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Research Article

Analysis of the Thorny Issue of Who Can Bind a Nigerian Company Under CAMA 2020?

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Abstract

At common law and in Nigeria much confusion has been generated and has given rise to various judicial interpretations in several cases since the 19th century as to whose acts can bind a company since a company is a juristic person and cannot do any physical activity. The focus of this article is to analyse the provisions made under CAMA 2020 to ascertain those organs of the company responsible for policy decisions in the company whose acts can be attributed to being the acts of the company and the company is civilly liable as if it is the acts done by the company itself. Part of the findings of this study reveals that under section 87 of CAMA 2020 which provides for organic theory the company would be held liable only for the act of the person of sufficient standing in the company. The paper makes a case for urgent amendment of section 89 of CAMA 2020 to accommodate middle and lower management cadre among those who can represent and their actions bind a company in Nigeria as it is presently the practice in Canada.

Keywords

Civil Trials, Companies, Thorny Issues, Who can Bind a Company, Nigerian CAMA 2020,

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In general, a company is a legal entity distinct from any of its shareholders, directors, officers and agents. As a result, the company has enforceable legal rights and is bound by enforceable legal responsibilities and liabilities. In specific terms, a company can own property, can be a party to a contract, can act tortuously, can be a victim of a tortuous behaviour, can sue and be sued, has a nationality, has a domicile, and has human rights (Boadu, 2005). The case of (Seddoh & Akor). firmly established the above principle. The doctrine is the pivot of all other consequences of incorporation. The corporate entity is an artificial creation and fiction of the law with obvious natural limitations. Thus, it continues to puzzle and agitate the minds of many how the artificial personality carries on with the rights and duties attributed to it. This further fiction is created and resolved by law, but not as simple as practitioners would want to make it seem; regards being had of the unavoidable role of natural persons. Implicated here are the thorny issue of who can bind a Nigerian company under CAMA 2020? In this scenario, the first research question that this study seeks to address is corporate capacity and representation. The second research question is: since a company is a juristic personality which theories is used to determine the acts of the company, and the third research question borders on restriction on powers and liability of organs, officers and agents of the company.

Literature Review

Conceptual Clarification

Although company law is a well-recognised subject in the legal forum and attracts voluminous literature, its exact scope is not obvious since "the word company" has no strictly legal meaning (Pollack, Quigley, & Harbin, 1976). However, different eminent Jurists and Scholars define the word company differently. The Black's Law Dictionary (Bobbin & Rossi, 2016) defines a company as an entity, generally, a corporate organization, that has the legal capacity to operate as a single person separate from the shareholders who own it, can issue stock, and lives forever separately from them. Gower and Davies maintain that it is clear in legal theory (though not as will be seen always in economic reality) that the term implies an association of several people for some common object or objects (Edu, 2013). Sofowora described a company as a legal person created by a process other than a natural birth, for instance, by law and so is an artificial person. (Seddoh & Akor) Section 42 Cama 2020 defines a company as follows... The subscriber to the memorandum, as well as any other persons who may become members of the company at any time, will form a body corporate. In the case of(Heine, 2000) the English Court push the literature review of the word company forward where the Court stated that:

A company is an abstraction with no mind or legal body of its own, it must seek its active and directing will in the person of someone who may be referred to as an agent for some purposes, but who is the company's guiding will and mind, the very ego and heart of its personality.

Similarly, the Supreme Court of Nigeria in the case of (Davies & Gower, 2008) *Nig Ltd* v. *A*. had this to say about the notion of a company: If the law needs a person to act or a person's defects to bind a legal fiction like a business accountable, the directors, managers, or managing directors are the guiding mind and will of the company in the eyes of the law. And, because they have complete influence over what the firm does, the state of mind of this particular group of employees is the company's state of mind.

