BOldscholar

EVALUATION OF COMPANY'S ROLE IN CORPORATE RIGHT OF ACTION AND CORPORATE RESTRUCTURING

AKPOMEDAE, EMEJEROR GODWIN, ESQ[*]
&
OKOH CHINWE NWALI, ESQ[**]

Abstract
Corporate body could be defined as an association or group of persons coming together with the aim of doing business under a name with rights and liabilities. Upon incorporation, a company becomes a juristic person capable of being accorded rights and duties with power to sue or be sued in its corporate name. It acquires the status of corporate legal personality with such ability as that of a natural person in acquisition of property, legal rights to sue and be sued. In the course of performance of these roles, problems which often occur are sometimes difficult to trace and manage among its staff which are actually the corporate's hands and legs. Most of these problems may lead to corporate distress and may seek remedy through legal action or corporate restructuring. On this premise, this paper reviewed the roles of a company or corporate legal personality *vis-à-vis* right of action for redress and in restructuring such as corporate reconstruction, compromise, etcetera. These were evaluated through the doctrinal research methodology on cases of infidelity and assets mismanagement by company's staff with a view of mitigating corporate drawbacks. The doctrine of lifting the veil of incorporation is therefore recommended as suitable tool in right of action.

Key words: Company, Corporate Right, Restructuring, Arrangement, Compromise and Remedy.

1 Introduction

Corporate legal personality refers to the personal identity and status of a corporate body. From the time a company is duly incorporated, it acquires the status of legal personality distinct from its members. In law, the members being human beings are regarded as natural persons while registered companies are regarded as artificial entities. Thus, both human beings and artificial entities vested with human attributes are conferred with the status of legal personality[1]. It is upon the conferment of this status that an entity is said to have a corporate personality. The fundamental principle of a corporate personality is that the company is a legal entity distinct from its members. It is a legal creation, an artificial person as opposed to a natural person.[2]

1.2 Artificial or Corporate Personality Principle

As earlier stated, as soon as a company is duly registered and has also been issued its certificate of registration or incorporation, it acquires the status of a legal personality distinct from its members. From that time, it can sue and be sued in its corporate name. Any natural person or

[*] College of Law, Western Delta University, Oghara, Delta State. Email: emejoror@gmail.com Tel: 08033488270.
[**] Faculty of Law, University of Delta, Agbor, Delta State. Email: okoh.nwali@unidel.edu.ng Tel: 08034471962
[1] *Okoko v. UBN* (2004) 3 NWLR (857) 187.
[2] Omameren Patience D. and Eric Omo E., *Nigerian Company Law and Procedures*, (Ribway Printers and Publishers Ltd, Benin-Nigeria 2015) 30.

Oldscholar

artificial person as the case may be can enter into a contract with it. This also includes its members since it is distinct from its members. This is why a company may be insolvent but the members may be wealthy. While the members may die, the company does not die hence it lives on.

The classical case where the court tested and made pronouncement on the principle of corporate personality is the case of *Salomon v. Salomon Co. Ltd*[3]. Mr. Salomon, as reported in this case was a sole proprietor who later registered a company known as Salomon Co. Ltd and sold his business to the company for E39,000. In this company, Mr. Salomon, his wife and five children subscribed to the memorandum of association of the company whereby Mr. Salomon held 2001 shares while his wife and children also held a share each. Thereafter, Mr. Salomon loaned some money to the company by way of debenture. In no distance time, the company became insolvent and the available money was only enough to pay for Mr. Salomon's debenture of which nothing was left to pay the unsecured creditors.

The creditors argued that the company was an agent of Mr. Salomon or a mere alias and that Mr. Salomon could not owe himself. The creditors argued further that Mr. Salomon was liable to indemnify the company, consequent upon which the creditors must be paid first before the payment of the debenture. The House of Lords, pronouncing on the principle of corporate personality held that Mr. Salomon was entitled to be paid first and that he was in law regarded as a different person from the company.

