigerian financial institutions. However, despite the provisions of the Companies Act, the Banks Act, the corporate governance codes and other relevant Acts that deals with good corporate governance, various companies were declared bankrupt and business failures were recorded owing to the majority shareholders' abuse of their powers against minority shareholders and/or the adoption of bad corporate governance practices by majority shareholders and directors in Nigeria (Makajuola, 2015, pp. 75-76). For instance, between 2006 and 2011, 19 banks liquidated in Nigeria due to bad corporate governance practices and the abuse of credit facilities by shareholders and directors (Nigeria Deposit Insurance Corporation (NDIC), 2018, pp. 9; NDIC, 2011, pp. 15; NDIC, 2009, pp. 22). Directors' abuse involving the grant of unserviceable loans to themselves or companies where they have substantial shareholdings is rampant in Nigerian financial institutions. It was discovered that the directors and majority shareholders of the liquidated banks between 2006 and 2011 were responsible for outstanding loans ranging from 20 percent of unserviceable or bad debts

in Pinnacle Commercial Bank Limited and 100 percent in Financial Merchant Bank Limited (Marshal, 2017, pp. 147; Adeyemi, 2011, pp. 106 -107; NDIC, 2011, pp. 15). Some other visible corporate scandals such as the Cadbury (Nigeria) Limited accounting scandal of 2007, the Halliburton scandal of 2008 and the Siemens bribery scandal of 2009 shows that there is no correlation between ownership of majority shares by foreign investors and good corporate governance and accountability in Nigeria (Inyang, 2017, pp. 67; Adegbite, *et al.*, 2012, pp. 398). The mess involving some foreign (majority) owned corporations in Nigeria seems to validate Lessambo's (2014, pp. 4), view that the legal system of a country has direct effect on the corporate governance structure in relation to company ownership, board composition, business restructuring and investors' rights. In this regard, the authors argue that the enforcement of adequate good corporate governance mechanisms is crucial to the combating of corporate malpractices and corporate scandals.

Corporate Personality and the Doctrine of Majority Rule in Nigeria

A corporation acquires a legal personality distinct from its members upon its registration (*Salomon v Salomon* (1897) AC 22; *Afribank (Nig) Limited v M. Enterprises Limited* (2008) 12 NWLR (Pt. 1098) 225; *Emenite Ltd v Oleka* (2005) 6 NWLR (Pt. 921) 350; section 37 of Companies Act). A corporation will have the powers of a natural person on its incorporation and registration (section 38(1) Companies Act). However, a corporation being a juristic person, acts through natural persons or its members, directors, officers or agents at general meetings (section 63(1) of the Companies Act; *UTC (Nig.) Plc v Philips* (2012) 6 NWLR (Pt. 1295), pp. 136; 163). Likewise, by virtue of section 41 of Companies Act, the memorandum and articles of association of the corporation are the company's constitution and have the effect of a contract under seal between the company, employees and officers; and between the employees and officers themselves. Section 64 of the Companies Act confers the management of a company on the board of directors. The board of directors is in charge of the day-to-day management of the company and it may delegate its functions to one of its member, commonly referred as the Managing Director (section 64 of the Companies Act).

According to Gower (2016, pp. 15), the majority rule arrangement is likened to the constitutional system of parliamentary democracy, where the rule of the majority is the norm. One of the legal implications of

incorporation is that a corporation can sue or be sued in its own name (Sadhana and Kannappan, 2018, pp. 891; Tang, 2012, pp.179; Delpont, 2011, pp. 574). The principle of majority rule stems from the doctrine of corporate personality, which states that when a wrong is done to a corporation, the proper party to sue is the corporation itself, and not its members (Brockett, 2012, pp. 101-103; Boyle, 2002, pp. 2). The corporation depends on its members, employees and/or directors at general meetings. The directors in Nigerian corporations are usually the majority shareholders.