Theoretical framework

The theoretical underpinning of this study is both fiction and realist theories. Private law offered two opposing explanations of corporate personality, both of which rely heavily on anthropomorphic imagery (Heine, 2000) and each of which has given rise to models of company liability. To the fiction theory of corporate personality (Edu, 2013), the company is nothing more than a legal construct, a term used to describe a group of individuals constituted at any one time (Okafor, 2007). The company, on this view, can only act through its human

representatives, its operational staff being its 'limbs', its officers and senior managers its 'brains' or 'nerve centre' (Olarinde, Jacob, & Emokiniovo, 2021).The company may bear the action or omission on the nominalist view but only because it can be identified with a human being who serves as its 'directing mind will' now also known as the organic theory. In contrast, the reality theory recognises the company as possessing a distinct personality in its own right, as well as being a person under the law (Warren, 2013). Currently, this view of corporate personality allowed legal entities to be held vicariously liable for the civil wrongs of their servants (Stessens, 1994). The above theories inform the study and help readers to understand the relationship between the company and its organs, agents and officers whose actions are binding on the company.

Methodology

In conducting this research study, the researcher adopted analytical and expository research methods by reading previous and existing journals, articles, government policies, commentaries, textbooks, statutes and case laws on corporate capacity, basic theories of corporate representation, and liability of a company.

Corporate Capacity or Representation

To answer the first research question, we shall rely on the relevant company constitutional provisions. For instance, a company's capacities are normally specified in the memorandum of association. The objects clause of the memorandum has the function of defining the powers or capacity of the company. This clause will specify precisely the corporate capacity. Generally, a company can only perform acts as provided for by its memorandum or relevant statute which it is expressly or impliedly authorized to do. An incorporated company has no existence and cannot act as a legal person outside the powers defined in the objects clause. In other words, its legal personality exists only for the particular purposes of its incorporation as defined in the objects clause. Any purported act that is not authorized is *ultra vires* the company at common law (Slapper, 1994). For these purposes, Section 27(1) (c) of CAMA 2020 provides the requirements to the memorandum, which states:
The nature of the business or businesses which the company is authorized to carry on..." And by Section 43(1) it is provided inter alia, that "every company shall, for the furtherance of its authorized business or objects have all the powers of a natural person of full capacity". It must be immediately noted that it is only for the furtherance of its authorized business or objects that it shall have all the powers of a natural person. Furthermore, corporate capacity is usually associated with and practically illustrated by the *ultra vires rule*, which at common law translated that any act *ultra vires* the company was null and void(Bobbin & Rossi, 2016; Curtice & Seyd, 2011). The rule is not subject to statutory modifications whittling down the common law concept. Section 41(1) of the new Act states that: *a company shall not carry on any business not authorized by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act,* while Section 44(1) of the same Act provides that:
Notwithstanding the provisions of Subsection (1) of this section, no act of a company shall be invalid because such act, conveyance or transfer was not done or made for the furtherance of any of the authorized business of the company or that the company was otherwise exceeding its objects or powers. This whittles down the *ultra vires* concept as espoused at common law by ameliorating the harsh consequences.
In all, corporate capacity under the Act is determined in the major by the objects clause of the Memorandum of Association and to a little extent, the Act. The memorandum could restrict a company's capacity rendering acts beyond its specified capacity *ultra vires* the company. In that case, section 44(1) will apply to make the transaction avoidable where it would have been void at common law. Generally corporate capacity varies amongst jurisdictions and this position under the Nigerian Act is peculiar.
Related to the issue of capacity is authority and power to act as or for the company. These two are dependent on the capacity and power of the company as governed by the objects clause. Any such act as or for the company must be within the defined capacity and powers. Contrary to the German practice where there is neither the need nor any possibility for the

company to confer or restrict authority(Edu, 2013), under the Nigerian Act a company may restrict authority. Section 43(1) that confers the general powers of a company incorporated under the Act suggests this. The subsection in providing that every company shall, for the furtherance of its authorized business or objects have all the powers of a natural person of full capacity, states "*except to the extent that the company's memorandum or any enactment otherwise provides*".