In another classical case, *ACB. PLC v. Emos Trade*[4], the Principal of the respondent company opened an account with the appellant bank for himself. He opened the account in favour of the respondent's name and was also a sole signatory to the said account. Thereafter, he registered a business name, Emos Trade with same account in which he still maintained sole signatory. Subsequently, he re-registered the business name as Limited Liability Company by virtue of conversion but did not inform the bank of this new development. In the course of time, he discovered unauthorized withdrawals from his account and instituted legal action against the bank in order to recover such unauthorized withdrawals from Emos Trade account.

The argument of the appellant was that the respondent was not known as a limited liability company consequent upon which he cannot institute legal action in respect of Emos Trade account in the bank. The appellant further argued that even if the respondent brings an action, the action cannot stand on the basis that the respondent is unknown to law hence cannot sue.

The court dismissed the appellant's argument and held to the effect that assuming Emos Trade is not a limited liability company and at its best a partnership whose documents were deposited with the appellant. Regardless of whether the respondent was or was not a limited liability company, on the appellant's own assertion, the respondent was a partnership, it was a registered business name and was so accepted by the appellant. A partnership or firm can sue and be sued even if it is not a legal person "*stricto sensu*".

[3] (1897) A.C. 22.
[4] (1998) NWLR (Pt. 536).

BOldscholar

1.3 Benefits of Incorporation Status of a Company

Below are the benefits, which a corporate organization enjoys on incorporation.

i. The benefit of limited liability: This advantage is to the effect that members of a limited liability company have limited liability to contribute to the company's assets in the event of insolvency. A member is not liable beyond the amount subscribed to in the company's memorandum of association.[5]

ii. An incorporated company has power to acquire and own immovable and movable property different from property belonging to its members.

iii. Once a company is incorporated, it acquires the status of a legal entity and has perpetual succession. This means that even if the members die, it cannot die except when it is wound up.[6]

iv. Unlike partnership, a registered company being a separate legal person can enter into contract with its members.

v. An incorporated company has advantage of wider membership as a result of which a larger amount of capital can easily be raised. Thus, membership of partnership is limited to 20. A private company can have a maximum of 50 members while there is no limit to numbers of members of a public company.[7]

vi. An incorporated company also have the advantage of greater facilities for borrowing than a partnership as it can easily issue debentures and float charges as a security. This cannot be done in partnership business.

1.4 Shortcomings of Incorporated Company

i. An incorporated company must restricts itself within the confines of its objects or business for which it was registered.

ii. An incorporated company being a legal person known to law cannot validly and justiciable contract with a non-juristic person or person not known to law. Thus, in the case of *Agbomagbe Bank v. General Manager G.B.O. Ltd*[8]**,** there was a document containing a claim whereby the first defendant was named therein as "General Manager" G.B.O. Ltd. The contention was that the General Manager was not a person known to law and that under the doctrine of corporate personality, an unknown person could not be sued. The court held that the first defendant is a non juristic person and as such could not be sued. The legal action was therefore struck out.

Another similar case was the case of *National Bank of Nigeria Ltd v. Korban Bros Nigeria Ltd*[9]. In this case the plaintiff's action was for the relief order that the defendant be compelled to honour the power of Attorney given by the plaintiff on the 2nd of November in the year 1970 to the first defendant. The aforementioned Power of Attorney authorized the Manager of the National Bank of Nigeria Ltd, Ilorin to collect money from the Ministry of Finance, Kwara State of Nigeria for and on behalf of Korban Bros Nigeria Ltd in connection with the contract

[5] CAMA 2020, s 42.
[6] Ibid.
[7] CAMA 2020, s 22 (3).
[8] (1961) 1 All NLR 166.
[9] (1976) 6 UILR 166.

