PROTECTION OF MINORITY UNDER THE NIGERIAN COMPANY LAW

Introduction

The protection of the minority shareholders within the domain of corporate activity constitutes one of the most difficult problems facing modern company law. The reason for this is not far-fetched, due to the fundamental attribute of corporate personality conferred on a company which distinct it from members. A company is an ‘artificial person’ hence, its affairs is managed by natural persons. Such natural persons are the members or directors of the company who are tasked with the daily management and operation of the company and are required to act in the best interests of the company. Accordingly, decision making in a company though meant to be reached in a democratic manner is often lopsided due to the fact that majority get to have their suggestions adopted. It is not unusual to find majority shareholders running a company in an illegal or oppressive mode irrespective of provisions of the Laws regulating the operation of companies in Nigeria or managing the company in an oppressive manner detrimental to the rights of the minority shareholders. In most cases, the saying that ‘majority will always have their way while the minority will have their say’ holds true in most cases when decisions are made by the company.

Minority shareholder(s) can be referred to person(s) who holds such number of shares or interest which does not confer control over the company or shareholder(s). Black’s Law Dictionary however 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. They are at the mercy of the majority shareholders who owns or controls more than half the corporation’s stocks.1

This article examined the 2020 CAMA provisions on the protection of minority shareholders and the measures put in place to ensure that majority shareholders do not act in an illegal or irregular manner.

General Rule

It is trite that where an irregularity has been committed in the course of a company’s affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct2. The scope of this rule is of twofold

---

2 See section 341 CAMA 2020; see also the case of Foss v Harbottle. (1843) 2 Hare 461, 67 ER 189
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 management of 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.

Exceptions

There are however exceptions to the aforementioned provision of the law. There are exceptions to this rule which are instances where it is essential that the company is prohibited from committing certain acts viz.:

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;  
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;  
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; and  
g) Any act or omission where the interest of justice so demands.”

In Edokpolo & Co. Ltd. V. Sem-Edo Wire Ind. Ltd & Ors, the court held, ”The contention that the company ought to sue touches on the wider principles usually referred to as the rule in Foss v. Harbottle. By it the court will not interfere with the internal management of companies acting within their powers. If there is a wrong done to the company for which redress is needed it is the company that must sue. The principle is based on a recognition of the implications of corporate organisation and management which must include, subject to well laid down exceptions, the supremacy of the majority. These exceptions which have been developed in several authorities include: (a) an act which is ultra vires the company or illegal (b) an act which constitutes a fraud against the minority and the wrongdoers are themselves in control of the company (c) a resolution which requires a qualified majority but has been by a simple majority. (d) where the rights of the shareholders are infringed or about to be infringed.

3 Section 343 CAMA 2020  
4 (1984) LPELR-1017(SC)
A fifth exception appears to have developed from the cases. An individual minority shareholder can also sue where the interest of justice demands that he be so allowed to sue."

A member under this heading includes the personal representative of a deceased member; and any person to whom shares have been transferred or transmitted by operation of law.5

In the case of Dys Troca Valessia Ltd & Ors v. Sanyanolu & Ors6, the Court enumerated instances where the affairs of a company may be said to be conducted in an unfairly prejudicial and oppressive manner as follows:

1. When those in a dominant position in a company act over a period of time in a manner that is unfair, burdensome, harsh and wrongful and lacking in probity to the minority then it can be said that the affairs of the company are being conducted in an oppressive manner.
2. Conduct that excludes participation in the management of the company or jeopardises the value of shareholding is unfairly prejudicial.

In Williams v. Williams7, it was stated by the court that the first requirement to be satisfied by a petitioner under section 201 of the Companies Act, 1968 is that at the time of the presentation of the petition, the affairs of the company were being conducted in a manner oppressive to some part of the members including the petitioner himself. This requirement has been held to involve an invasion of one’s legal rights displaying lack of probity or fair dealing on the part of those conducting the company’s affairs and affecting the petitioner in his capacity as a shareholder or member of the company. It could be unjustly exclusion of a member from the affairs of the company.

Reliefs

The law8 recognize certain actions that can be brought by minority shareholders against the company which are:

- Personal Action;
- Representative Action; or
- Derivative Action.

---

5 See Sec 345 of the CAMA 2020.
6 (2016) LPELR-40423(CA).
7 (1995) 2 NWLR (Pt.375)1.
8 Section 344 & 346 CAMA 2020.
The remedies available to personal and representative actions are either damages for loss or breach of right, injunction or declaration. The provision however allows a member to institute a personal action to enforce a right due to him personally, in such circumstance, he shall be entitled to damages for loss incurred on account of the breach of that right and a declaration or injunction to restrain the company and/or the directors from doing a particular act.\(^9\) \textbf{In Pender V Lushingnton,}\(^10\) the court held that, where there is a breach of any of the individual rights, the aggrieved member can bring an action in his personal capacity since the injury is done to him in his personal capacity and this he can do without the consent or approval of any other member to sue.

However, in a derivative action, an applicant can 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. The remedies available in the event that the court is satisfied with the application includes the following\(^11\):

- Court orders directing that the applicant or a third party control the conduct of the action;
- Giving directions for the conduct of the action;
- Directing any amount adjudged to be paid by the individual or company; or
- Requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

The law\(^12\) also provides another option for a minority shareholder to bring a petition to the court on the grounds that:

- the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members, or in a manner that is in disregard of the interests of a member or members as a whole; or
- that an act or omission was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory to a member or members.

\(^9\) Section 344(1) CAMA 2020.
\(^10\) 1877 6 Ch D 701.
\(^11\) Section 347(2) CAMA 2020.
\(^12\) Section 354(2)(a)(1) CAMA 2020.
Accordingly, if the court is satisfied that the petition is well founded, the court may make one of the following orders amongst others:

- That the company be wound up;
- Regulate the conduct of the affairs of the company;
- Direct an investigation be made by the Corporate Affairs Commission;
- Appoint a receiver or a receiver and manager of property of the company;
- Restrain a person from engaging in specific conduct or from doing a specific act or thing.

**Conclusion**

It is no doubt that the principle of majority rule is a democratic corporate rule which seek to maintain equilibrium amongst shareholders in terms of their varying shareholding strength. The principle applies strictly in favour of the majority shareholders who hold the greater of the equity shareholding relative to the populous impressionable ordinary shareholders who constitute the minority. The unpalatable consequence is that the minority are only seen and not heard as their opinions are destined to defeat each time company resolutions are taken at the polls. However, contemporary developments in corporate governance have swayed to mitigate the frustrations posed to the minority with the result that at specific circumstances, the minority could sue the company despite contrary opinions of the majority.

Sequel to the above protection provided by the law, it is germane that specific terms of the Shareholders Agreement such as voting rights, right to first refusal, pre-emptive rights, share transfer restrictions, tag-along rights, rights of first offer etc. are duly negotiated by counsel in a manner that would grant minority shareholders some forms of protection.

**UGOCHI T. NDUKWE ESQ.**