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Exposition of the Concept of Lifting the Veil of Incorporation for Improved Corporate Management in Developing Countries: The Nigerian Perspective

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Abstract

The business entity known as a company is a legal person, having been created by law. It can do all that a human being can do. However, as an artificial legal entity, a corporate person can only function through the natural persons who constitute the organs through which the company carries on its activities. Often times, those organs under the instrumentality of the directors or the members of the company may perpetuate fraud hiding under the cloak of the company. This paper is aimed at espousing the import of the corporate personality principle of an incorporated and the corresponding restraints associated with the management powers of its organs. The paper adopts a doctrinal approach hinged upon analytical, appraisal and expository methods. It is however found that that the directors who remain the *alter ego* and the directing mind and will of the company hide under the disguise of the corporate fiction to engage in self-rewarding ventures at the expense of the corporate interest and mission. This has in myriad of cases precipitated insolvency and ultimately resulted in the collapse of companies. It is therefore recommended that the statutory restraints of the powers of the corporate management should be strengthened by widening the circumstances under which the veil of incorporation should be lifted to include loss of business sustained as a result of the negligent act a director. To this end, the law should allow any member or creditor of the company to apply to the court seeking redress for and on behalf of the company. The strengthening of the corporate management would enhance productivity and boost our national economy.

Keywords: Corporate, Personality, Management, Veil and Fraud

I. Introduction

Company is a business association formed in accordance with the procedure set out by law. Such a business association is registered with some outlined business or objects constituting its powers. The court, in the case of *P.A.I.S.C. Ltd v Jkpeez Co. Ltd,*[1] held that a company is an aggregation of persons carrying out commercial or industrial enterprise. A company attains maturity at the date of its birth and maintains a separate life from the persons who incorporated it. When a company is incorporated, it becomes a legal personality and possesses power akin to those of a natural person of full age and capacity, for example, entering into legal transaction either with natural person or with another company.It has the capacity to acquire, own or dispose of a property and above all, it has the capacity to sue and be sued on its corporate name.In this wise, the subscribers will not be liable for any action done by the company. This presupposes that is the company is liable for its own actions. It goes without saying that the essence of corporate existence of incorporated companies is to remove all the necessary clogs on the wheel of business. The common law principle as was enunciated in the *Salomon case*was captured by the Companies and Allied Matters Act.[2] This does not however, breed an unrestrained and unbridled posture in the manner in which management structures of the company exercise their statutory roles. This paper will, *inter alia*, examine the latitude and restraint observed by the directors in the exercise of their powers while running the affairs of the company.

II. Contextual Analysis of the Principle of Separate Legal Personality

Incorporated company in law is a separate entity from the promoters or the shareholders. Company as a corporate body distinct from the members is reorganized under the Act, thus:

[1] (2010) 3 N.W.L.R. (Pt. 1182) p. 449.
[2]Companies and Allied Matters Act, Cap. C20 Laws of the Federation of Nigeria, 2010, section 37.

> As from the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum together with such other person as may, from time to time, become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land and having perpetual succession and a common seal, but with such liability on the part of members to contribute to the asset of the company in the event of its being wound up as is mentioned in this Act.[1]

In view of the foregoing provision, where a company is registered under the Companies and Allied Matter Act,[2]or any other pervious law, it continues to retain its status of legal personality distinct from its members.[3] The concept of legal personality of an incorporated company asreorganised at common law was affirmed in the famous case of *Solomon v. Solomon and Co. Ltd*[4]. In this case, Lord McNaughton adumbrated the legal personality of a company thus:

> When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate capable forthwith, to use the words of enactment, of exercising all the functions of an incorporated company, those are strong words. The company attains maturity on its birth. There is no period of minority - no internal incapacity. I cannot understand how a body corporate thus made capable by statute can lose individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum and although it may be that after incorporation, the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them, nor are the subscribers as members liable in any shape or form, except to the extent and in the manner provided by the Act.

The principle of legal personality of an incorporated company has been well entrenched in corporate law. The jurisprudence of the principle of separate legal personality is further enunciated in the following cases.In the case of*Lee v. Lee Air Farming Ltd,*[5]Lee who formed a company in which he was the beneficial owner of all the shares and also the governing director was nevertheless a separate entity from the company, and as the governing director he could on behalf of the company give order to himself as servant. It was equally held in*Marina Nominess Ltd v. FBIR*[6]that the device of 'agency' by using one incorporated company for the purpose of carrying on an assignment for another company, a person must not overlook the fact that an incorporated company is a separate legal entity which must fulfill its own obligations under the law.