POldscholar

awarded in its favour. In this regard, the fourth defendant contended that the aforesaid Power of Attorney cannot be recognized as a valid document on the ground that it was issued to a non-legal person. The court held that in law, both the donor and the donee of power of attorney must be a legal person. Furthermore, a non-legal person cannot be validly appointed as an attorney therefore the power of attorney given to the Manager of the National Bank of Nigeria Ltd Ilorin by the first defendant was null and void.

Similarly, in the case of *Africa Insurance Company v. Esan*[10], the respondents, in their affectional capacity, Mr. and Mrs. Esan instituted legal action against the appellant. The contention issue was whether "Mr. and Mrs." Could constitute a legal personality known to law that can sue or be sued in that capacity as Mr. and Mrs. Esan. The court held that a non-juristic person cannot sue or be sued. Also, a non-juridical person has no capacity in law to authorize a named representative to represent it.

No action can be brought by or against any party other than a natural person or persons unless such a person has been given by statute expressly or impliedly or by the common law either; a legal personality under the name by which it may sue and be sued or on the other hand, a right to sue or be sued by that name, e.g. Partnerships, Trade Unions, Friendly Societies and Foreign Institutions authorized by their law to sue and be sued.

The court held further that Mr. and Mrs. Esan do not create legal terms as such to confer on a married couple a legal personality with right and capacity to sue and be sued. Despite the fact that a married couple is seen as one in their marital status in church and social expression, in legal parlance, they are two separate people and either of them can only be properly sued in his or her own name. if they want to sue as two plaintiffs, their respective names must be specifically stated.

2. RESTRUCTURING OF CORPORATE ORGANIZATIONS

2.1 Company's Amalgamation

Amalgamation is the act of combining or uniting two small companies to form a new corporation. It is a situation where two companies, such as company 'A' and company 'B' may not be doing well in their business activities or for the purpose of changing their status may come together to form a larger company.

2.2 Company Reconstruction

Reconstruction is the process of changing or improving the condition of work or state of affairs of a company.
It is a structural re-organization in the equity holding of a company that can take the form of a take-over or merger which are regulated by the Investment and Securities Act.

2.3 Arrangement and Compromise

2.3.1 What is Arrangement?

Arrangement means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company other than a

[10] (1999) 8 NWLR (Pt.614) 197

POldscholar

change effected under any other provision of the Act or by the unanimous agreement of all parties affected thereby[11].

Arrangement, as a process in company's restructuring may be used for the sale of company's property during member's voluntary winding-up. On this, the Act provides that a company may by special resolution resolve that the company be put into members voluntary winding up and that the liquidators be authorized to sell the whole or part of its undertaking or assets to another body corporate whether a company within the meaning of the Act or not (herein referred to as the transferee company) in consideration or part consideration or fully paid shares and to distribute the same in specie among the members of the company in accordance with their rights in the liquidation[12].

Similarly, any sale or distribution in pursuance of a special resolution under this provision shall be binding on the company and all members thereof and each member shall be deemed to have agreed with the transferee company to accept the fully paid shares, debentures, policies, cash or other like interests to which he is entitled under such distribution. Provided that if;

i. Within one year from the date of the passing of any special resolution as is referred to in this provision above, an Order is made under section 310 to 312 of this Act dealing with relief on the ground of unfairly prejudicial and oppressive conduct or for the winding up of the company under a creditors' voluntary winding up, the arrangement for the sale and distribution shall not be valid unless sanctioned by the court.

ii. Any member of the company by writing, addressed to the liquidator and left at the registered office or head office of the company within 30 days after the passing of the resolution dissents therefrom in respect of any of the shares held by him, the liquidator shall either abstain from carrying the resolution into effect or shall purchase such shares at a price to be determined in the manner provided by subsection (4) of section 538 of the Act.

It should be noted that any member who fails to signify his dissent in accordance with the above stated provision, shall be deemed to have accepted the resolution[13].

2.3.2 Meaning of Compromise

Compromise means an agreement for the settlement of a real or supposed claim in which each party surrender something in concession to the other[14].

