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An Analysis of Judicial Intervention and Enforcement as Panacea to Corporate Misgovernance in Nigeria.

Smaranda Elisabetta Olarinde[1]
Afe Babalola University, Ado (ABUAD), Ekiti State, Nigeria.
Professor of Law Department of Private and Business Law, Department of Private and Business Law

AGANBI Victor Emokiniovo[3]
Senior Lecturer in Media and Doctoral Student in Law,
Department of Media and Communication Studies, Afe Babalola University, Ado (ABUAD), Ekiti State, Nigeria
aganbivictor@abuad.edu.ng

IDEM Udosen Jacob[2]
Senior Lecturer, Department of Private and Business Law, Afe Babalola University, Ado (ABUAD), Ekiti State, Nigeria.

[3] Corresponding author: Senior Lecturer in Media and Doctoral Student in Law, Department of Media and Communication Studies, Afe Babalola University, Ado (ABUAD), Ekiti State, Nigeria... Email: ajerovyk@yahoo.com

Abstract

In Nigeria, today, some of the products and services we use to love while growing up and the companies that manufactured them are no more available due to failure on the part of the company's management to follow basic corporate governance. Good corporate practice boosts investors' confidence and good reputation that attracts foreign direct investment into the company and the economy through transparency, accountability, fairness, and responsibility. Key regulators such as the Securities Exchange Commission, the Nigeria Stock Exchange, Institutional Investors, Professional Associations, the Central Bank, and the Courts continue to improve their regulatory frameworks. (Ogbechie, 2013). The significance of corporate governance continues to raise several questions in Nigeria, and enforcement remains the primary problem in Nigeria. Accordingly, there has been emerging debate regarding courts' enforcement of corporate governance through interpretation of relevant legislations and the application of the corporate governance codes where the law does not exist. This study addresses the questions of whether courts play any role in the in mitigation of corporate misgovernance in Nigeria, in what ways and if they have the capacity to do so. This research finds that court interpretation and enforcement measures enhance good corporate Governance in Nigerian companies and prevent corporate failures. However, though judicial interventions, have been found to deter corporate mismanagement, such measures and guiding principles are rarely sought by stakeholders. The research recommends that increased recourse to judicial procedures and enforcement measures can deter any wrongdoing committed by the companies and their directors. Furthermore, given in courts should be adequate to discourage companies and their directors from wrongdoings.

Keywords

Corporate Misgovernance, Judicial Intervention, Corporate Failure, Enforcement

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Introduction

Today a significant number of companies in Nigeria have ended up shutting down due to poor performances of the management team, which culminated in the loss of confidence, which they hitherto enjoyed. This loss of faith has led to the collapse of many of these companies. The major reasons for company failure are mismanagement and fraudulent practice by key players in the terrain, as well as the inability of the in-built monitoring devices to perform their roles. The achievement of the corporate goal largely depends on how the company is run. The effective use of the company's assets, coupled with good corporate governance, invariably translates to a higher probability of good returns and investments. However, initially, both at common law and in Nigeria, a corporation being an artificial person could not be expected to commit treason, nor be outlawed, nor excommunicated, for they have no souls. This was Sir Edward Coke's view in the famous case of Sutton's Hospital Case 1612. This sentiment found renewed resonance in the unbiased economic imperatives increasingly advance in the latter part of the 20th century by commentators such as (Friedmam, 1970) who considered that the only objective of the business is to earn profits (Friedmam, 2007). He submits that since only people can have the responsibility, a corporation, as an "artificial person," can only have "artificial responsibilities". Indeed, in today's global environment, we have witnessed high-profile corporate collapses and failures, which appears to indicate the public's desire for corporations to acquire souls. However, the public outcry over the recent scandals and unexpected collapses of prominent companies like Enron, WorldCom, Tyco, Adelphia, Arthur Anderson L.L.P., Lehmam Brothers, Freddy Mac and Funny Mae in United States of America, Marconi and Northern Rock in the United Kingdom, Parmalat in Italy, Yukos in Russia, led many developed countries to pay better attention to corporate governance which demanding accountability and responsibility in organisational behaviour. Regulators established codes of governance that were to serve as a guideline to organisational behaviour were developed. This drive to foster good corporate governance has, however, not been restricted to developed countries alone. Nigeria, for instance, whose economy is still referred to as a developing economy, also realises the importance of 3 corporate governance and developed her corporate governance codes. These codes, therefore, suggest that even though corporate governance is based on individual legal, historical, and cultural systems, certain universal principles of governance do exist globally (Khouza & Adam, 2005). Corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that facilitate accountability among the corporations, management, business units, and board of directors for the discharge of their legal responsibilities. In assessing the standard of appropriate conduct, a court will take into account all relevant circumstances, including what is regarded as the normal or usual practice in a particular situation (Orenge, 2018). The conditions of good corporate governance codes and guidelines will be important in making decisions about what equates to the standard of business practice. The more settled certain administration rehearses become, the more probable a court would respect lead that adjusts with these practices as satisfying the necessary guideline of care. Consequently, any failure by management units and board of directors' compliance with a recognised government standard, even if not legislated, may deem a board or a single director responsible by law (Institute of Directors in Southern Africa, 2009) Farrar (2003) noted that the law had experienced various "paradigm shifts" over time which has inevitably impacted on the role of the judiciary. There are at least two other factors that have added to the complexity: the process of rapid change and a global trend towards self-regulation. This trend has been overshadowed, however, by the high rated corporate shutdown of the last few years, which have raised serious doubts about the ability of the business to self-regulate (Farrar, 2003).

Methodology

Research

The authors examined the concepts embedded in Judicial Interventions and Enforcements as Panacea to Corporate Misgovernance in Nigeria. The study is mainly analytical and descriptive in nature. It employs a doctrinal legal research methodology which involves desk and library-based, relying on primary and secondary materials. The primary sources relied upon are relevant legislations, case laws, policy, and government reports. The secondary sources include textbooks,

journal articles, commentaries, conference papers, and magazines from law societies, and reports from respected and recognised international organisations like the World Bank.[1]

Conceptual Framework

For organisations to effectively and efficiently achieve the objects and have good organisational and management performance, there is a need to have in place some form of regulation and structure (Ituah, 2014). It is in the light that the principle of corporate governance evolved over the years to provide guidelines, structures, and processes on how companies should be organised and managed for effective performance. Corporate governance principle, like other principles, 5 has no definite meaning, but over time practitioners have come up with their definitions based on their understanding of the principle. It is worthy of note that corporate governance is viewed narrowly and also in a broad aspect. The broader vision perceives corporate governance in terms of issues related to management control of shareholder protection and the problems of the leading popular economic theory agencies (Oyejide and Soyibo 2001). In contrast, proponents of the narrow corporate governance approach view the subjects as the mechanism through which shareholders are assured that managers will act in their interest (Ituah, 2014). The author of the broader perspectives uses examples of the problems arising from the privatisation crusade that has crossed developing countries, including Nigeria, since the 1980s and the economies of the former communist countries in the 1990s that issues of codes of corporate conduct, and capacity building as well as other laws, are at the very nerve of corporate governance. One preferred description of the concept of corporate governance was articulated by the former Auditor General of Australia – Mr Pat Barrettt as follows: Corporate governance is largely about organisation and management performance. In short, corporate governance is about how an organisation is managed, its corporate and other structures, its culture, policies, and how it treats its various stakeholders. He deals with the structures, and decision-making processes, as well as with the control and behaviour that underlie the effective responsibility for the results / results of the performances in (Siladi. 2006). The OECD Economic Cooperation and Development Organization offers a more concise description of the concept of corporate governance, which is why corporate governance involves a variety of relationships between the management of the corporate organisation. Its board of directors, shareholders, and stakeholders also provide the structure through which the objectives of the business organisation are established, and the means to achieve those objectives and monitor performance are determined (OECD, 2006). Kachikwu presents a definition of Corporate Governance that has taken into consideration the Nigerian specific context (Kachikwu, 2007). To put it succinctly, corporate governance intends to regulate the conduct of directors in terms of responsibility towards the recognition by shareholders of the interest of other stakeholders and the need to encourage investments to flow where it could be more productive by raising Nigerian corporate governance standards, in these 6 cases, to engage in international practices in comparable jurisdictions, this would appear to be the reason and purpose of corporate governance (Kachikwu, 2007). From the above definition, it is clear that corporate governance does not refer to the legal restraints but also to the norms of best practice as well as the attempts of organisations themselves to formulate a code of business ethics (Farrar, 2003). The subject of corporate governance, therefore, covers the Nigerian Companies Act, 2004, and the case laws decided by the courts. They also include the corporate governance code issued by the stock exchange commission for public companies 2011, the Corporate Governance Code for banks and discount houses Nigeria 2014 issued by the Central Bank of Nigeria; the Financial Reporting Council of Nigeria Code 2019.