In some circumstances, there could be a presumption of incorporation. Thus, a bank established in a state has a presumption of incorporation in its favour. This is because, under the Nigeriacorporate law jurisprudence, a bank cannot do business as such without having been incorporated in Nigeria. Thus, a defendant trying to dispute the incorporation must do so at the stage when issues are being joined in pleadings. The court in *EmeniteLtd v Oleka*[7]had held that the legal personality of a corporate entity or body can only be established as a matter of law by the production in evidence of the certificate of incorporation, but where the legal personality is not in issue, there will be no need to prove the status and legal personality of a corporate body.

It can be affirmed from the foregoingthat a company is a legal person and has a separate existence and can do all that a natural person can do. A company can be likened to a human body with different parts and organs. It thereforecarries out its functions through its organs, to wit: the board of directors and the members in general meeting. In *Bolton (Engineering) Co Ltd v. Graham and sons,* [8] Lord Denning drew the analogy of an incorporated company, thus:

> A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing

[1]Companies and Allied Matters Act,*op. cit*., Footnote 2 , section 37.
[2] Cap. C. 20 Laws of the Federation of Nigeria (LFN) 2010.
[3]*Union Bank (Nig) Ltd v. Penning Mait Ltd* (1992) 5 N.W.L.R. (Pt 240) 228 at 237.
[4] (1897) AC 22.
[5] (1961) AC 12 PC.
[6] (1986) 2 N.W.L.R. (Pt 20) 48.
[7] (2005) 6 N.W.L.R. (Pt 98)
[8] (1957)1 QB 159.

> more than hands to the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does.

In the same vein, the Court in the case of *Delta Steel (Nig.) Ltd v American Computers Technology INC*,[1]perAderemi, JSC, referring to act imputed to a company, had this to say:

> In cases where the law requires the personal acts or faults of an individual so as to make a legal fiction like a company to be liable, the directors, managers or the managing directors are in the eyes of the law, the directing mind and the will of the company.They control what the company does.The state of mind of this special class of employees is the state of mind of the company.

A different consideration may apply as to the liability of an individual especially in criminal matters. From all the above judicial elucidations, a company can do everything that a human being can do.Upon incorporation, a company has the capacity to do any business as containedin the object clause of its memorandum of association. It can sue and be sued in its corporate name; it can acquire, hold or dispose ofits own property; it acquires perpetual succession and a common seal. So a company being a juridical person enjoys the same right and obligation as well as limitation of action as natural person. Accordingly, where a company goes outside its memorandum and perform an *ultra vires* act, the company will be liable for damages in favour of the person who suffered loss or sustained injury as a result of the act. This is premised on the principle that a company is bound by the object clause of its memorandum, and is held liable where it acts on the contrary.

III. Jurisprudence of the Concept of Lifting the Veil of Incorporation

Despite the foregoing enunciation of the principle of separate legal personality of a company, it is besieged with many criticisms. Many business dealers havedeviced a means of hiding under the principle to commit crime or indulge in questionable behaviours which precipitates the principle of lifting the veil. To avoid repetition, a company is attributed to human being with different parts or organ. A company does not run itself; it does its activities through the human agents covered by the veil of incorporation, such as the directors, promoters and other members of the company. The principle of lifting the veil comes to play when any of the organs through which the company works commit any fraud. For instance, where the managing director of a company used the name of a company in perpetuating fraud,the law is that the veil of incorporation had to be lifted or pierced into to see the real character that committed the fraud and brought him or her to book. In *GulfordMotor Co. v Horne,*[2] the court held that whenever a fraud or improper conduct is found in the conduct of a company, the veil has to be lifted in the interest of justice. The whole essence of lifting the veil of incorporation is to make sure that fraud is not committed using the names of incorporated companies.