Where a compromise or arrangement is proposed between a company and its creditors or any class of them, the court may upon an application made by the company or any of its creditors or members or, in the case of a company being wound up of the liquidator, order a meeting of the

[11] CAMA 2004, s 537 now LFN 2020
[12] CAMA 2004, s 537 now LFN 2020.
[13] CAMA 2004, s 538 (2) & (3) now LFN 2020.
[14] Bryan A. Garner, et al, *Black's Law Dictionary*, 9th Edn. (West Publishing Co., Thomson Reuters, U.S.A. 2009) 326.

Oldscholar

creditors or class of creditors or of the members of the company or class of members as the case may be to be summoned in such manner as the court may directs[15].

If a majority representing not less than three-quarters in value of the shares of members or class of members or of the interest of creditors or class of creditors as the case may be being present and voting either in person or by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement may be referred by the court to the Security and Exchange Commission which shall appoint one or more inspectors to investigate the fairness of the said compromise or arrangement and to make a written report thereon to the court within a time specified by the court[16].

From the above provisions on arrangement and compromise, it is necessary to point out a sharp difference between arrangement and compromise. Arrangement introduces a change on the rights and liabilities of members of the company who may request for the winding up of the company even in a state of solvency. On the other hand, compromise as explained creates a situation relating to settlement between the creditors or class of creditors and the company. Winding up under this situation is mainly due to the company going into insolvency.

When after all investigations into the affairs of the company, it is clear and fair that a compromise or arrangement is necessary upon such satisfaction, the court shall then sanction the same and the compromise or arrangement shall be binding on all the creditors or the class of creditors or on the member or the class of members as the case may be and also the company or in the case of a company in the course of being wound up on the liquidator and contributories of the company[17].

2.4 Take-Over

Take-over means a restructuring whereby a company acquires the shares of another target company with the aim of taking over the control or management of that company. For instance, a situation where company 'A' acquires the issued share capital of company 'B' so that they form one group in which 'A' will hold the company and 'B' will be the subsidiary.

It is pertinent to state that before a company can take over another company, the acquiring company must obtain an authority to proceed with the take-over bid.[18] Thus, a take-over bid shall not be made to fewer than 20 shareholders representing 60% (percent) of the members of the target company or such other number as may be prescribed by the Commission from time to time. But it can be made to such number of shareholders holding in the aggregate, a total of 51 percent of the issued and paid up shares of the target company.

2.5 Merger[19]

Merger is defined by the Black's Law Dictionary as an amalgamation of two corporations pursuant to statutory provision in which one of the corporations survives and the other

[15] CAMA 2004, s 539 (1) now LFN 2020.
[16] Ibid, s 539 (2).
[17] Ibid, s 539 (3) .
[18] ISA 2007, s 134.
[19] David Folorunsho Tom, *Company Law in Nigeria,* (Union Publishers, Nigeria 2009) 84-85.

BOldscholar

disappears. The absorption of one company by another, the former losing its legal identity and the later retaining its own name and assets, liabilities, franchises and powers of former and absorbed company ceasing to exist as separate business entity[20].

A merger may take the form of a scheme of arrangement, compromise or reconstruction[21]. For instance, *Re-lipton (Nig) Ltd*[22] was merged with Lever Brother. Merger as an aspect of Reconstruction may be a complete fusion of two or more solvent companies. Thus in *Re-Bendel Line Co. Ltd and Ors*[23], the three companies involved in the scheme were solvent and the arrangement was intended to minimize expenses.

3. Corporate and Individual Membership Right of Action

A company acquires rights and obligation upon being incorporated. Such rights are known as corporate rights. An individual member of the company also have certain rights and obligation attached to him. This is known as individual membership rights. Thus in the case of *Pan Atlantic and Forwarding Agencies Ltd v. Aleyidieno*[24], the court held that the right to have a personal notice conveyed in respect of a company's meeting and to have such meeting held with a prescribed quorum to take valid decisions is a right to the individual and not of a corporate body.