Theories of Corporate Governance

The notion of corporate governance, which addressed the challenges of firms, has been a subject of diverse theories, with none affording a satisfactory answer to all because corporate governance will always have a different meaning to different schools of thoughts. This study adopts the agency theory and the stewardship theory aimed at enhancing a better understanding of the basic concept of good corporate governance and the process by which decisions are implemented in large organisations. Codes of Conduct Guidelines Statements of

Best practice Stock Exchange Listing Requirement and Statements of Accounting Practice Legal Regulation Business Ethics 7

Agency Theory

The theory was developed by Jesen and Meckling (1976) and has been widely adopted. This theory is based on the separation between ownership and control of economic activities between the agent and the principal. As various agency problems may arise, such as asymmetric information between the principal and the agent, conflicting objectives, disagreement in risk aversion, outcome uncertainty, behaviour based on self-interest, and bounded rationality (Jesen and Meckling, 1976). According to Jensen and Meckling 1976, directors, shareholders, can ensure that the agent will make the best decisions only if the appropriate incentives are granted, and only if the agent is monitored. Incentives include elements such as stock option bonds and prerequisites that are directly related to how the results of management decisions serve the interests of shareholders. (Bonazzi and Sardar, 2007). Monitoring involves linking the auditor's prerequisites with the systematic auditors and setting specific limits for management decisions In contrast, Fama and Jensen 1983 suggest that monitoring of the chief executive is not from the owners but from the managerial job market. The authors submit that management control of companies is separated from the ownership of the company (Fauzias and Shamsubaridah, 1995). Effective market capital provides signs of market evaluation of a company's securities and performance of its management teams (Fauzias and Shamsubaridah, 1995). The changing value of the securities market is instructive. On the other hand, reputational concerns do not correct all agency problems and can create new ones. Agency theory guided this study by helping understand that separation between ownership and control of corporations characterises the existence of a firm.

Stewardship Theories

In contrast to agency theory, stewardship theory represents a different model of management, where managers are considered good steward who will act in the best interest of the owner (Donaldson & Davis, 1993). The proponent of steward theory argues that there is no conflict of interest between the management teams and owners of the company and that the goal of corporate governance is, definitely, to develop the mechanisms and structure that (Donaldson, 1990) facilitates more effective coordination between the two sides. The essential prerequisite behind the Stewardship Theory requirements is that the manager's behaviour is aligned with the interests of the directors. The Stewardship Theory places greater value on the convergence of objectives between the parties involved in corporate governance than the interests of the agent (Van Slyke, 2006; Pastoriza and Ariño, 2008). Administrators are motivated by intrinsic rewards, such as reciprocity and mission alignment, rather than only by extrinsic rewards (Pastoriza & Ariño, 2008). Unlike the agent, the administrator gives greater value to collective objectives than to individual ones; The administrator understands the company's success as well as its success (Pastoriza and Ariño, 2008). The Stewardship Theory informs the study and helps understand the relationship between the ownership and administration of the company. The theory asserts that managers of a firm are not motivated by personal needs and desires, but rather see themselves as stewards with the same motives and objectives as the owners of the firm. The issue of whether the courts can change corporate behaviour is viewed in the context of current corporate governance environment which increasingly involves a complex amalgam of both legal and self-regulation (Farrar, 2003); Ndlovu et al. (2013) acknowledged that courts are the last resort for shareholders when issues of corporate governance arise. They revealed that courts have resources to handle cases and apply legal concepts to enforce the law. Shareholders' interests in an organisation need to be protected. According to Millstein et al. (2005), investor protection requires both law and the effective enforcement of the law by the courts.

Corporate Governance, Misgovernance and Failures in Nigeria

Corporate governance is not alien to Nigeria, and it has had its share of corporate scandals evident in companies like Cadbury, Oceanic Bank, Skye Bank, UTC Nig Plc, Nigeria Textile Mills Plc, Mercantile Bank of Nig. Plc, Lobi Bank of Nig. Ltd and Berewa Pharmaceutical Company, among

numerous others. The Nigerian Corporate Governance Code framework is industry-specific (Ofo, 2010). In 2001, the Securities and Exchange Commission (S.E.C.) of Nigeria set up a committee that came up with a code of Best Practices for Public Companies in Nigeria that became operational in 2003 and was updated in 2012. In 2005, the Nigerian Institute of Directors established a corporate governance center to support the cause of good corporate governance among its members. Furthermore, in March 2006, the Nigerian Central Bank issued corporate governance guidelines for banks operation in Nigeria. Also, in 2011, S.E.C. released Corporate Governance Codes for Empower and trust Protects and maximise shareholder's wealth, Stewards Shareholders' profits and returns Intrinsic and extrinsic motivation 10 Public Companies in Nigeria, which served as a replacement for its 2003 legislation. This code has been awarded as the most comprehensive corporate governance code in Nigeria based on five main principles, including the effectiveness of leadership, responsibility, remuneration, and shareholder relations. (Olatuyi, 2017). In 2014 the corporate governance code was issued for banks and discount stores in Nigeria and guidelines for reporting the Nigerian banking sector. In the same year, Corporate Governance Codes for the Telecommunication Industry was issued by the N.C.C. The N.C.C code has sought to promote good corporate governance practices in the Nigerian telecommunications sector, the provisions of which are based on international best practices. In 2018, the Nigerian Financial Reporting Council (N.F.R.C) under its powers in sections 50 and 51 1 of the Nigerian Financial Reporting Council law issued the Nigerian Code 2018 in 2019. The Nigerian framework has been criticised for its different codes with different compliance natures. The CBN code is mandatory, while the other codes are voluntary. The authors suggest that the codes be integrated into one code just like the King code IV in South Africa for effective governance. Nigeria is a country where the political elite seriously hinders public accountability and the country's corporate governance mechanism is based more on political considerations. The extent to which the laws are enforced is largely dependent on the disposition of the political party in power. Significant ranges of corruption, enterprise crimes, and indoor abuse of corporate privileges in Nigeria are indicators of susceptible agency governance surroundings. The mechanisms for ensuring good corporate governance exist in Nigeria; the problem does not lie with the statutes and laws in a book but with the laws in practice (Berglof and Claessens, 2005). Nigeria, as a country, has laws that are transplanted through globalisation, colonisation or other financial interests. Despite this transition of good laws, enforcement remained a core issue in Nigeria. Also, the different challenges lie in the weakness and inefficient regulatory agencies responsible for ensuring enforcement and monitoring compliance (Okike, 2007). The Corporate Affairs Commission (C.A.C) is the primary government agency that has responsibility for regulating, controlling, and overseeing all corporate matters. Still, this agency is deliberately weakened by government negligence and is superficial in performing its functions. (Okike, 2007). Legal compliance can only be guaranteed by a virile and well-funded agency. The struggle to survive at 11 all costs is doing more business in Nigeria to turn a blind eye to ethical issues of social and environmental governance. In Nigeria, apart from the courts, ' other institutions that help guard against corporate malfeasance are Securities Exchange Commission, Nigeria Stock Exchange, the CBN, Institutional Investors, Professional Associations, and a probing Media (Ogbechie, 2013). 7.