In Nigeria, the Company and Allied Matter Act (CAMA) is emphatic under several sections that provide for how the directors and managing directors should carry the affairs of any incorporated company under their care. Accordingly, a managing director who carried out any transaction that he has no power to do, do that to his peril and will be personally liable to any third party he must have transacted the business with. It is a trite law that the veil of the company can be lifted either as provided by the statute or under courts discretion. As regard lifting the veil of incorporation under the discretion of the court, it had been held in several cases that the guiding principle upon which the court should base their judgment should be the business realities of the day. It goes without saying that the legislature envisaged that the aim of incorporation was to make manager, managing directors and directors not liable to the actions even though done by them as the human agents through which the company functions if the action was done in the course of the business of the company. A director will not be liable for both criminal and civil wrong done in the course of the business of the company. But if such director was reckless or negligently carried out such transaction, he will be liable under the case law.

Nevertheless, it has always been recognised that the legislature can forge a sledgehammer capable of cracking open on the corporate existence of an incorporated company.Even without the aid of a legislative harmer, the courts have sometimes been prepared to have a crack on the corporate shall. It is therefore, pertinent to state that where the veil is lifted, the law goes behind the corporate personality to attach responsibility on the individual members or directors thereby, ignoring the separate personality of the company in favour of the economic reality prevailing in the circumstance.

[1] (1999)4 NWLR (Pt. 597)53 at 66.
[2](1933) Ch. 935.

It should however, be emphasized that the veil of incorporation does not mean that the affairs of the company are completely concealed from view. On the contrary the legislature has always made wide publicity an essential condition for the recognition of corporate personality with limited liability. Although, third parties dealing with the company will normally have no right to resort against its members, they are nevertheless entitled to see who those members are, what shares they hold and in the case of a listed company, the beneficial interest in those shares.Of substance, they are also to see who its officers are so as to know who to deal with, and to know what its constitution is in order toenable them know what the company may do and how to how do it.

Usually, third parties are neither bound by theinformation contained in the constitutional documents which the law provides should be made public.In addition, the veil of incorporation is in the nature of a curtain formed by the company, and what goes on behind it is concealed from the public gaze. Besides the commercial utility of the principle of lifting the veil of incorporation, an inspector may be appointed to investigate the company's affairs, in which case he will have the widest inquisitorial powers. The inspector may be appointed for the purpose of going behind the company's registers to ascertain the substantive shareholders of the company who purport to be the owners of the company.It is not always easy to decide when lifting the veil of incorporation is appropriate in the interest of justice. It all depends on the available facts and the prevailing circumstances.

In matters relating to lifting the veil of incorporation, it is obvious that the court is not strictly bound to abide by the principle of the common law as enunciated in the case of *Salomon v Salomon and Co. Ltd.*[1]While the case law affirms that the doctrine of corporate personality is a portent phenomenon, the concept should not command exaggerated deference, so much that a court would not feel itself inexorably bound by the principle. Nigerian law favours the theory of legal personality as established above, but this case has been increasingly criticized by the court and commentators.Apart from the aspect of a legislated policy of commercial convenience, the concept occasions results that are seemingly evasive to the ends of justice. Thus when it is invoked in support of circumstances inimical to this policy, the doctrine should be disregarded. In some circumstances however, the law is prepared to pierce or lift the veil of incorporation or disregard corporate personality so as to have regards to the realities of the situation.The theory of corporate personality has become so entrenched and expedient in the industrial and commercial milieu. However, the real situation often in issue in many company law matters is whether the separate personality of the company is to be circumscribed or disregarded.The general rule is that, although the legal personality of a company is distinct from those of its members, it has for long been recognized together with the consequences earlier mentioned, that there are certain circumstances in which the law disregards the corporate entity and pays regard instead to the economic realities behind the legal concept. On the other hand, when the veil of incorporation is lifted in line with statutory provisions or by the court order in the interest of justice, the law goes behind the corporate personality of the company to attach responsibility on the individual members who constitute the organs through which the company functions. In *Aderemi, v Lan and Baker Nigeria Ltd.*[2]the court had this to say:

> The consequences of recognising the separate personality of a company is to draw a veil of incorporation over the company and that one is generally not entitled to go behind the veil. Since a limited liability company exists in the eyes of the law, it can only operate by means of human beings. But it is now settled in law that the directors or the managers are those whose decision can be attributed to the legal fiction…. However, there is nothing sacrosanct about the veil of incorporation…. The decision in *Salomon v Salomon & Co. Ltd.* must not be behind one essential fact of dependency and neither must it compel a court to engage in an exercise of finding of fact which is voluntarily created by the parties as distinct from an artificial or fictitious one. Thus, if it is discovered from the material facts before the court, that a company is the creature of a biological person, be he managing director and it is a device or sham masked by the eye of equity, the court must be ready and willing to open the veil of incorporation to see the character behind it, if justice must be seen to be done.