3.1 Individual Membership Right of Action

A member enjoys right of litigation especially where his right has be infringed upon or there is a breach of his statutory rights. Such aggrieved member can sue in his personal capacity since the injury suffered or the damages caused was done to him in his individual capacity. In this regard, he does not need to seek the consent of other members before he can sue or institute legal action so as to redress the wrong done to him or suffer consequentially. In this case, he will need to apply to the court of law for an Order of injunction to restrain the company from any act affecting his individual membership rights[25].

3.2 Circumstances under which an Individual may apply to Court to enforce his Right of Action

The individual rights are the shareholders' rights which originate from their shareholding or their individual membership rights. Thus without prejudice to the rights of members under sections 346 to 351 and sections 353 to 355 of the CAMA or any other provisions thereof, the court, on the application of any member, may by injunctions or declaration restrain the company from the following;

i. Entering into any transaction which is illegal or ultra vires.[26]
ii. Purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution.
iii. Any act or omission affecting the applicant's individual rights as a member.
iv. Committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done.

---

[20] Black's Law Dictionary, 6th Edn. P.988.
[21] Emiola Akintunde, *Nigerian Company Law* (Ogbomosho, Emiola Publishers Ltd 2001) 461.
[22] FHC/L/M2/85.
[23] (1979) 5 FRCR 19.
[24] Suit No.CA/L/106/84.
[25] CAMA 2020, s 344.
[26] Ibid.

Oldscholar

v. 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.
vi. 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.

3.3 Personal and Representative Action

It is important to note that where a member institutes a personal action to enforce a right due to him personally, he shall not be entitled to any damages but to a declaration or injunction to restrain the company and or the directors from doing a particular act. Similarly, if a member institutes a representative action on behalf of himself and other affected members to enforce any rights due to them he shall not be entitled to any damages but to a declaration or injunction to restrain the company and or the directors from doing a particular act[27].

The above provisions being as it were, the court may sometime exercise its discretion to award cost to the applicant personally, whether or not his action succeeds[28].

3.4 Derivative Action

Derivative action means a situation where an individual member of a company may bring an action in the name of the company or on behalf of the 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.
However, no action may be instituted and no intervention may be made under this provision unless the court is satisfied based on the following grounds:[29]

i. That the wrong doers are the directors who are in control and will not take necessary action.[30]
ii. The applicant has given reasonable notice to the directors of the company of his intention to apply to the court if the directors do not act appropriately.[31]
iii. That the applicant is acting in good faith.[32]
iv. That it appears to be in the best interest of the company that the action be brought prosecuted, defended or discontinued[33].

4. The Rule in *Foss v. Harbottle*

It is a trite matter that once a company is incorporated, it becomes a legal entity distinct from its members. Consequent upon this, if any wrong is done to the company, it is only the company itself that can as of right sue on such matter. Thus, in the case of *NID Invt. (WA) v. Omisore*[34], the court of Appeal invoked the common law principle or Rule in *Foss v. Harbottle* and held to the effect that, it is well founded with its articulated conceptual application restating that to redress a wrong done to a company or to the property of a company or to enforce the right of a company,

[27] CAMA 2020, s 344.
[28] Ibid.
[29] CAMA 2020, s 355.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] (2006) 8 WRN (Pt. 28).

Oldscholar

the proper plaintiff is the company itself and the court will not entertain any action brought on behalf of the company or by a shareholder.

The principle established in *Foss v. Harbottle*[35] therefore states that to redress any wrong done to a company, the proper party to redress such wrong is the company itself and not any of its members. It follows therefore that where irregularity has been committed in the course of the management of the affairs of the company or a wrong is done to the corporate right of a member, this wrong is seen as wrong done to the company and it is for the company through the majority of members to decide whether it should be treated as a wrong which should be redressed and the majority can validly decide not to redress such wrong.