The Courts in Nigeria

The judiciary as an independent organ of modern government is vested with the role of interpreting the law through the various courts established and doing substantial justice without fear or favour to all, and exercising the judicial powers vested in it. These courts have the powers to hear and determine all disputes, primarily of criminal and civil in nature that occurs between directors inter se, shareholders inter se, or between shareholders, companies, and directors inter se. Apart from the constitutional powers given to the Courts to give binding and authoritative decisions, the courts also have powers to take actions for the enforcement of such judgments. On this issue, Afe Babalola, a distinguished legal luminary and the founder of Afe Babalola University has made an outstanding contribution when he said enforcement is the last stage of the judicial process after the legal right, claim or interest has been converted into the decision of the court that has yet to be executed. The learned Senior Advocate of Nigeria (SAN) and erudite scholar further states that "a party who has successfully obtained a final order or signed judgment against another has only won the first round in the fight" - the next round being the battle for enforcement (Babalola, 2003). On his part, Fidelis Nwadialo another erudite scholar in Nigeria in his book "Civil Procedure in Nigeria" notes that enforcement is giving effect to the judgment of a court. He

continues by stating that it is the process whereby a judgment or order of Court is enforced or given effect according to the law (Nwadialo, 2000). In the (Government of Gongola state v. Alh. Umaru abba Tukur (1989) 4NWLR (pt 117) 592), the Supreme Court per Nnaemeka - Agu, J.S.C. (as he then was) defined the word execution in the following words: Execution means the process whereby a judgment of order of a court of law is enforced or given effect according to law. However, it must be noted that a court cannot on its own move to enforce its judgment; a successful party must take the initiative to move the Court 12 to act. These laws have, to a small extent, impacted positively on Corporate Governance and Organisational Structure of the companies and corporations in Nigeria. 8.

The Interpretation Role of the Courts

The importance of the role of court interpretation in corporate governance cannot be emphasised. For instance, an enhanced role of the courts can be viewed against the backdrop of the dilemma of the legislature in providing accurate legislation. Therefore, the legislator's inability to predict all possible future problems enhance the interpretative role of the judiciary in promoting good corporate governance (Jonathan, 1989). Courts must interpret statutes in cases where statutes are silent on a particular point of the law or where the language of the statutes is unclear. This interpretative role of the courts highlights the importance of the courts in corporate governance. This section shows an example of some areas and cases where Nigerian courts have played an interpretative role where there is a violation of the relevant corporate governance legal framework.

Corporate Organs and Exercise of Powers

In English law and in Nigeria, the question of who controls the company, the general meeting or the board of directors has been controversial not only in Nigeria but also in other Commonwealth countries and has given rise to various judicial interpretations in several cases since the 19th century (Akanki, 1992). In the case of (Avop Plc v The Attorney General of Enugu State, (2000) 7 NWLR (Pt 664) 260) the issue before the Appellate Court for determination was whether the trial court was right in finding that the Respondent did not interfere with the running and management of the Appellant's company. The facts of this case were that the Appellant was a limited liability company operating under the Companies and Allied Matters Act (CAMA) with its factory in Enugu State (http://absoluteoutdooradvertising.com/). The Respondent held 18.2% of the shares while the East India Produce Company (technical experts) held 37.49% of the shares. The Respondent appointed a Judicial Commission of Inquiry into the activities of the Appellant, and the recommendations were given to the Managing Director which contained among other things the appointment of Mr Amadi, an indigenous senior management staff of the Appellant to take over the management team of the company, this appointment was made by the Respondent, and there was also an advertisement by the Respondent informing the public of the 13 take-over of the management of the Appellant Company by indigenous management. The Respondent went further to appoint its Auditor-General to audit the books and account of the Appellant. The Appellants after holding an extraordinary meeting where it condemned the acts of the Respondent and resolved to seek redress in Court filed an action at the Federal High Court against the Respondent seeking among other things a declaration that the Respondent had no powers to suspend the management of the Appellant and set up in its place an indigenous management team and to order the auditing of the Appellant's account.
(http://decisions.courts.state.ny.us/ad3/Decisions/2018/526426.pdf) The trial court dismissed the claims holding that there was no interference with the Appellant's management and the Appellant appealed to the Court of Appeal, which held that: Under section 63(1) and (3) of the Companies and Allied Matters Act, it was held that the management of a limited liability company is usually a function of the directors of the company be it Private or Public. Such function is spelt out in the Articles of Association. The acts of the Respondent were contrary to the articles and therefore, null and void. Even though one of the essences of corporate governance is to ensure maximisation of shareholders' interest, the Courts will not fold its hand in cases of undue and unlawful interference by the minority shareholders with the affairs of the companies. One crucial point that can be taken from the case of (Avop Plc v the Attorney General of Enugu State (2000) 7 NWLR (Pt 664) 260) is that the shareholder is seeking to protect their interest and enhance their

value and return on investment must do so within the ambit of the law. 8.2 Corporate Personality The principle of corporate personality is that a company, upon incorporation, automatically acquires a legal existence; it becomes a legal personality distinct from its members. As such, the company becomes vested with the capacity to enjoy rights and of being subject to duties that are not the same as those enjoyed or borne by its members. It is capable of owning property, suing, and being sued with perpetual succession and a common seal (Salomon v Salomon (1897) A C. 22). In the case of (Marina Nominees Limited v. Federal Board of Inland Revenue, (1986) 2 NWLR (pt. 20) 48 at p. 61), the issue before the Supreme Court was whether the appellant 14 company incorporated under the Companies Act 1968 which earned income within the period under review was liable to pay corporate tax under the Companies Income Tax Act 1961. In this case, Peat Marwick Casselton and Co., a firm of accountants, acted as secretary to a number of its client companies. In March 1964, the firm incorporated the Marina Nominees Ltd, the Appellant to perform secretarial duties. The company had other objects. It had no staff of its own — all the staff who carried out the secretarial duties as employees of the holding company. A dispute arose between the companies; Marina Nominees Ltd and the Federal Board of Inland Revenue as to whether the company should be liable to pay income tax is earned. The company contended in the Federal High Court and the Court of Appeal that it merely acted as agents of the firm of Peat Marwick Caselton Ellot & Co. and that the income it earned belonged to Peat Marwick. Both courts rejected the contention, and a new appeal was filed in the Supreme Court. After a careful evaluation of the body of evidence on records the Supreme Court held inter-alia that by the nature of the services carried out by the Appellant Company, it was carrying on a trade or business within the meaning of section 17(a) of the Companies Income Tax Act 1961, and had earned an income on which corporate tax was payable under the Act. The apex court further held that an incorporated company must be regarded as a separate entity from, any one of its shareholders and subject to all incidents under the Companies Act of a company so registered. Also, the Court of Appeal in the case of (Habib Nig Bank v. Ochete (2001) 3 NWLR (pt 699) CA 114) applied this principle. In this case; the Respondent operated both personal and corporate accounts (in the Belyn Pharmacy Ltd, which was initially a business name-Belyn Pharmacy) in the Appellant Bank. The Respondent paid a check in his name, and the applicant bank maliciously paid it into the corporate account, which was heavily withdrawn, and the Respondent was unable to use the money. He brought an action for rectification, and damages, and the trial court found for the Respondent, and ordered the Appellant to refund the sum of N311, 215.40 said to have been converted by the Appellant. The Court also awarded in favour of the Respondent the sum of N150, 000 as general damages, and dismissed the claims of the Appellant holding that there was no interference with the Appellant's management. Not satisfied with the decision of the court, the Appellant appealed to the Court of Appeal, dismissing the appeal, Justice Umoren J.C.A. (as he then was) restated the position of law in line with section 37 of CAMA held as follows: 15 Soon after a commercial enterprise name is incorporated into a limited liability company, it legally assumes a distinct personality different from its members. A corporate veil is placed beyond which no one can penetrate, except when raised in a manner authorised by law. Subsequently, it is possible to own and accept the transfer of assets and liabilities on behalf of the company. 8.3 Removal of Directors In England, the general rule is that in a meeting a company can remove a director before his term of office expires, despite his contractual agreement between the company, and himself. (Section 168(1) English Companies Act, 2006 (c. 46)). In doing so, the company must issue a special notice on the company's intention to remove a director by this section or to appoint someone to replace him (Section 168(2) English Companies Act, 2006 (c. 46)). Similarly, in Nigeria, (Section 262(1) CAMA) provides for the procedural steps to be followed for a valid removal of directors. This was the issue canvassed in the case of (Longe v First Bank of Nigeria (2010) 6 NWLR (pt. 1189) 1 S.C.), the issue before the Supreme Court was whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial court that the Appellant was suspended under the common law met the requirement of the Companies and Allied Matters Act that a director must be given a notice of director's meeting unless the director is disqualified under the Act, an issue which if it had been pronounced upon would probably resolve the appeal in favour of the Appellant and by not doing so occasioned a miscarriage of justice. The facts of this case were that the Appellant was appointed the Managing Director/Chief Executive of the Respondent (F.B.N.) on 24th February, 2000, by its Board of Directors. Prior to this appointment, the applicant was the defendant's executive director. The Appellant was accused of impropriety, following which he was suspended by the Respondent's Board of directors on 22nd April 2002, and his appointment was later revoked on 13th June 2002.