What is more, from the position of the erudite judge, Aderemi, JCA, the fact is clear that the principle of separate legal personality as earlier entrenched in the decision in *Salomon v. Salomon* and as was codified under section 37 of the Companies and Allied Matters Act is not sacrosanct, and therefore the veil that covers an incorporated company can be pierced when an individual use the corporate personality of an incorporated body to indulge in questionable acts. The court should abandon the common law principle in the case of *Salomon* and look into the business reality before them. Afterall, the whole essence of law is to achieve justices and equity and equity comes to mitigate the harshness of the common law.The separate personalityprinciple of the company cannot be

[1]*Supra,* Footnote 6.
[2] (2006) 7 N.W.L.R. (Pt 663) 33 at 51.

allowed by the courts as a cloak for fraud or dishonesty. In other words, where it is evident that a company was defrauding impressionable persons, the company and the individuals may be treated as both one and the same person. The circumstances in which the courts would be minded to lift the veil of incorporation include the following:

(i) Where the company is being used as a mask for fraud or improper conduct;

(ii) Where the purpose for which the company is formed is fraud;

(iii) Where it is in the public interest to ignore the corporate veil;

(iv) Where the company is used to evade legal obligations such as evasion of tax;

(v) Where the company is used to defeat the aim of the law.

(vi) Where shares in a company are held on trust and the management of the company is in the hands of the trustees; or[1]

These circumstances may all be subsumed in the element of fraud which has been espoused by jurisprudential analysis as earlier noted in the case of *Gilford Motors Co. Ltd. v. Horne.*[2] In this case, Horne, a former employee of the plaintiff company attempted to avoid a restrictive covenant claiming that as a person he might be bound by the restraint but the company being a separate entity may not be so bound. The court described the company as a device, a stratagem and a mere cloak or sham in order to carry on the business of Mr E.B. Horne. The purpose of it was to try to enable him, under what is a cloak or sham, to engage in business which, on consideration of the agreement which had been sent to him just about seven days before the company was incorporated, was a business in respect of which he had a fear that the plaintiff might intervene and object. The court therefore cracked the corporate veil by granting an injunction against the company as well as Horne.[3] This decision was followed in *Jones v Lipman*,[4] where the defendant, who had contracted to sell land to the plaintiff, later endeavoured to put the land beyond the reach of an order for specific performance by conveying it to a company which he had formed for this express purpose, and which he effectively controlled by holding the majority shares. Ignoring the corporate veil, the court ordered specific performance against both the defendant and the company. In both *Gilford Motors Co. Ltd. v. Horne* and *Jones v Lipman*, the company whose separate existence was disregarded had been set up deliberately in an attempt to evade an existing obligation.[5]

The court in Nigeria toed the same line of judgement in *Adeyemi v. Lan and Baker (Nig.) Ltd & Anor*.[6] The foregoing decisions can be contrasted from that of the decision in *Lee v. Lee Air Farming Ltd.*[7] Here, Lee formed a company and owned all the shares. He was also its site governing director. He was also employed by the company as the chief pilot. In line withsection 3(1) of the New Zealand Workers Compensation Act 1922, Lee caused the company to insure against liability to pay compensation in the event of an accident. He was killed in a flying accident. The New Zealand Court of Appeal held that his widow was not entitled to compensation from the company because Lee could not be regarded as a 'worker' within the meaning of the Act. However the Princely Council reversed the decision holding that Lee and the company were distinct legal persons which had entered into contractual relationship under which he becomes a servant of the company. As the sole governing director, he could on behalf of the company give orders to himself in his other capacity as a pilot. Accordingly, the relationship between himself as a pilot and the company was that of servant and master. Therefore, the magic of corporate personality enabled him to be master and servant at the same time and got all the advantages of both.[8]

[1] Sofowora, O.M.,*Modern Nigerian Company Law,* (Lagos: Soft Associates, 1992) pp. 34-36.
[2] *Supra*, Footnote 12.
[3] Sealy, L.S.,*Cases and Materials in Company Law,* Sixth Edition (London: Butterworths, 1996) p. 66.
[4] (1962) 1 All ER 442; (1962) 1 WLR 832.
[5] Sealy, L.S.,*Cases and Materials in Company Law, op. cit.*, p. 66.
[6] [2006] 7 N.W.L.R. (Pt. 663) p. 3.
[7] (1960) UKPC 33; (1961) AC 12 PC.
[8] Davies, P. and Worthington, S.,*Principles of Modern Company Law*, Tenth Edition (London: Sweet & Maxwell, 2016) p. 125.