The position of the law on minority protection in Nigeria before the enactment of the Companies Act is not very different from the current position because sections 299 and 300 are mere codification of the common law rules in a statute. Section 299 of the Companies Act, which is the statutory codification of the common law principle in the classical case of *Foss v Harbottle* (1843) 2 KB 461, is relatively similar to the principle of majority rule. Section 299 of the Companies Act provides that where a wrong or an irregularity has been done to the company, only the company can ratify the irregular conduct or sue the offender to remedy that wrong. It is submitted that the court will not interfere in the internal affairs of a company if the irregularities complained of by the minority could be legally done or ratified by the majority (*Agip (Nig) Limited v Agip Petroli International* (2010) 5 NWLR (Pt. 1187) para 392; *Onuekwusi v Registered Trustees of the Christ Methodist Zion Church* (2011) 6 NWLR (Pt. 1243) paras 361-362; *Okonkwo v National Universities Commission* (2013) 15 NWLR (Pt. 1378) para 500). The English and the Nigerian courts justify the principle of majority rule because of the obvious danger of a multiplicity of shareholders' suits in the absence of the majority rule (Aderibigbe, 2016, pp. 104; *Gray v Lewis* (1896) 8 Ch. App. 1035 para 1051; *Elufioye & Ors. v Halilu & Ors.* (1993) 6 NWLR, para 570). Therefore, section 299 of the Companies Act emphasises two important principles which underlie the root of corporate governance in Nigeria. These principles are the doctrine of corporate personality of registered companies and the principle of the supremacy of the majority shareholders. Nigerian courts are always reluctant to interfere in the internal affairs of a corporation because the directors who are appointed by the majority of shareholders are required to focus more on the commercial aspects of their companies and manage the affairs of such companies effectively (*Edokpolor & Co. Limited v Semi-Edo Wire Industries Ltd & Anor* (1984) 7 SC para 119; see also Khimji and Viner, 2016, pp. 135; Tang, 2012, pp. 179; Cassim, *et al.*, 2012, pp. 757-775).

The majority shareholders are empowered with broad powers in corporate administration and decision making of their companies. In this regard, the rights of the majority shareholders in a corporation may be broadly classified as contractual and statutory rights. The contractual rights are those conferred on the members by the memorandum and article of association (section 41 of Companies Act). The statutory rights are those conferred on the members by the relevant statutes. For example, section 300 of Companies Act provide instances where the minority shareholders could seek protection from the courts against the negative and abusive acts of the majority shareholders.

The majority shareholders are in most cases in an advantageous position to vary the contractual rights. For instance, the majority shareholders could use their voting powers to alter the memorandum of association and articles of association (sections 46 and 47 of the Companies Act). For instance, in *Orji v DTM (Nig) Limited* (2009) 18 NWLR (Pt. 1173) para 467, it was held that by virtue of sections 44-48 of the Companies Act, it is the prerogative of companies to amend, alter or change their memorandum of association and articles of association. Therefore, if such changes are carried out in accordance with the provisions of the Companies Act, they will be valid and enforceable.

Likewise, at incorporation, the first directors of a company in Nigeria are determined by the majority subscribers of the memorandum of association (section 247 of the Companies Act). Subsequent directors are elected at the annual general meeting of shareholders through a voting system which permits majority shareholders to constitute the entire board (section 248(1) of the Companies Act). A director may be appointed for a fixed period or for life, in accordance with the articles of association (section 255 of the Companies Act). Directors can be removed by ordinary resolution, even if the minority shareholders succeed in appointing a director, majority shareholders can remove such director by ordinary resolution (section 262 of the Companies Act). Equally, section 359(4) of the Companies Act, provides that the audit committee should comprise of an equal number of directors and shareholders of a company. Since the majority shareholders have control over the activities of the board of directors, it is possible that only directors are preferred by majority shareholders are nominated to serve in audit committee (Abdulmalik and Ahmad, 2016, pp. 58). This follows the fact that section 300 of the Companies Act does not provide adequate protection of minority shareholders in such instances.

Exceptions to the Doctrine of Majority Rule in Nigeria

Section 300 of the Companies Act protects the minority shareholders from the oppression of the majority shareholders in a few specified instances. Minority shareholders' oppression occurs when the majority shareholders take company actions and/or decisions that are unfair and prejudicial to the minority shareholders. For instance, the majority shareholders, through their nominees-directors, may divert a legitimate corporate opportunity to themselves or their associates or deny minority shareholders the necessary information in relation to that opportunity (Nelson, 2015, pp.99; *Omisade v Akande* (1987) 2 NWLR (Pt. 55).