The applicant was not informed of the defendant's board meeting where the decision was made to terminate his employment. Consequently, the applicant filed an appeal against the defendant, alleging that he had the right to be notified of the meeting pursuant to Section 266 of CAMA and that the failure to communicate such notification made the termination illegal (Olarinde and Idem, 2020). The trial court rejected the applicant's claims. Dissatisfied with the ruling, the Appellant appealed to the Court of Appeal, but his appeal was dismissed. Still aggrieved, he appealed to the Supreme Court and contended that the Court of Appeal was wrong when it held 16 that a meeting of directors is not within the Companies and Allied Matters Act (CAMA) and in particular within section 266(1), and more importantly in light of the definition of the word "director" under CAMA in section 650 which the court did not take into account, the Supreme Court unanimously authorised the appeal on merit. Oguntade J.S.C (as he then was) in his lead judgment stated that: The removal of the plaintiff as CEO / executive director of the defendant without notice to attend the meeting where the decision to remove him was taken constitutes a clear violation of 266 (1), and (2) of Companies Law, and this violation must attract the sanction provided for by law in section 266 (3). This meeting is in accordance with the invalid law, and I pronounce it thus that the removal of the Plaintiff is not provided for by law; therefore, the Plaintiff must be regarded to remain the Chief Executive Officer / Executive Director of the Defendant Company. Indeed, from the above, it is clear that the essence of corporate management is to ensure that proper and right things are done in running the affairs of companies be it appointment or removal of directors. The improper dismissal or appointment of directors would be unhealthy corporate governance, and the courts will disapprove of these practices and ensure that the company's affairs are carried out in accordance with the provisions of the Enabling Law. 8.4 Financial Improprieties The concept of corporate governance states that Directors who are major officers of the company act in the position of trustees of the properties and money of the company (Orojo, 1992). They, therefore, owe a duty of care to the company on the handling of its fiancés and properties. They should act under some basic honesty in any transaction they engage in for the company and must give an appropriate account of such transactions as and when due. In (E.F.CC v. Oceanic Bank & Ors (Suit No F.C.H./1/CS/514/201) (www.nairaland.com/528223/former_md_oceanic_bank_cecilia), the former C.E.O. of Oceanic Bank Plc, Ms. Cecilia Ibru, was sentenced to 18 months imprisonment. The anti-graft agency had alleged in the amended charge that Mrs Ibru granted a credit facility in the sum of 20 million U.S. Dollars to Waves Project Limited, which was above her credit ceiling power given by the bank. She was also accused of not taking all reasonable steps to ensure the accuracy of the monthly return from the Ocean Bank to the Central Bank of Nigeria (C.B.N) between October 2008 and May 2009. Mrs Ibru was further said to have carelessly approved the credit facility in the sum of 17 N2 billion by the bank to one Petosan Farms Limited without adequate security as laid down by the regulations of Oceanic bank, thereby committing an offence punishable under section 15 of the Failed Banks (Cap. F2, Vol. 6, LFN 2004). The charges were, reduced by the commission from twenty-five to three and apparently based on the plea bargain. The voluntary forfeiture of assets by the former Managing Director to cover the credit facility given was also a term of the plea bargain. The Federal Supreme Court held that although the law provided for 10 to 13 years' imprisonment for her crime, she would have been lenient with Ms Ibru because she had agreed to voluntarily renounce assets that could substantially cover the sum (K2wise, 2010) she was accused of; also, all the asset recovered from her were to be handed over to the Federal Government of Nigeria. In the Oceanic Bank situation, the problem required a governance structure that dealt with a framework for ethical behaviour, defined the boundaries, and prohibited managerial self-aggrandisement and illegal transfer of wealth from the company or their subsidiaries to managers. In all the cases analysed above, the Courts intervened to ensure that there is a financial discipline on the part of those with the responsibility to manage and direct the affairs of the company. In this case, the Court has given out sentences in all the charges that will serve as deterrents to others and thereby promoting good corporate governance. 9. The Enforcement Influence of the Courts and Promotion of Good Corporate Governance This section discusses one of the objectives of this Paper, which sought to establish the influence of Court on the promotion of good corporate governance, in listed companies in Nigeria. Indeed, an independent, fair and efficient judiciary is considered a key aspect of any country's corporate governance, and the courts are expected to be the last hope of any aggrieved person, be it individuals or corporate bodies. Courts in Nigeria generally commit to assert corporate governance cases only in two specific situations, namely: (1) where the law provides that in order to assert a matter, the Nigerian Exchange Commission and other regulatory agencies must pursue

and (2) where private litigant, such as shareholders, seek to clarify and extend directors duties. In this way, one might be tempted to say that the courts have less of a role to play than, say, the regulator, in influencing corporate behaviour or the perceptions of the wider community to corporate governance. The function of the courts in influencing corporate behaviour can, 18 therefore, at times be disproportionate to the number of matters dealt with overall (Warren, 2005). Below are some of the contemporary high-profile cases of the breakdown in corporate Governance in Nigeria where Nigerians people were interested to see the outcome of the Court's decisions. In October 2006, Cadbury revealed that it discovered what is described as a "significant and deliberate" exaggeration of profits in its balance sheet for some of the past few years, in the amount of N15 billion. This came to light when Cadbury Schweppes (the parent company) retained Price Waterhouse Coopers (P.W.C) to review the accounts. Cadbury Nigeria's previous auditors had not discovered the misstatements. In 2007, the Administrative Proceedings Committee (A.P.C.) of the Securities and Exchange Commission was empanelled to investigate these findings of misstatements in Cadbury Nigeria's financial statements. The Defendants Directors and Registrars of the Union of Cadbury Nigeria Plc have been invited to appear before the A.P.C., but they challenged their competence to sit and investigate the matter while the A.P.C. was created by S.E.C. Consequently, the Defendants filed an action at the Federal High Court seeking preservative orders to restrain and halt the proceedings. The Court granted an interim order, but following S.E.C.'s application to allow the stay of proceedings, the injunction was removed. In 2008, the A.P.C. went ahead with the proceeding, and based on its findings, it imposed sanctions on the Defendants, for violating the provisions of the Investments and Securities Act 1999, the S.E.C. Rules and Regulations 2000. Some of the directors filed appeals to the Investment Securities Tribunal (I.S.T.) seeking to upturn the decision of S.E.C. Still, I.S.T. upheld the sanctions imposed by the Securities and Exchange Commission on Cadbury Nigeria Plc and its directors for liability in the misstatements of the accounts of the company. (Ituah, 2014). Dissatisfied with the decision of the investment securities Tribunal, the managing Director Bunmi Oni applied to a Lagos State High Court, praying the Court to declare the dismissal of appointment null and void. Justice Ayotunde Phillips, in his ruling issued November 12, 2010, stated that Oni was fired from a letter dated December 11, 2006, and signed by Dr. Imo Itsueli, President of Cadbury (as he was then), was illegal, (Anaba, 2011). She further contended that the sack was a breach of his employment contract (Anaba, 2011). Being dissatisfied with the court's decision, Cadbury appealed against the decision of the A.P.C. Tribunal to the Court of Appeal, and also asked the lower court to suspend the execution of the sentence until the hearing and final determination of 19 the appeal. Both the Court of Appeal and the Supreme Court held that they had no jurisdiction over a suit to decide on the case since you cannot put something and expect to stand. In (EFCC v. Oceanic Bank Plc & O.R.S. Suit No: FCH/1/CS/514/2012), the accused person, the former Managing Director of Oceanic Bank Plc, Mrs Cecilia Ibru was sentenced to 18-month imprisonment on a three-count charge to run concurrently. The anti-graft agency had alleged in the amended charge that Mrs Ibru granted a credit facility in the sum of 20 million U.S. Dollars to Waves Project Limited, which was above her credit ceiling power given by the bank. She was also accused of not taking all reasonable steps to ensure the accuracy of the monthly return from the Ocean Bank to the Central Bank of Nigeria (C.B.N) between October 2008 and May 2009. Mrs Ibru was also accused of having carelessly approved a loan of a credit facility in the sum of N2 billion by the bank to one Petosan Farms Limited without adequate securities as laid down by the regulations of Oceanic Bank, thereby committing an offence punishable under section15 of the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act. The charges were reduced by the commission from twenty-five to three, apparently based on the plea bargain. The voluntary forfeiture of assets by the former Managing Director to cover the credit facility given was also a term of the plea bargain. In his judgment, the Federal High Court held that though the law stipulated imprisonment of between 10-13 years for her crime, she was sentenced to a term of six months imprisonment and a fine, involving a forfeiture of 199 assets scattered all over the world, especially United States, Nigeria, Europe and the Middle East and shares, worth over N190 billion (over US$ 1.5 billion). The sentences run concurrently. Also, in (Eromosele v. Fed. Rep of Nigeria (CA/L/55OA/2013), the Court of first instance ordered the winding up of the company and sentence two companies' employees to a total of 28 years imprisonment. The facts of this case were that in 2012 Berewa Pharmaceutical Company, located within the Lagos State of Nigeria produced, conspired and sold harmful teething mixture, which was found to have caused the death of 84 babies in Nigeria after taking fake drugs. The National Agency for Food and Drugs Administration & Control charged the pharmaceutical company and production manager Mr