In lifting the veil of incorporation there are some procedures through which this could be achieved these compartmentalized as follows:

1. Where the statute provided for lifting veil and
2. Under the case law.

The two procedural compartments can be enunciated seriatim. Firstly, under the statute, lifting the veil of incorporation may be invoked in the following circumstances:

(a) **Number of Members Falling below Legal Minimum**: The Companies and Allied Matters Act under section 93 provides that if a company carries on business without having at least two members and does so for more than six months, every director or officer of the company during that time that it so carries on business, after those six months, who knows that it is carrying on business with only one member is liable jointly and severally with the company for the debt of the company contracted during the period.

In this circumstance, the officers and directors will share in the liability of the company. This section did not create an offence but only prescribe the consequences that flow from a company carrying on business for more than six months without the required number of members as stipulate by the law. It brings to the notice of the directors and officers the danger they are exposed to if they fail to comply with the provision of the CAMA.

(b)**Where the Number of Directors GetsLess than Two**:A director or member of a company who knows that a company carries on business after the number of directors has fallen below two for more than 60 days shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.[1]In line with the above provision, when such situation is before the courts the practice is that the court pierces the veil of incorporation to know who actually were the directors.

(c) Personal Liability of Directors and Officers for Fraud: Section 290 of the Companies and Allied Matters Act (CAMA) provides for personal liability of directors and officers. Accordingly, in circumstances where a company:

(a) Receives money by way of loan for specific purpose; or

(b) Receives money or other property by way of advance payment for the execution of a contract or project; and

(c) With intent to defraud, fails to apply the money or other property for the purpose for which it was received, every directors or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received.[2]

This provision applies to catch not only those who borrow money from banks and divert it to their own use but also to those who hide under the cloak of a company to perpetuate fraud.The case of *PFS Ltd v Jedia*[3]is quite instructive. In this case, there was an allegation of fraud. The court had found that the chairman and managing director of a company, though his assurance and warranty induced a person to place funds with his company for agreed returns, latter refused to pay on the excuse that his company's production was low. On the facts, the court found constructive fraud and held that it was a case aptly covered by section 290 of the AC. Therefore, the court per Rowland, JCA held *inter-allia*:

> It is a trite law that the court will lift the veil of incorporation of any company to find out who was behind the fraudulent and improper conduct. This would be necessary where the canopy of legal entity is used to defeat public convenience, justify wrong and perpetuate fraud and crime.

It goes without saying that this section applies only to where incorporation was used as a cloak to commit fraud. That is, where there was no intention to commit fraud or that the director acted in error or mistake of the facts, he will not be liable because equity will not allow an innocent man suffer fraud he never had intention of committing.

[1]Companies and Allied Matters Act, Cap. C20 Laws of the Federation of Nigeria 2010, Section 246 (3).
[2]Companies and Allied Matters Act,*op. cit.,* Footnote 23, section 290.
[3](1998) 3 N.W.L.R. (Pt 543) 602.

(d) **Reckless or Fraudulent Trading**: If in the course of the winding up of a company, it appears that any business of the company has been carried on in a reckless manner or with intent to defraud creditors of the company or creditors of any other person for any fraudulent purpose, the court, on the application of the official receiver or the liquidator of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.[1]

(e) **Company not Mentioned on Bills of Exchange**: Upon incorporation, every company shall have its names and registration number mentioned in legible characters in all business letters of the company and in all notices advertisements, and other official publication of the company and in all bills of exchange, promissory notes, endorsement,cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all bills or parcels, invoices, receipts and letters of credit of the company.[2]

The fact that could be deduced from the foregoing above is that the Act (CAMA) seek to prevent fraud that may emanate from some company directors or managing director who may try to use the company to perpetuate fraudulent activities against a third party. The point is that if any officer of a company or any person on his behalf, issues or authorizes the issue of any bill of exchange, promissory note, endorsement,cheque or order for money or goods without the name of the company being so mentioned, he will be liable to the holder of any such bill of exchange and so forth for the amount thereof, unless it is duly paid by the company. An omission of an essential part of the name will be a contravention of the provision. Thus, the omission of the word 'limited' when it forms part of the company's name will come within the provision of the Act. In *Maxform SPA v. Marian and Goodwill,*[3]the court held that where an officer or a company signed a bill of exchange in which the company was described by a trade name, and the drawee and signatory were different, the circumstances were such that the signatory could be held to have signed on behalf of the drawee and was liable thereby.