It must be noted that Section 44(1) of the new Act retained *ultra vires doctrine* as an internal Corporate Management Policy whereby if a company should engage in *ultra vires act* the court on the application of any member may by injunction or by declaration restrain the company from doing so (Okafor, 2007). However, that the Common Law position that a contract that is *ultra vires* is void has been reversed by (Section 44(3) CAMA). That notwithstanding to succeed on Section 44(3) a third party involved in an *ultra vires* transaction will have to satisfy Section 93(d) (1) that he had no actual notice of the *ultra vires* transaction. Unlike the position in England subsection 44(5) allows the court to set aside and prohibit the performance contract that is *Ultra Vires*, while this subsection may seem to help the member of debenture holder opposing the proposed act, the author submits that it does not prevent the company from embarking on any act, so far as it can summon the required majority to amend the objects. The subsection is however useful, as it enables the court to quantify any loss or damage to any party who may have suffered as a result of the *Ultra Vires Act,* and so *Ultra Vires Acts* are no longer a nullity, and the company or the third party can no longer escape just obligations by hiding under the Rule. It is noted, however, that where the restriction is stated in the memorandum, it can be relied upon by the company and have effect only in the circumstances specified in Section 45(1) (a)-(d). Thus, any restriction in the memorandum is effective and valid despite the attempt to confer the powers of a natural person on the company. The power of a natural person given to the company is not a power at large. Its exercise is limited strictly to the furtherance of its authorized business or objects(Pollack et al., 1976; Rollin, 1999).

Basic Theories of Corporate Representation in England

Having determined the company's capacity, and source of its powers research question two is since a company is a juristic person which theories is used to determine the activity of the company. In answering this question it is intended to discuss three contending theories of corporate legal representation. These are the agency, organic and vicarious liability theories. The agency theory insists that the company is incapable of acting for itself and so must act through human agents. The agents have to act on their behalf and the agents' authority depends on their agency from the principal. For instance, where an agent acting with the scope of his authority (Seddoh & Akor) make a contract with a third party on behalf of his principal, the agent drops out completely and only the principal can sue and be sued by the third party on the contract (Olarinde et al., 2021). Ordinarily, it makes no difference that the agent acted fraudulently and entirely in his interest and contrary to those of his principal (Hambro v Barnard, 1904 2 K.B. 10).

The legal implication of the doctrine is that any contract made by the agent on behalf of his principal will operate to pass the rights and liabilities under the contract to the principal. This common-law rule was explained by Wright J. In the case of (Montgomery v. U.K. Steamship Association), where His Lordship made the following statement:

The contract is between the principal and the agent, and the principal is *prima facie* the only person who may enforce and be sued at common law. It follows that it is the principal alone who acquires rights and liabilities under the contract and he alone can sue and be sued on the contract. (Montgomery v. U.K. Steamship Association Similarly, in the Nigerian Case of (Stessens, 1994) the Supreme Court held that an agent is a person authorised by another to act for him, one entrusted with another's business. He is a person who is authorized to transact all of his principal's business of any sort or all of a certain location's business

However, there are exceptions to this common law concept, and an agent or director may be personally liable for contracts entered into on behalf of the organisation if he acts outside of his authority(Warren, 2013). Under the organic theory model, the company would be held

liable for the wrongdoing if the person has sufficient standing. It is not sufficient to merely establish that any employee or agent acted wrongly. The directing mind must be properly identified within the company to which fault may be attributed. The doctrine is a "two-step analysis first, it identifies the perpetrator of the act, and then it asks whether he or she is a person who can be said to embody the company's mind and will" (Gobert, 1994).This position played out in the English Case of
In (Curtice & Seyd, 2011) case, the Supreme Court of Canada expanded the category of directing the mind to include the board of directors, the managing director, the superintendent, the manager, the chief financial officer or anyone else delegated by the board of directors to who is delegated the governing executive authority of the corporation. The Canadian Court when further to say that a corporation may have more than one directing mind, where corporate activities are geographically widespread or diffused, would virtually inevitable that they would be delegation and sub-delegation of authority from the corporate centre and therefore there would be several directing minds. On this point, the Supreme Court suggested that the application of identification doctrine in the English case of (Pollack et al., 1976) was too narrow for Canadian realities. In the United Kingdom, the target group is confined to the board of directors, the managing director and other highly-placed managers. The author submits that the Canadian Supreme Court decision accord more with the present-day reality and is more in tune with the alter ego principle which is concerned with whether the employee, at the time of wrongdoing, was acting in the course of his employment for the overall benefit of the company or not. The difference between the Canadian, Nigerian and English identification theory is that Canadian Courts are prepared to locate the directing mind at a lower level in the company than are the English Courts vis-a-vis the Nigerian Courts.
The English law popularized this theory. In the ***Rolled Steel Products (Holdings) Ltd. v. British Steel Corporation and Others*** (1978, Ch. 246, at 304), Browne Wilkinson LJ, recognized "...the directors acting as agents of the company".
In the celebrated Nigerian case of (Seddoh & Akor) ***Estate & Investment Co. Ltd. & Another,*** 1978 1LRN 146), after a review of old authorities, Aniagolu, JSC agreed that "...a company, although having a corporate personality is deemed to have human personality through its officers and agents..."
Continuing, the erudite Justice quoting the time-honoured dictum of **Viscount Haldane, LC,** said:
...a corporation is an abstraction. It has no mind of its own anymore that it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent, but who is the directing mind and will of the corporation, the very ego and centre of the personality of the corporation (Slapper, 1994)