The rule has been applied by the Nigerian court in some cases wherein it has often be re-echoed that the minority will have their say but the majority will have their way irrespective of whether the minorities have good cause of action or not.[36] Thus, in the case of *Foss v. Harbottle,* a shareholder of the company instituted a legal action against the company's director and some other persons alleging that the property of the company has been misapplied and wasted. He also argued that certain mortgagees in were improperly placed on the company's property. The court held that it will not interfere in the matter in which the company is competent to settle or in the case of irregularity to rectify or condone by its own internal procedure. The court stated further that where the allegation is that of a wrong done to the company, prima facie, the only proper plaintiff is the company itself.

Similarly, in the case of *Macdougal v. Gardiner*[37]**,** the parties sought a declaration that the conduct of the Chairman was injurious and improper, hence they sought a relief of injunction to restrain the director from carrying out a proposed arrangement without presenting them to the shareholders for an approval. The court held that the action could not be sustained since it violated the rule established in *Foss v. Harbottle*. For the court will not interfere in the internal management of the company.

In the case of *Elufioye & Ors v. Halilu & Ors*[38], the court held that the rule in *Foss v. Harbottle* has two limbs;

i. That in respect of any wrong against the company or union, only the company or union can sue in its own name.
ii. The court will not interfere in any transaction where it is within the power of the majority shareholders to rectify or undo such action.

In the case of *Tika Tore Press Ltd v. Abina*[39] sequel to the death of the majority shareholder in the company, the directors allotted shares to themselves which enabled them to gain control over the company by becoming its majority shareholders. The deceased shareholder's Administrators sought a declaration that the allotments were ultra vires, void and of no effect. The supreme court

[35] (1843) 67 E R 189.
[36] (1843) 67 E R 189, *Sparks Electronics (Nig.) Ltd v.Ponmile* (1986) 1 NWLR (Pt.23) 514, *William v. Edu* (2002) 8 NWLR (Pt. 754) p.400.
[37] (1975) 1 Ch.2.
[38] (1993) 6 NWLR 570.
[39] (1973) 1 All NLR 401.

held that the allotments were not void but were at worst voidable and that the plaintiff's action in seeking a declaration that the allotments were void was misconceived and therefore cannot be sustained.

The provision of Act[40] complements the rule that only a company may sue for wrong or ratify irregular conduct. Thus, where irregularity has been committed in the course of a company's affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

4.1 Exceptions to the Rule in Foss v. Harbottle

In *F.A.T.B. & Ors v. Ezegbu & Ors*[41], the court stated some exceptions which have legal recognition on individual member's action. These exceptions are the same as the grounds or circumstances upon which an individual member may be permitted by law to apply to court in order to enforce his right being infringed upon. An individual can also enforce his right being affected by the acts of the directors through representative action. In the aforementioned case, the court stated the following exceptions where individual action is permissible:

i. Where the act is ultra vires against the company.
ii. Where the acts of the directors are illegal.
iii. Where the act constitutes a fraud against the minority and the wrong doers are themselves in control of the company.
iv. Where the right of a shareholder is infringed or about to be infringed.
v. Where the interest of the justice demands that the individuals be allowed to sue.

4.2 Lifting the Veil of Incorporation

Lifting the veil of incorporation is a doctrine use in unveiling a corporate shield in corporate matters so as to identify an individual member who may be running afoul of the provisions of the relevant laws with regards to dealings with outsiders.

By the provisions of the Act[42], from the date of incorporation of a company, the subscriber of the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum. This means that once a company is incorporated, the company becomes a body corporate recognized in law as a legal person distinct from its members. Consequent upon this recognition, the law does not thereafter concern itself with the individual identity of the members of the company.