Adeyemo Abiodun and its Quality Assurance manager Mr Egbele Eromosele to the Federal High Court in Lagos. After the evaluation and conclusion of the body of evidence, the Federal High Court had in a judgment delivered in 2012 by Justice Okechukwu Okeke (retd.) convicted Abiodun, Eromosele and Barewa Pharmaceutical Company, for conspiracy and sale of 20 a mixture of harmful dentition brought against them by the National Agency for the Management and Control of Food and Drugs. The court also sentenced Abiodun and Eromosele to seven years in prison each and ordered the liquidation of the company, and their resources would be lost to the federal government (Oladimeji, 2016). Being dissatisfied with their conviction, prison sentence, and the winding up and forfeiture orders, the company and its officers filed separate notices of appeal before the Court of Appeal, seeking to set Justice Okeke's judgment aside. The court upheld the sentence of Abiodun and Eromosele and quashed the order for dissolving the Barewa Pharmaceutical Company by the Federal High Court (Oladimeji, 2016). Being dissatisfied with the Court of Appeal's decision, Abiodun, Eromosele, and Barewa Pharmaceutical Company, later on, appealed to the Supreme Court (Oladimeji, 2016). On March 18, 2016, the Supreme Court quashed the appeal court's decision and ordered a de novo trial on the case (Oladimeji, 2016). After a new hearing by the Court of Appeal, the Court held that the complaint of the appellants was without merit because, throughout the gamut of the trial, the appellants never denied that they were not the manufacturers of the contaminated drug -" My Pikin" teething syrup. The Court further held that there was no contradictory evidence as both the appellants and the Respondent confirmed that the contaminated drug was manufactured by the appellants. The Court reaffirmed her earlier position. From the two cases, which are examples of many cases that our courts should be appreciated for making pronouncements that promote good corporate governance in Nigeria. The Court can also promote good governance in companies by ordering the arrests, detentions, imprisonment, or dismissal of erring directors and managers as in the two cases cited. The Court can further enforce standards of directors' behaviour through both criminal and civil sanctions as charges against a director who misappropriate and commit wrongdoings. The above findings are in agreement with those of (Ndlovu et al., 2013), who acknowledged that courts are the last resort for shareholders as the enforcement of laws via courts assumes that courts have resources to handle cases and enforce the law. This is also supported by (Millstein et al., 2005), who revealed that good corporate governance protects investors and requires both law and effective enforcement of the law. The law is 'incomplete' and is unable to cover all foreseeable wrongs; hence, it is important to devise enforcement mechanisms to ensure compliance. Enforcement by 21 the Court is therefore needed to address gaps in the law and to deal with clear violations of the law (Millstein et al., 2005). 10. Deterrence and Prevention Measures in Promotion of Good Corporate Governance The issue of enforcement has concerned economists, legal practitioners, criminologists, jurists, and criminal justice lawyers over the years who are tried to study the relationship between enforcement and compliance. (Stigler, 1974). The 'deterrence theory' has often been used to highlight the need for court enforcement, particularly within the field of criminal justice. While the theory is more frequently used within the context of criminal behaviour and criminal justice, this Paper applies the deterrence theory in justifying the need for enforcement in corporate law. Deterrence generally means refraining oneself from an act or omission due to the fear of penalty. It is more formally defined as 'the omission of an act as a response to the perceived risk and fear of punishment of contrary behaviour. The role of the Court is to deter individuals, manager or director and corporation before them from committing further crimes ("specific deterrence") or from making further civil breaches and also to deter others in the community who might potentially commit corporate crimes ("general deterrence") or otherwise breach civil provisions (Warren, 2005). For instance, in the Nigerian fake drugs case of (Eromosele v. Federal Republic of Nigeria, CA/L/550A/2013), deterrence was an important issue when deciding whether to allow the appeal against the penalties ordered against appellants. The judge at first instance sentenced the company's production manager Adeyemo and its quality assurance manager Eromosele to seven years imprisonment each. The stated that when considering the period of imprisonment, general deterrence was considered but noted that personal deterrence was a particular factor. Eromosele appealed against imprisonment, but the Court of Appeal upheld the decision of the Federal High Court on conviction of Abiodun, Eromosele but set aside the order for the windingup of the company because the duration of the imprisonment order was deemed moderate rather than severe. In this way, it may be seen that the courts are seeking to deter not only the individual before them from re-offending, but also seek to protect the community through preventing others who might otherwise have thought to produce harmful drugs into the market. However, several factors have been thought to determine