This theory is based on the fiction of a company acting independently of any outside support. Though it might seem awkward at first sight, as rightly argued by (*Felix Rollin),* it is in fact in line with the doctrine of a separate legal entity. A distinct creature ought to be able to act itself. This it can do through its organs. But Rollin's argument seems to ignore the fact that an incorporated company never enjoys full legal capacity as its personality exists only for the particular purposes of its incorporation (Lord Cranworth L. C in eastern Counties Rly. v. Hawkes, 1855 5 H.L.C 331 at 346). However, the reality theory recognises the corporation as possessing a distinct personality in its own right, as well as being a person under the law (C. Wells, 1993).

Basic Models of Corporate Liability under CAMA 2020

The Nigerian company law under CAMA 2020 appears to admit two models of corporate representation, namely: Vicarious liability and organic or identification theories though with variations. This proposition was succinctly laid down as far back as 1992 in the Court of Appeal case of (Edu, 2013) **Awogu, JCA**, had noted that the artificial entity must act through the instrumentality of its human organs, agents and officers. A combination of sections 87 and 89 shows a clear codification of both the *organic theory* and vicarious liability theory into the new Act.
By section 87(1) of the Act it is provided that a company shall act through its members in general meeting or its board of directors, or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors. This provision

simply admits the artificiality of the corporate personality and the fact that it must act, if at all, through the organs or its officers or agents. The section equally demarcated the respective powers of the organs and the officers or agents who may both act for the artificial person. The position is in line with the English case of *Denning LJ* in ***Bolton (Engineering) Co. Ltd v. Graham & Sons* (Supra),** that:

A company may in many ways be likened to a human body. It has a brain and a nerve centre, which controls what it does. It also has hands, which holds tools and act under directions from the centre. Some employees are just employees and agents who are there to execute the task and cannot be considered to reflect the thought or will of the corporation. Section 89 of the new Act provides that any act of the members in general meeting, the board of directors or the managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be (subject to stated exception) liable for it to the same extent as if it were a natural person. This section completely rested on the fact of human personification of the artificial creation in the organs and officers. As it were, it is only the organs and the managing director that their acts are regarded as those of the company, for other persons, even directors it can only be when authorized by the company. This is the closest the Act had gone codifying the *organic theory* while also instructive on the mandate principle. Thus, the identification *or alter ego theory under CAMA 2020 does* not carry the concept of distinct corporate personality with the ability to act for itself to ridiculous absurdity like the English approach.

Apart from organic theory, Sections 88 and 90 of CAMA 2020 also makes provision for the vicarious liability model in Nigeria. Under this model, companies are made liable as a principal not because of their own "direct actions" but because of the "action of another person or his servant" (A. Linus, 2008). Like the United States counterpart, for vicarious liability to be imposed in Nigeria, various requirements need to be established. First, this liability can only be attached to the company when the relevant law intends to impose vicarious liability. The board of directors, for example, can "...from time to time designate one or more of its body to the office of the managing director and may delegate all or all of their duties to such managing directors," according to section 88 of the CAMA the implication here is that the managing director, under the delegation can only bind the company vicarious for his actions in the company's course of business. In the same vein, Section 89 of the same Act recognizes that any of the …managing directors while carrying on in the usual way, the business of the company, shall be treated as the act of the company itself and the company shall be civilly liable therefore to the same extent as if it were a natural person. The implication here is that the company is directly liable for the acts of the managing director as though it carried out the act itself. Thus, where the managing director of a company acts in Nigeria, it may be successfully urged that the liability of the company should be personal, or vicarious, depending on the construction of the instrument of his appointment and the circumstances of the transaction. On the other hand, Section 90 of the new Act expressly admits the application of vicarious liability of the company for the acts of their servants while acting within the scope of their employment.