The legal effect of this is that a legal veil of incorporation is created to shield the members of the company in all their dealings. Thus, it is necessary to note that the legal veil is not a guarantee or license for the members of the company to misbehave. Where any anomaly is noticed, the necessity may arise to lift or pierce the veil of incorporation in order to locate and identify the member behind the veil. In the case of *Federal Republic of Nigeria v. Dr. Nwochie Odogwu and Capital Merchant Bank*[43], the Managing Director of the Capital Merchant Bank who was also the

[40] CAMA 2004, s 299.
[41] (1994) 9 NWLR 150.
[42] CAMA, 2004, s 37 now LFN 2020.
[43] (1997) FBTLR 179. See also Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Act Cap. F2 Vol. 6 LFN 2004.

promoter of the aforementioned, floated other sham companies and granted unsecured loans that he subsequently converted to his personal use.

In the course of time, the bank became insolvent and went into liquidation. Consequent upon this all the depositors lost their money. While charging the bank and its Managing Director before the Failed Bank Tribunal, the doctrine of lifting the veil of incorporation was invoked and the Managing Director was sentenced to 18 years imprisonment. The Managing Director was also ordered to refund ₦76 Million Naira with a fine of ₦35,000:00 while the Bank being the corporate body was discharged and acquired.

From the above case, what the Failed Bank Tribunal did is simply the lifting of the legal veil to discover who was behind the mask committing fraud[44]. The natural person being the Managing Director was discovered and dealt with accordingly.

The doctrine of lifting the veil of incorporation has over the years gained recognition and relevancy by the Nigerian courts in corporate matters. Thus in the case of *Public Finance Securities Ltd v. Jefia*[45], the court stated to the effect that the veil of incorporation of a company will be lifted or pierced if the activities of the company are tainted with fraud.

However, where the acts of the company itself is that of fraud, then, the company itself will be dealt with accordingly. Thus, in the case of *Lennards Carrying Company Ltd v. Asiantic Petroleum Company Ltd*[46], the court stated that a corporation is an abstraction. It has no mind of its own any more than it has body of its own. Its active and directing mind must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation. That person may be under the direction of the shareholders in general meeting, may be the board of directors itself as the case may be. Again, that person has an authority to coordinate with the board of directors given to him under the articles of association. The fault or privity of the company within the meaning of a statute is the fault or privity of somebody who is liable upon the footing but somebody for whom the company is liable because his action is the very action of the company itself.

Looking at the position expatiated by the court, it therefore follows that a corporation that engages in any illegal or fraudulent act through the acts of its employee will be held responsible for such act and hence criminally liable for the anomalies. In this connection the state of the mind of its organs will be imputed into the company**.**

5. Conclusion and Recommendations

From the foregoing, it is crystal clear that this paper reviewed major causes often associated with the role of corporate legal personality vis-à-vis right of action for redress and corporate restructuring such as corporate reconstruction, compromise, arrangement, take-over and merger. The conclusion drawn from the critical evaluation of the corporate and individual right of action is that the role of the corporate legal personality could be misleading when distinguishing it from

[44] *Int. Offshore Ltd v. SLN Ltd* (2003) 16 NWLR (Pt.157).
[45] (1998) 3 NWLR (Pt. 59).
[46] (1975) A.C. 705.

Oldscholar

the individual staff or members of the corporate body especially in cases where a wrong or a crime is committed.

This paper therefore recommends the doctrine of lifting the veil of incorporation as a suitable tool in right of action that in all cases of corporate role and exercise of right of action in order to correct any anomaly, the doctrine of lifting the veil of incorporation is the most suitable tool for any redress. There have been several occasions where members of a corporate body, director or other principal members had been involved in cases of misappropriation of company's fund or dealing with outsiders in such manner as to allow personal interest to conflict with the company's interest. One major usefulness of this doctrine is that it preserves the integrity of innocent members who would have become victims of corporate blame and corporate responsibility in which Mr. A will surfer with Mr B for the wrong committed by Mr B.

It is also recommended for cases of infidelity and assets mismanagement by company's staff. The doctrine of lifting the veil of incorporation is vital in uncovering the corporate veil and piercing through to the culprit who has indulged in the ultra vires or illegal act.