the deterrent effect of punishment; this study would focus on four key ones (Scholz, 1984). The first is the certainty of punishment It is argued that the 22 greater the likelihood of punishment being imposed, the greater the deterrent effect of such punishment, the second factor is the speed with which the punishment is applied. This is also known as celerity (swiftness) of punishment (Scholz, 1984). The idea is that when punishment is swiftly applied, there is a greater association between the criminal acts and its costs in the minds of offenders. The third element, which is also considered essential, is the severity of punishment. To ensure its effectiveness, punishment should be sufficiently severe and proportionate to outweight any possible gain attribute to the offence (Scholz, 1984). Another rationale for sentencing is the prevention of crimes. As the name implies, this theory seeks to prevent the offender from committing a further offence(s) in the future. It has to do with the elimination of the offender to prevent him from repeating the prohibited act. Imprisonment of erring corporate officers and winding-up of companies' cases fall within this category aimed at removing the offender from the society and thus preventing his further commission of crimes (Yoder, 1978). If a corporation commits serious crimes against public order, public policy, or morality (such as trafficking in hard drugs) or deliberately breaching constitutional provisions relating to the sanctity of human life or the security of the state, courts should be able to order a winding up of the company. The above arguments are in agreement with those of (Musikali, 2008) who revealed that the most effective way to achieving good corporate governance is by the criminal sanctions within the companies Act and Penal Code to a level that reflects the business. 11. Court Guiding Principles and promotion of good Corporate Governance Nigeria courts were operating the common law doctrine and followed the doctrine of judicial precedent in the enforcement of the judicial process. Indeed, there are several case laws cited in this study that justifies the role and enforcement measures of courts in promoting corporate governance in Nigeria. Those laws have, to a large extent, impacted positively on corporate governance and have become reference points in areas of guidelines, structures, and processes on how companies should be organised and managed for effective performance. In some instances, the pronouncements of courts have resulted in the enactment of codes of Corporate Governance and amendment of the Companies Act. Although the judges are not interested in legislating, when they judge and pronounce on cases, their decisions become laws which, in turn, become precedents which unite in similar cases in the future under the doctrine of judicial precedents (Ituah, 2014). Therefore, it follows that judges do much more than simply apply the law as it is 23 (Ituah, 2014). They every so often and at different times, create new legal guidelines that continue to be binding on all till reversed or overruled by means of Courts that are higher in the hierarchy of courts and competence to do so (Oguntade, 2014). For example, in the Nigerian case of (Artra Industries Nig. Ltd v. Nigerian Bank for Commerce & industry (1998) 4 NWLR (pt 546) 375). Justice Onu J.S.C. (as he then was) when interpreting section 279 (3) of the CAMA relating to the duty to act bona fide for the benefit of the company, said in the exercise of the management power and duties conferred upon the directors by sections 63(3) of the same Act, the directors of a company must adhere strictly to the statutory provisions which enjoin them to consider the interest of the company as paramount. The Court further held that if the directors give evidence that they had honestly believed that they had acted in the best interest of the company, and if that evidence were believable, then no breach has been done. This duty would seem to attract the same approach advocated by (Keay, 2010). Nevertheless, courts will not accept without a director's statement that he or she acted in good faith, and where it is pertinent that the act complained of led a significant detriment to the company a director will have according to Justice Onu, a difficult task in convincing the Court that he or she honestly believed the action to be in the best interests of the company. From the findings, it can be deduced that courts guiding principles measures such as courts' precedents and interpretations of the law gives clear guidance on corporate governance principles which promotes good corporate governance in the companies in Nigeria. The finding is supported by Keay (2010), who provided several case studies that justify the role of courts in promoting corporate governance. The King Report on Corporate Governance in South Africa, for example, incorporates a Code of enterprise behaviour and Conduct, which aims to promote the highest company governance preferred in South Africa (Cliffe, 2002). 12. Concluding Remarks This paper has analysed the role of courts in the promotion of good corporate governance and practice in Nigeria. It is found that the courts have played the role of enforcing good corporate governance in the companies to a great extent. The courts have been promoting good corporate governance in most of the companies listed in the Nigerian Securities Exchange Commission by enforcing compliance with the laid down regulatory legal framework. The research also revealed that the standards of directors' and companies' behaviour are

enforced through both criminal and civil sanctions. This paper has shown instances through case 24 laws where erring directors and managers were imprisoned for various offences and sometimes, ordered to pay fines while some companies were wound-up to act as a deterrence to the others (Ogbechie, 2013; Okike, 2007). The study further shows that the fines given in courts were inadequate to deter both the companies and their directors from wrongdoings. The regression result shows that there is a positive and significant relationship between deterrence and prevention role of the courts in promoting good corporate governance. These findings are supported by a report by (OECD, 2003) which asserted that the courts have a role to play, not only in enforcing but also putting mechanisms to deter others who may be involved in malpractices. The function of the courts is now not only to put in force current legal guidelines but to promote and facilitate market discipline (OECD, 2003). The work also analyses the influence of guiding principles of the courts in the promotion of good corporate governance in Nigeria. The study found that the courts gave guiding principles to promote good corporate governance in companies quoted in the S.E.C. to a great extent. The study revealed that the Court's precedents effectively guided on the principles of good corporate governance and interpreted the law giving clear guidance on corporate governance principles in Nigeria. The results found out that there was a positive and insignificant relationship between the guidance of courts on the principles of corporate governance and the promotion of corporate governance. These findings are in line with those of (Keay, 2010) who presented case studies that justify the role of courts in guiding on matters of corporate governance especially on the role of directors and repercussions of their actions. The legal decision taken by the courts of the authority acts as judicial precedents in the future in similar cases. Our review of the cases and legislation relating to corporate governance and the analysis of the standard of Corporate Governance in Nigeria shows clearly that largely the institutions and the laws for effective corporate governance appear to be in existence. The authors believe that the mere provision of good laws in statutes books cannot substitute a weak enforcement mechanism. Therefore, it is recommended that for Nigeria to reap all the advantages of requisite corporate governance, both good laws and effective enforcement mechanism must complement each other. In the absence of good laws, enforcement will not be successful, and conversely, in the presence of a weak enforcement mechanism, mere good laws in the statute books cannot protect investors. 25 The courts roles as regard fines given in Court should also be adequate to deter companies and their directors from wrongdoings. This paper shows that many collapses of the companies in Nigeria have political connotations. Accordingly, the paper suggests a set of possible solutions that include government policies on a clear boundary between businesses, politics, and government. And that being the case, there is a dire need for establishing a special designated Corporate Affairs Court within the judiciary to try offenders of the country's corporate disputes that occur between directors inter se, shareholders inter se, and shareholders and employee inter se without delay. The present situation where violators are tried through our current adversarial judicial system whereby some cases can last for onward of ten years and above before a final decision is made does not promote corporate Governance in Nigeria. On conflicts of interest, the writers affirm that they have no disagreement of interest regarding the publication of this document. Funding This research has not received any specific grant from funding agencies in the public, commercial, or non-profit sectors, but our affiliate university will sponsor the costs of this publication. Companies Act Companies and Allied Matters Act of 2004 Constitution of the Federal Republic of Nigeria 1999 (as amended) English Companies Act 2006 (c. 46) Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act LFN 2004 Cases 1) Artra Industries Nig. Ltd v. Nigerian Bank for Commerce & industry (1998) 4 NWLR (pt 546) 375 2) Avop Plc v. The Attorney General of Enugu State, (2000) 7 NWLR (Pt 664) 260 3) EFCC v. Oceanic Bank Plc & O.R.S. Suit No: FCH/1/CS/514/2012 4) Eromosele v. Fed. Rep of Nigeria CA/L/55OA/2013 26 5) Government of Gongola state v Alh. Umaru abba Tukur (1989) 4NWLR (pt 117) 592 6) Habib (Nig) Bank v. Ochete (2001) 3 NWLR (pt 699) CA 114 7) Longe v. First Bank of Nigeria ((2010) 6 NWLR (pt. 1189) 1 SC 8) Marina Nominees Limited v. Federal Board of Inland Revenue, (1986) 2 NWLR (pt. 20) 48 at p. 61 9) Salomon v Salomon (1897) A C. 22 10) Sutton's Hospital Case (1612) 10 Co Rep 1a, 32b 3. Conceptual Framework For organisations to effectively and efficiently achieve the objects and have good organisational and management performance, there is a need to have in place some form of regulation and structure (Ituah, 2014). It is in the light that the principle of corporate governance evolved over the years to provide guidelines, structures, and processes on how companies should be organised and managed for effective performance. Corporate governance principle, like other principles, 5 has no definite meaning, but over time practitioners have come up with their definitions based