(f) **Holding and Subsidiary Company**:At the end of its financial year a company that has subsidiaries must prepare group financial statement dealing with the state of affairs and the profit and loss account of the company and the subsidiaries unless otherwise permitted by the Act.[4] Those documents must be laid before the company in its general meeting when the company's balance sheet and profit and loss account are so laid.[5]

In line with the above, the veil of incorporation may be pierced to discover the reality of the situation for instance, where a group of companies is virtually a partnership or where one of the companies is a trustee of the other in respect some property in use. The effect of such an account is to derogate from the independent legal personality of each of the companies and to show that they are related and are subject to examination behind the incorporation veil.

(g)**Investigation into Related Companies**: When an inspector is appointed by the Corporate Affairs Commission to investigate the affairs of a company, the inspector, if he thinks necessary for the purpose of his investigation, may also investigate the affairs of any other related company, and report on the affairs of other company so far as he thinks the result of his investigation thereof are relevant to his main investigation.[6] This involves lifting the veil of incorporation if need be.

In the second ambit, under the common law, lifting the veil of incorporation may be invoked in the following circumstances:

(a) Company Acting as Agent for Shareholders or as Sham

Where the shareholders of a company use the company as an agent, they will be liable for the debts of the company. But it is a question of fact in ascertaining when an agency exists or whether a subsidiary is carrying on

[1]Companies and Allied Matters Act,*op. cit*, Footnote 23, section 506(1).
[2]*Ibid*.,Footnote 26, section 548 (1) (c).
[3] (1982) 2 Lloyds Rep 54 CA.
[4]Companies and Allied Matters Act,*op. cit*,Footnote 23, sections 336-338.
[5]*Ibid*., Footnote 29, section 345.
[6]*Ibid*., Footnote 29, section 316.

the business of its holding company or its own as was held in *Smith, Stones and Knight v Birmingham corporation.*[1]

With regard to the relationship between an individual and a company whose controlling shares are owned by him, it was held in *Akande v Omisade*[2] that if a company is formed for the express purpose of doing a wrongful or unlawful act, or if when formed those in control of the company indulge in unlawful or wrongful deed, the individuals as well as the company are responsible to those whom liability is legally owed. In such circumstances, it may be said that the company is a sham, cloak or alter-ago.Otherwise, the company should not be so termed as it is not owned by any shareholder. It is a legal entity distinct from the shareholders who constitute its membership. It was further held that somebody who is a director cannot escape liability by incorporating or acting through another company which is his *alter ego* as a sham for receiving profit which would have been rightly due to the company of which he is a director. The above principle had been elucidated in the case of *Wallersteiner v. Moir*[3]and*Clarkson Co Ltd v. Zhela.*[4]

The general ruler is that where a court has found some improper conduct, it shall lift the veil in the interest of justice. Accordingly, in *Gilford Motors Co. v Horne*,[5] a former director of the plaintiff company had bound himself by a 'restraint of covenant' clause not to solicit. It was held that he could not escape the obligation of the covenant by hiding under the company which was described by the court as 'a mere cloak or sham for the purpose of enabling him to commit a breach of covenant. The same principle was held in *NigeriteLtd v Dalami Nigeria Ltd.*[6]

(b) Group of Companies: The trend is that the veil of incorporation can be pierced for economic and commercial reasons. In *Union Beverages Ltd v Pepsi Cola International and others,* Union Beverage Ltd (UBL) entered into an agreement with Pepsi Cola incorporated, under which P. Inc, granted UBL exclusive bottling appointment. The representation company of P. Inc in Nigeria was Pepsi ColaInternational Ltd which was a subsidiary of P. Inc. Union Beverage Ltd(UBL), having complained of a breach of the contract brought an action in court to restrain Pepsi ColaInternational Ltd, the subsidiary and representatives of P. Inc., from breaching the agreement. On appeal the Supreme Court held that 'That if however, the two companies were shown to be one to all intent and purposes 'then, corporate veil could be pierced and each could be held liable for the action of the other'.This problem has assumed a greater dimension with the spread of multinational companies in many parts of the world, particularly in Nigeria. This question as was settled in the *Union Beverages Ltd case* was also the ground upon which the court reached a judgment in the case of *Adams v Cape Industries Plc.*[7]