The second requirement for the application of the doctrine of vicarious liability in Nigeria, which is akin to that of the United States position is that the employee, officer or agent must have done the action or omission in question in the course of his or her employment or authority. This requirement is evident in the wording of Section 90(3) of the Act which makes provision for vicarious liability of the company for the acts of its servants while acting within the scope of their legitimate employment (Section 90(3)). The third element of companies liability according to the theory of vicarious liability is that the actions were authorized, tolerated, or ratified by the corporate management (Section 90(2)). It must be understood that if intention, knowledge or recklessness is a fault element with the physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorized or permitted the commission of the offence.

The concept of vicarious liability was given formal recognition by the Nigerian court in the case (*Texaco Africa Ltd. v. Nigerian Shipping & Trading Co. Ltd., 1962 LLR)*, like the American's case of (the gives credence to the fact that for the act of agent to be imputed to the corporation, the agent must have acted within his scope of employment. In this case, the court held that

as the acts of the managing agent fell within the ostensible scope of his authority, the company was liable. The act must have been done to benefit the corporation. The court went further to say that it is irrelevant that the act was not done for the exclusive purpose of benefiting the corporation or that the corporation did not receive the benefit.

Restriction on Powers and Liability of Organs, Officers and Agents of the Company under CAMA 2020

Having established Corporate Capacity and representation, basic theories used in determine the activity of the company, it is important to examine the extent of the restriction on powers and liability of organs, officers and agents of the company under the new Companies Act.
The respective powers of the organs are specified in the articles. The only restrictions on the company acting through the organs hence on the powers of the organs to act are as provided in the memorandum any enactment or the Articles (Section 87). In essence, under the Nigerian Act, while accepting the *organic theory,* the organs' power is not defined by the law but by the Articles, which may restrict the powers.
Much as section 89 states that the acts of the organs are acts of the company to the same extent as if the company were a natural person, one notable restriction is that the act in question must be one done "*while carrying on in the usual way of the business of the company*". This is a reference to the *ultra vires* rule. So, the acts cannot be those of the company outside the objects, save to the extent allowed by the Act for purposes of liability. Even at that, as regards the ostensible authority of the organs, the company will not be liable if the third party seeking to hold the company liable had actual knowledge at the time of the transaction in question that the General Meeting, the board of directors or the Managing Director, as the case may be, had no authority to act in the matter or had acted irregularly or if, having regard to his position or his relationship to the company, that third party ought to have known of the absence of power or the irregularity.
The precise effect of the aforetasted restriction is however whittled down by section 89, paragraph b. This provides that where the company is carrying on a business, it shall not escape liability for the acts of its organs undertaken in connection with that business merely because the business in question was not among the business authorized by the company's memorandum of association. This provision will appear to be a consolidation of the whittling down on the common law *ultra vires* principle by the Act, but it is simply for purposes of liability. The inclusion of the managing director under section 89 as one whose actions may be treated as the act of the company is instructive and commendable under the new Act.
The new Act under Section 88 provides that directors may unless otherwise provided in the Act or the Articles, exercise their powers through a committee of their members, and may from time to time appoint one or more of themselves as managing director and may delegate all or any of their powers to him. This power allows for alteration of the order of corporate representation, jettisoning the concept of collective representation. Where the directors exercise their power to delegate under this section, a director or committee so delegated becomes entitled to act as an organ of the company As a learned writer observes:

The office of the managing director is one created by the board of directors by appointing one of their bodies to the office and are to delegate all or any of their powers to such managing director. The extent of the powers of the managing director is therefore directly proportionate to the extent of delegation by the board of directors In this circumstance, there is no mistake under the new Act as section 89 includes the managing director as one of those whose acts may be treated as the act of the company. This accords with economic reality as of today; so much power are usually allowed the delegate such that it is normally the managing director who runs the day to day business of the company rather than the board as a whole as if the powers of the board as an organ are not conferred collectively (Section 89 CAMA 2020).
Section 90 is a reaffirmation that only the acts of the organs and the Managing Director recognized in section 89 could be acts of the company. The acts of any other officer or agent can bind the company only if authorized or represented as having authority. Three categories

of the officer or agent's power could be seen here. In many cases express authority will be found in the article, for instance, the authority is given to the board of directors; but the articles may further empower the delegation of the directors' power to committees, managers, managing directors, or other persons and such delegation may be made either expressly, as where a manager is given specific powers by resolutions of the board or by implication, as where an agent is permitted to exercise certain powers or is held out as having such powers(Pollack et al., 1976).So there is the case of express authority. Under English law, this is actual authority and can only be conferred by consent of the principal and the agent. Said **Lord Pearson** expressed his thoughts on the subject. "Only the principal's and agent's content may establish their relationship." *(Gobert, 1994)*.

Once there is express authorization to an agent from an appropriate organ or office of the company empowered to act for the company, then the company is properly represented and is legally bound. On this **Orojo** observation instructive:

It is usual for a company to authorize an officer to sign a document on its behalf. In such a case, the company, not the officer, is liable... This is not only because he is an agent of a disclosed principal, but also because the company is an artificial person that can only act through human persons such as the officers (Okafor, 2007). The above decision of the English Court was given recognition by the Nigerian Court in the case of (Onuoha, 2012) where it was held that:

The company itself cannot act on its person for it has no personality. It can only function through directors in the conventional instance of principal and agent, which means that anytime an agent is held accountable, the directors are also found liable. Where the liability would attach to the principal and the principal only, the liability is the liability of the company. As actual authority derives from the principal authorizing the agent to act, the principal determines the scope of authority. This principle is without exception in English and Nigerian law. Hence any restriction imposed on an agent's authority generally validly limits actual authority. In this case of actual authority, the company is liable civilly and criminally.

Again, the authority could be implied, for example, if such authority had been given on previous occasions or is usual. If by the acts of the organs or the Managing Director, an officer or agent has been represented or held out as representing the company, then the company will be estopped from denying the authority of the agent or officer. This is the holding out principle long-entrenched at common law. In (***Trenco Nigeria Ltd v. African Real Estates Ltd.*** Supra, at 153 – 154), the court observed that:

Normally true agency arises by agreement only, but there are circumstances in which the law recognizes agency by estoppels in which case the principal may be estopped from denying that another is his agent and his relationship with third parties may be affected by the acts of that other.

Also, the Supreme Court of Nigeria in (***Metalimpex v. AG Leventis & Co. Ltd*** 1976, 2 SC 91 at 108 – 109) stated that:

A person may hold a company liable on any contract between them although *ultra vires* the directors of the company if... (a) the company has held out the director as having the necessary authority. In both cases, the companies were held liable and bound by the acts of the chairman and director respectively. It must be noted that Section 90(1) is subject to section 89 which provides that the company shall not be liable if the third party had actual knowledge that the company's organ or officer had no power or acted irregularly or having regard to his position with or relationship to the company he ought to have known of the absence of such power or the irregularity. The company cannot be held criminally liable for holding out in any event. But does this not detract from the principle of corporate personality?