on their understanding of the principle. It is worthy of note that corporate governance is viewed narrowly and also in a broad aspect. The broader vision perceives corporate governance in terms of issues related to management control of shareholder protection and the problems of the leading popular economic theory agencies (Oyejide and Soyibo 2001). In contrast, proponents of the narrow corporate governance approach view the subjects as the mechanism through which shareholders are assured that managers will act in their interest (Ituah, 2014). The author of the broader perspectives uses examples of the problems arising from the privatisation crusade that has crossed developing countries, including Nigeria, since the 1980s and the economies of the former communist countries in the 1990s that issues of codes of corporate conduct, and capacity building as well as other laws, are at the very nerve of corporate governance. One preferred description of the concept of corporate governance was articulated by the former Auditor General of Australia – Mr Pat Barrettt as follows: Corporate governance is largely about organisation and management performance. In short, corporate governance is about how an organisation is managed, its corporate and other structures, its culture, policies, and how it treats its various stakeholders. He deals with the structures, and decision-making processes, as well as with the control and behaviour that underlie the effective responsibility for the results / results of the performances in (Siladi. 2006). The OECD Economic Cooperation and Development Organization offers a more concise description of the concept of corporate governance, which is why corporate governance involves a variety of relationships between the management of the corporate organisation. Its board of directors, shareholders, and stakeholders also provide the structure through which the objectives of the business organisation are established, and the means to achieve those objectives and monitor performance are determined (OECD, 2006). Kachikwu presents a definition of Corporate Governance that has taken into consideration the Nigerian specific context (Kachikwu, 2007). To put it succinctly, corporate governance intends to regulate the conduct of directors in terms of responsibility towards the recognition by shareholders of the interest of other stakeholders and the need to encourage investments to flow where it could be more productive by raising Nigerian corporate governance standards, in this 6 case, to engage in international practices in comparable jurisdictions, this would appear to be the reason and purpose of corporate governance (Kachikwu, 2007). From the above definition, it is clear that corporate governance does not refer to the legal restraints but also to the norms of best practice as well as the attempts of organisations themselves to formulate a code of business ethics (Farrar, 2003). The subject of corporate governance, therefore, covers the Nigerian Companies Act, 2004, and the case laws decided by the courts. They also include the corporate governance code issued by the stock exchange commission for public companies 2011, the Corporate Governance Code for banks and discount houses Nigeria 2014 issued by the Central Bank of Nigeria; the Financial Reporting Council of Nigeria Code 2019.

Theories of Corporate Governance

The notion of corporate governance, which addressed the challenges of firms, has been a subject of diverse theories, with none affording a satisfactory answer to all because corporate governance will always have a different meaning to different schools of thoughts. This study adopts the agency theory and the stewardship theory aimed at enhancing a better understanding of the basic concept of good corporate governance and the process by which decisions are implemented in large organisations. Codes of Conduct Guidelines Statements of Best practice Stock Exchange Listing Requirement and Statements of Accounting Practice Legal Regulation Business Ethics 7 4.1 Agency Theory The theory was developed by Jesen and Meckling (1976) and has been widely adopted. This theory is based on the separation between ownership and control of economic activities between the agent and the principal. As various agency problems may arise, such as asymmetric information between the principal and the agent, conflicting objectives, disagreement in risk aversion, outcome uncertainty, behaviour based on self-interest, and bounded rationality (Jesen and Meckling, 1976). According to Jensen and Meckling 1976, directors, shareholders, can ensure that the agent will make the best decisions only if the appropriate incentives are granted, and only if the agent is monitored. Incentives include elements such as stock option bonds and prerequisites that are directly related to how the results of management decisions serve the interests of shareholders. (Bonazzi and Sardar, 2007). Monitoring involves linking the auditor’s prerequisites with the systematic auditors and setting specific limits for management decisions In contrast, Fama and Jensen 1983 suggest that monitoring of the chief executive is not from the owners but from the managerial job market. The

authors submit that management control of companies is separated from the ownership of the company (Fauzias and Shamsubaridah, 1995). Effective market capital provides signs of market evaluation of a company's securities and performance of its management teams (Fauzias and Shamsubaridah, 1995). The changing value of the securities market is instructive. On the other hand, reputational concerns do not correct all agency problems and can create new ones. Agency theory guided this study by helping understand that separation between ownership and control of corporations characterises the existence of a firm.

4.2 Stewardship Theories In contrast to agency theory, stewardship theory represent a different model of management, where managers are considered good steward who will act in the best interest of the owner (Donaldson & Davis, 1993). The proponent of steward theory argues that there is no conflict of interest between the management teams and owners of the company and that the goal of corporate governance is, definitely, to develop the mechanisms and structure that (Donaldson, 1990) facilitates more effective coordination between the two sides. The essential prerequisite behind the Stewardship Theory requirements is that the manager's behaviour is aligned with the interests of the directors. The Stewardship Theory places greater value on the convergence of objectives between the parties involved in corporate governance than the interests of the agent (Van Slyke, 2006; Pastoriza and Ariño, 2008). Administrators are motivated by intrinsic rewards, such as reciprocity and mission alignment, rather than only by extrinsic rewards (Pastoriza & Ariño, 2008). Unlike the agent, the administrator gives greater value to collective objectives than to individual ones; The administrator understands the company's success as well as its success (Pastoriza and Ariño, 2008). The Stewardship Theory informs the study and helps understand the relationship between the ownership and administration of the company. The theory asserts that managers of a firm are not motivated by personal needs and desires, but rather see themselves as stewards with the same motives and objectives as the owners of the firm. This theory can be represented in the diagram below: Principals Agents Hires and Delegates Performs Self-interests Self-interests 9 5. Research Methodology The proposed study is mainly analytical and descriptive in nature. It employs a doctrinal legal research methodology which involves desk and library-based, relying on primary and secondary materials. The primary sources relied upon are relevant legislations, case laws, policy, and government reports. The secondary sources include textbooks, journal articles, commentaries, conference papers, and magazines from law societies, and reports from respected and recognised international organisations like the World Bank. 6. Corporate Governance in Nigeria Corporate governance is not alien to Nigeria, and it has had its share of corporate scandals evident in companies like Cadbury, Oceanic Bank, Skye Bank, UTC Nig Plc, Nigeria Textile Mills Plc, Mercantile Bank of Nig. Plc, Lobi Bank of Nig. Ltd and Berewa Pharmaceutical Company, among numerous others. The Nigerian Corporate Governance Code framework is industry-specific (Ofo, 2010). In 2001, the Securities and Exchange Commission (S.E.C.) of Nigeria set up a committee that came up with a code of Best Practices for Public Companies in Nigeria that became operational in 2003 and was updated in 2012. In 2005, the Nigerian Institute of Directors established a corporate governance center to support the cause of good corporate governance among its members. Furthermore, in March 2006, the Nigerian Central Bank issued corporate governance guidelines for banks operation in Nigeria. Also, in 2011, S.E.C. released Corporate Governance Codes for Empower and trust Protects and maximise shareholder's wealth Stewards Shareholders Shareholders' profits and returns Intrinsic and extrinsic motivation 10 Public Companies in Nigeria, which served as a replacement for its 2003 legislation. This code has been awarded as the most comprehensive corporate governance code in Nigeria based on five main principles, including the effectiveness of leadership, responsibility, remuneration, and shareholder relations. (Olatuyi, 2017). In 2014 the corporate governance code was issued for banks and discount stores in Nigeria and guidelines for reporting the Nigerian banking sector. In the same year, Corporate Governance Codes for the Telecommunication Industry was issued by the N.C.C. The N.C.C code has sought to promote good corporate governance practices in the Nigerian telecommunications sector, the provisions of which are based on international best practices. In 2018, the Nigerian Financial Reporting Council (N.F.R.C) under its powers in sections 50 and 51 1 of the Nigerian Financial Reporting Council law issued the Nigerian Code 2018 in 2019. The Nigerian framework has been criticised for its different codes with different compliance natures. The CBN code is mandatory, while the other codes are voluntary. The authors suggest that the codes be integrated into one code just like the King code IV in South Africa for effective governance. Nigeria is a country where the political elite seriously hinders public accountability and the country's corporate governance mechanism is