(c) **Lifting the Veil in Criminal Cases**

The courts have considered the issue of lifting the veil in criminal cases and have decided that the considerations are not same as in civil matters. In *Adams v the State*[8] the appellant was the managing director of a firm, Abbey Life and Pensions Consultants. He received some money on behalf of the firm for the purpose of placing insurances for premium. As a result, the managing director was arrested and later prosecuted for stealing the money he had received on the ground that he was the proprietor of the firm and the person who negotiated the insurance deal and who was also the sole signatory to the account of the firm. He was convicted on the assumption that the veil should be lifted to see the operator who in this case, was the appellant. This was the issue in consideration on appeal. Accordingly, the court per Sulu Gambari, JCA, held *inter alia*:

> In all these instances I have given, it appears to me quite clear that the lifting of the veil or piercing the veil of corporate bodies were invariably done in civil matters where the court would, as a court of common law and equity, be applying the principles of equity in the appropriate matter. Rendering the director of a company as a sole proprietor of a company criminally responsible for the act ascribable to the company would amount to applying equitable doctrines to ground conviction in criminal matter.

[1] (1939) 4 All ER 116.
[2] (Suit No FCA/L/108/80 of the 4th May 1983 (Unreported).
[3] (1974) 1 WLR 1991.
[4] (1967) 64 DLR (2ND) 457 at 470.
[5] 21 (1933) Ch 935 (1933) ALLER Report CA.
[6] (1992) 7 N.W.L.R. (Pt. 253) 288 at 304.
[7] (1990) CH 433; (1990) 2 HL 726.
[8] (1992)4 N.W.L.R. (Pt 234) 148.

He further observed that the act of an individual could be taken as the act of the company in appropriate matter. For instance, where the director represents the directing mind and will of that company and can be regarded as the *alter ego* of the company rendering the company liable for his acts, it will be absurd and dangerous to make an individual criminally liable for the acts apparently done for and on behalf of the company without express provision of statute rendering him so criminally liable.

IV. Conclusion and Recommendation

The company, being a separate legal entity, can only act and think either through corporate structures which are defined in the company's constitution as having authority, such as the board of directors or committees of the board or through individuals who have the requisite authority by the operation of the principles of agency and vicarious liability as was enunciated in M*eridian Global Fund Management and Asia Ltd v. Securities Commission.*[1] Accordingly, the court held that these principles could not always apply where a statutory provision required a state of mind expressed in terms of a natural person as is generally the case in criminal law. Where the court needs to ascertain some physical or mental attitude then it is necessary to look at the human management involved in the governance of the company. In attributing physical or mental characteristic to a company, reference must be made to the corporate structures or specific human individuals involved. It is therefore, recommended that that the statutory grounds for ignoring the corporate entity in order to attach responsibility on the individual culprits should be widened to accommodate all perceived incidents of crime and tort. The fact that a company is conferred as much powers as a natural person of full capacity is no subterfuge to circumvent the civil and criminal responsibilities of wrongs and offences committed in satisfaction of the personal avarice. It goes without saying that the essence of disregarding the corporate personality of a company is to avoid fraud.

The legislature and the court in their wisdom devised a caveat to serve as a guide to anybody acting with the express provision of the statute. The principle under the common law as enunciated in the case of *Salomon v Salomon* was that an individual will not be liable when he act in the course of carrying out the affairs of a company. It is the intention of the legislature to entrench such provision for the smooth running of business considering the economic realities of the modern time. However, where an individual used the name of a company to perpetuate fraud and hide under the corporate entity, the court is allowed by the provisions of the Act to raise its sledgehammer to pierce the veil of the company so as to see the particular person that perpetuated that fraud and find him liable for such misconduct. This is significant because the provisions of the CAMArecognisedthat the separate entity and limited liability doctrine are capable of being abused and that their benefits should be removed from abuse. Abuse in the shape of hiding behind limited liability to effect fraud is easy to identity as the long standing provisions against fraud which in effect makes access to limited liability dependent upon objective standard of competence on the part of controllers of companies at least during the period when insolvency threatens and the company's creditors are threatened.

[1](1995)3 WLR 413.