The Practice

Despite the afore-stated copious provisions of the Act on whose acts can bind a Nigerian registered company, the practice appears to be in total disregard of the law. Before now, while appreciable compliance of the outlined provisions could be recorded of public companies, a careful observer will find that most private incorporate companies are run by "sole administrators" or "sole proprietors". However, to encourage small scale industries in Nigeria, Section 18 (2) of the new Act provides as follows: Notwithstanding sub (1), one person

may form and incorporate a private company by complying with the requirements of this Act in respect of Private Companies. Thus, in the day to day operations, there is hardly any difference between the running of unregistered sole proprietorships and those of incorporated private companies in Nigeria. In a typical scenario, the "sole administrator" who is usually the financier and manager of a company, carries on solely with acts otherwise reserved by the Act for the company's organs namely: the general meeting and board of directors. The administrator's acts as such are regarded and treated as those of the company and factually attributed to it without any regard to the Act's provisions. There is usually no lawful meeting of any of the organs and as a corollary hardly any genuine resolutions. The only noticeable exceptions are a case where filings must be made to the Corporate Affairs Commission (CAC). In that case, a resolution is easily contrived to satisfy the requirements for filing. Any meeting such as "sole administrator" with his management team or workers, none of who is a shareholder or director, is easily equated with the company's meeting.

Of course, in the illustrated cases the financier parades him/herself as the "owner" and is associated with the aberration of "ownership" of the company. He represents the board, the general meeting, officers, managing director, secretary and agents and ostensibly the company. The other members of the board and general meeting are usually his nominees or family members, who may or may not know that their names had been subscribed. To the described sole proprietor and the one Section 18 (2) of the new Act, Perhaps they think the idea of incorporation is just for the iconoclastic benefits of incorporation, which are to be enjoyed without any regard to the statutory implications of corporate capacity, representation or structure. Indeed, it is hopeful that the current Section 18 (2) of CAMA 2020 is an innovation by adopting the structure that small scale entrepreneurs now can mitigate risks by limiting their liability using the structure of businesses and avoid incidental complexities faced by individuals desirous of starting a Company. Again, unlike sole proprietors, single-member company owners have a separation between their business, assets and debts and their finances (Slapper, 1994). This implies that if your company is sued for injury or other damages, your assets aren't generally at risk, (Olarinde et al., 2021) and your assets aren't usually available to creditors if your company doesn't pay its debts. (Seddoh & Akor)

Conclusion/Recommendations

From the foregoing analysis, it is clear that CAMA 2020 makes provision for concepts of corporate capacity and representation, **basic theories of corporate liability,** and restriction on powers and liability of organs, officers and agents of the company. The research also established that the new Nigerian company law (Curtice & Seyd, 2011) provides for two contending models for corporate representation namely: Organic and Vicarious Liability Models. This study further established that all these powers must flow from the company's capacity deriving from its constitution and so limited by anything in the memorandum. That means that the organs' power to bind the company is limited. The power of other officers and agents appointed by the organs to act to bind the company is much more limited than the organs'. However, the full rigours of the Act provisions on corporate acts and representation are found in public companies; before now, in private companies, the provisions seem to be honoured more in breach as "sole proprietors" pretend to play the roles reserved by the company's organs. However, section 18 (2) of the new law has taken care of this situation. The work also finds that under the organic theory the company would be held liable only for the wrong actions of persons of sufficient standing in the company, whereas under vicarious liability theory the lesson we learnt, in a nutshell, is that: First, the employee must be operating within the extent and essence of his work. Second, the individual must be acting in some way to benefit the company. Thirdly, the employee's behaviour and intent must be assigned to the corporation. Fourth, a company is responsible for any wrongdoing that is corporate policy, authorised by the company's internal decision-making procedures. Fifth, if a corporation promotes a corporate culture that fosters misconduct by its workers, the company will be held accountable for any wrongdoing performed by its employees. But whatever one's theory of corporate responsibility, it is clear that a company is not responsible for the action or omission of its employees when it has done everything in its power to prevent such action or omission. This is because a corporation does not have a physical presence, it can only operate through

the efforts of the employees.
On the whole, CAMA 2020 has answered the thorny question of who can bind a company in Nigeria, which favoured the liability of the company only through the very senior management or the head of the company on one hand and vicarious liability on the other hand. The author submits that the organic theory does not take into account the major role which the middle and lower management play in the running of modern multi-national companies in Nigeria. The paper, therefore, recommends that our law should be amended to accommodate the middle and lower management cadre among those who can represent and their actions, decisions and omissions bind a company in Nigeria as it is presently the practice in Canada.

Conflicts of Interest

Statutes

English Company Act, 2006 (C46)
The Companies and Allied Matters Act, 2020

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