Sections 301 and 302 of the Companies Act empowers minority shareholders to institute an action in a personal capacity or by derivative action to challenge the negative actions of the company's directors or majority shareholders. Section 300(a)-(d) of the Companies Act also empowers the minority shareholders to institute an action in the following circumstances: (a) when the majority shareholders or directors failed to abide by special procedures; (b) where majority shareholders or directors violate some personal rights of minority shareholders or where they concluded an illegal or ultra vires transaction. For instance, under section 38 of the Companies Act, it is illegal for a company to fund or make donation to a political party or association. Thus, a minority shareholder may take legal action and challenge the directors or the majority shareholders for donating company funds to a political party or association. The Companies Act also protect the minority shareholders when the majority shareholders or the directors perpetrate fraud on the minority shareholders (section 300(d)). The Companies Act further protect minority shareholders when it is not practical to call a meeting to redress any wrong done to the company or to minority shareholders (section 300(e). In addition, the Companies Act protects minority shareholders where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of fiduciary duties (section 300(f). For instance, in *Oil Field Supply Limited v Joseph Lloyd Johnson* (1987) 2 NWLR (pt. 58) 625, a minority or foreign shareholder successfully challenged the majority shareholders who attempted to squeeze him out of the company, after a substantial compensation was made by the Nigerian government for the acquisition of some of the company's assets. The court granted the prayer of the minority shareholder to wind-up the company. The argument of the majority shareholders that the business permit of the minority shareholder had expired and that he had ceased to be part of the company

at the time the company received the compensation was disregarded by the court. Thus, the company was wound up on the request of a minority shareholder because the action of the majority shareholders was oppressive.

Likewise, by virtue of section 215(2) of the Companies Act, the board of directors may convene an extraordinary meeting at the behest of any member holding not less than one-tenth of the paid capital, or in the case of a company not limited by shares, the members representing not less than ten percent of the total voting rights. On receiving such requisition, the board of directors must convene the meeting within 21 days from the date of the initial requisition or application. Where the directors fail to convene the meeting, the requisition officer may convene the meeting, and all reasonable expenses incurred in this regard will be borne by the company (section 215(4) of the Companies Act). Section 215 of the Companies Act also empowers the minority shareholders to request for an extraordinary general meeting to discuss or mitigate the effects of their oppression by majority shareholders in Nigeria.

Another protective provision against oppression by the majority shareholders available to the minority shareholder is section 314 of the Companies Act. This section provides that where a member of a company has a reasonable reason to suspect that the affairs of a company are being mismanaged, conducted illegally or irregularly, such member can bring an application to the Corporate Affairs Commission. The Corporate Affairs Commission may appoint inspectors to investigate the affairs of the company (section 315 of the Companies Act). However, such an application could only be brought by members holding not less than 25 percent of the class of shares issued. In the case of a charitable or not for profit company, by at least 25 percent of persons on the company's register of members (section 314(2) of the Companies Act). The requirement of having at least 25 percent of the members to sign the petition or application before it is submitted to the Corporate Affairs Commission is another onerous procedure that must be complied with by the minority shareholders seeking redress against the majority shareholders under the Companies Act in Nigeria.

The Adequacy of the Provisions on the Protection of Minority Shareholders in Nigeria

There are various challenges affecting the minority shareholders' ability to enforce their rights against the company or majority shareholders. The minority shareholders must satisfy the provisions of section 303(1) of the

Companies Act, which provides that the minority shareholders must obtain the leave of the court 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. The minority shareholder must also prove that the wrongdoers are the directors who are in control and who failed to take necessary action (section 303(2)(a) of the Companies Act). Moreover, the applicant minority shareholder must prove that he or she has given reasonable notice to the directors of the company of his or her intention to apply to the court (section 303(2)(b) of the Companies Act). Notably, the minority shareholder may only rely on any action provided in section 300 of the Companies Act. For, instance in *Tanimola & Ors v Surveys and Mapping Geodata*, (1995) 6 NWLR (Pt. 403) para 617, where it was noted that although the majority shareholders breached the provisions of the articles of association and memorandum of association of the company, the court could not interfere with the affairs of the company in a suit instituted by the minority shareholders, since it did not fall within the exceptions to the rule in *Foss v Harbottle*. Furthermore, the minority shareholders are only entitled to an injunction or a declaration and not damages, irrespective of the outcome of the case (sections 300 and 301 read with sections 303-316 of the Companies Act). The other flaw is that the cost of litigation will be borne by the minority shareholders without the option of defraying the expenses or awarding them court damages. It is also very difficult for minority shareholders to obtain the necessary information and documents from the directors, majority shareholders and/or the company, to prove certain cases like fraud or misappropriation of company funds by directors and majority shareholders (OECD, 2012, pp. 19-118). Despite these flaws, there is dearth of reported cases on the protection of minority shareholders in Nigeria.

Likewise, although it is the prerogative of the majority shareholders or directors of a company to declare dividends to shareholders (section 379 of the Companies Act), the non-declaration of dividends by directors or majority shareholders has been one of the common ground for an action for the winding-up of a company on the just and equitable ground by the prejudiced minority shareholders in Nigeria (section 312(2)(a) of the Companies Act). In this regard, the winding up of the affected company will be too harsh on the minority shareholders whose rights and interests may be buried with the liquidated company with no recourse (Khimji and Viner, 2016, pp. 134-135; Sibanda, 2015, pp. 404; Sibanda, 2013, pp. 60). Accordingly, the authors argue that section 312 of the Companies Act should be amended to enact

provisions for the business rescue of companies rather than liquidation provisions alone.

Lastly, the onerous procedures, litigation costs and high burden of proof required in litigation cases against majority shareholders are further impediments to the adequate protection of minority shareholders' rights in Nigeria.

Recommendations

The Companies Act does not provide adequate protection to minority shareholders in respect of the time and the monetary cost of litigation which must be borne by the minority shareholders and the burden of proof required of them to obtain the leave of the court to bring an action in the name or on behalf of a company or against majority shareholders. Owing to this and other flaws stated above, the Companies Act must be amended to enact adequate provisions that enhance the protection of minority shareholders in Nigeria.

Given this background, the authors argue that the provisions in section 301 of the Companies Act should be amended to allow for the award of damages to a minority shareholder in deserving circumstances, especially where the plaintiff proves financial loss suffered as a consequence of a breach by the company or a director. Sections 248 of the Companies Act should be amended to enact provisions for the adoption of cumulative voting instead of the current voting system to accommodate the interest of the minority shareholder's representation on company's board. The onerous high burden of proof required from the minority shareholders in order for them to obtain the leave of the court under section 303 of the Companies Act should be dispensed with. Lastly, section 262 of the Companies Act should be amended enact provisions that prohibit the arbitrary abuse of majority powers by majority shareholders to discriminate against minority shareholders.

Concluding Remarks

The article has explored the protection of the interests of minority shareholders in the Nigerian corporations. It was noted that although a company is the proper plaintiff in actions where there is a wrong done to it, however the Companies Act has codified and expanded the common law principles in order to protect the minority shareholders against the oppression of majority rule (sections 300-311 of the Companies Act). Moreover, the flaws in some of the provisions dealing with the protection of minority shareholders in Nigeria were discussed. For instance, the

provisions of the Companies Act impose an onerous burden of proof on minority shareholders when instituting any action regarding their rights and protection in respect thereof. Owing to these flaws, it is submitted that National Assembly should seriously consider amending the Companies Act to enhance the protection of minority shareholders and promote robust corporate governance measures in the Nigerian financial institutions. Moreover, sections 300-311 of the Companies Act should be amended to promote the relevant international best practices and corporate governance measures in Nigeria (OECD, 2012). Minority shareholders must be given a say in approving certain transactions in their companies and majority shareholders should not arbitrarily abuse their voting powers against minority shareholders. Majority shareholders and directors of a company should carefully exercise their fiduciary duties without discriminating against minority shareholders (OECD, 2012, pp. 19-118). Furthermore, effective minority protection encourages fair share ownership in companies, FDI and overall economic growth in any country (Mhembe, 2019, pp. 7-9 and Guillen, 2016, pp. 127-128). Therefore, in light of the covid-19 pandemic, developing countries such as Nigeria should embark on adequate company law reform to enhance the protection of minority shareholders.

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