based more on political considerations. The extent to which the laws are enforced is largely dependent on the disposition of the political party in power. Significant ranges of corruption, enterprise crimes, and indoor abuse of corporate privileges in Nigeria are indicators of susceptible agency governance surroundings. The mechanisms for ensuring good corporate governance exist in Nigeria; the problem does not lie with the statutes and laws in a book but with the laws in practice (Berglof and Claessens, 2005). Nigeria, as a country, has laws that are transplanted through globalisation, colonisation or other financial interests. Despite this transition of good laws, enforcement remained a core issue in Nigeria. Also, the different challenges lie in the weakness and inefficient regulatory agencies responsible for ensuring enforcement and monitoring compliance (Okike, 2007). The Corporate Affairs Commission (C.A.C) is the primary government agency that has responsibility for regulating, controlling, and overseeing all corporate matters. Still, this agency is deliberately weakened by government negligence and is superficial in performing its functions. (Okike, 2007). Legal compliance can only be guaranteed by a virile and well-funded agency. The struggle to survive at 11 all costs is doing more business in Nigeria to turn a blind eye to ethical issues of social and environmental governance. In Nigeria, apart from the courts, ' other institutions that help guard against corporate malfeasance are Securities Exchange Commission, Nigeria Stock Exchange, the CBN, Institutional Investors, Professional Associations, and a probing Media (Ogbechie, 2013). 7. The Courts in Nigeria The judiciary as an independent organ of modern government is vested with the role of interpreting the law through the various courts established and doing substantial justice without fear or favour to all, and exercising the judicial powers vested in it. These courts have the powers to hear and determine all disputes, primarily of criminal and civil in nature that occurs between directors inter se, shareholders inter se, or between shareholders, companies, and directors inter se. Apart from the constitutional powers given to the Courts to give binding and authoritative decisions, the courts also have powers to take actions for the enforcement of such judgments. On this issue, Afe Babalola, a distinguished legal luminary and the founder of Afe Babalola University has made an outstanding contribution when he said enforcement is the last stage of the judicial process after the legal right, claim or interest has been converted into the decision of the court that has yet to be executed. The learned Senior Advocate of Nigeria (SAN) and erudite scholar further states that "a party who has successfully obtained a final order or signed judgment against another has only won the first round in the fight" - the next round being the battle for enforcement (Babalola, 2003). On his part, Fidelis Nwadialo another erudite scholar in Nigeria in his book "Civil Procedure in Nigeria" notes that enforcement is giving effect to the judgment of a court. He continues by stating that it is the process whereby a judgment or order of Court is enforced or given effect according to the law (Nwadialo, 2000). In the (Government of Gongola state v. Alh. Umaru abba Tukur (1989) 4NWLR (pt 117) 592), the Supreme Court per Nnaemeka - Agu, J.S.C. (as he then was) defined the word execution in the following words: Execution means the process whereby a judgment of order of a court of law is enforced or given effect according to law. However, it must be noted that a court cannot on its own move to enforce its judgment; a successful party must take the initiative to move the Court 12 to act. These laws have, to a small extent, impacted positively on Corporate Governance and Organisational Structure of the companies and corporations in Nigeria. 8. The Interpretation Role of the Courts and Promotion of Good Corporate Governance The importance of the role of court interpretation in corporate governance cannot be emphasised. For instance, an enhanced role of the courts can be viewed against the backdrop of the dilemma of the legislature in providing accurate legislation. Therefore, the legislator's inability to predict all possible future problems enhance the interpretative role of the judiciary in promoting good corporate governance (Jonathan, 1989). Courts must interpret statutes in cases where statutes are silent on a particular point of the law or where the language of the statutes is unclear. This interpretative role of the courts highlights the importance of the courts in corporate governance. This section shows an example of some areas and cases where Nigerian courts have played an interpretative role where there is a violation of the relevant corporate governance legal framework. 8.1 Corporate Organs and Exercise of Powers In English law and in Nigeria, the question of who controls the company, the general meeting or the board of directors has been controversial not only in Nigeria but also in other Commonwealth countries and has given rise to various judicial interpretations in several cases since the 19th century (Akanki, 1992). In the case of (Avop Plc v The Attorney General of Enugu State, (2000) 7 NWLR (Pt 664) 260) the issue before the Appellate Court for determination was whether the trial court was right in finding that the Respondent did not interfere with the running and management of the Appellant's company. The facts of this case were that the Appellant was a limited liability company operating under the

Companies and Allied Matters Act (CAMA) with its factory in Enugu State (http://absoluteoutdooradvertising.com/). The Respondent held 18.2% of the shares while the East India Produce Company (technical experts) held 37.49% of the shares. The Respondent appointed a Judicial Commission of Inquiry into the activities of the Appellant, and the recommendations were given to the Managing Director which contained among other things the appointment of Mr Amadi, an indigenous senior management staff of the Appellant to take over the management team of the company, this appointment was made by the Respondent, and there was also an advertisement by the Respondent informing the public of the 13 take-over of the management of the Appellant Company by indigenous management. The Respondent went further to appoint its Auditor-General to audit the books and account of the Appellant. The Appellants after holding an extraordinary meeting where it condemned the acts of the Respondent and resolved to seek redress in Court filed an action at the Federal High Court against the Respondent seeking among other things a declaration that the Respondent had no powers to suspend the management of the Appellant and set up in its place an indigenous management team and to order the auditing of the Appellant's account.
(http://decisions.courts.state.ny.us/ad3/Decisions/2018/526426.pdf) The trial court dismissed the claims holding that there was no interference with the Appellant's management and the Appellant appealed to the Court of Appeal, which held that: Under section 63(1) and (3) of the Companies and Allied Matters Act, it was held that the management of a limited liability company is usually a function of the directors of the company be it Private or Public. Such function is spelt out in the Articles of Association. The acts of the Respondent were contrary to the articles and therefore, null and void. Even though one of the essences of corporate governance is to ensure maximisation of shareholders' interest, the Courts will not fold its hand in cases of undue and unlawful interference by the minority shareholders with the affairs of the companies. One crucial point that can be taken from the case of (Avop Plc v the Attorney General of Enugu State (2000) 7 NWLR (Pt 664) 260) is that the shareholder is seeking to protect their interest and enhance their value and return on investment must do so within the ambit of the law.

Corporate Personality

The principle of corporate personality is that a company, upon incorporation, automatically acquires a legal existence; it becomes a legal personality distinct from its members. As such, the company becomes vested with the capacity to enjoy rights and of being subject to duties that are not the same as those enjoyed or borne by its members. It is capable of owning property, suing, and being sued with perpetual succession and a common seal (Salomon v Salomon (1897) A C. 22). In the case of (Marina Nominees Limited v. Federal Board of Inland Revenue, (1986) 2 NWLR (pt. 20) 48 at p. 61), the issue before the Supreme Court was whether the appellant 14 company incorporated under the Companies Act 1968 which earned income within the period under review was liable to pay corporate tax under the Companies Income Tax Act 1961. In this case, Peat Marwick Casselton and Co., a firm of accountants, acted as secretary to a number of its client companies. In March 1964, the firm incorporated the Marina Nominees Ltd, the Appellant to perform secretarial duties. The company had other objects. It had no staff of its own — all the staff who carried out the secretarial duties as employees of the holding company. A dispute arose between the companies; Marina Nominees Ltd and the Federal Board of Inland Revenue as to whether the company should be liable to pay income tax is earned. The company contended in the Federal High Court and the Court of Appeal that it merely acted as agents of the firm of Peat Marwick Caselton Ellot & Co. and that the income it earned belonged to Peat Marwick. Both courts rejected the contention, and a new appeal was filed in the Supreme Court. After a careful evaluation of the body of evidence on records the Supreme Court held inter-alia that by the nature of the services carried out by the Appellant Company, it was carrying on a trade or business within the meaning of section 17(a) of the Companies Income Tax Act 1961, and had earned an income on which corporate tax was payable under the Act. The apex court further held that an incorporated company must be regarded as a separate entity from, any one of its shareholders and subject to all incidents under the Companies Act of a company so registered. Also, the Court of Appeal in the case of (Habib Nig Bank v. Ochete (2001) 3 NWLR (pt 699) CA 114) applied this principle. In this case; the Respondent operated both personal and corporate accounts (in the Belyn Pharmacy Ltd, which was initially a business name-Belyn Pharmacy) in the Appellant Bank. The Respondent paid a check in his name, and the applicant bank maliciously paid it into the corporate account, which was heavily withdrawn, and the Respondent was unable to use the

money. He brought an action for rectification, and damages, and the trial court found for the Respondent, and ordered the Appellant to refund the sum of N311, 215.40 said to have been converted by the Appellant. The Court also awarded in favour of the Respondent the sum of N150, 000 as general damages, and dismissed the claims of the Appellant holding that there was no interference with the Appellant's management. Not satisfied with the decision of the court, the Appellant appealed to the Court of Appeal, dismissing the appeal, Justice Umoren J.C.A. (as he then was) restated the position of law in line with section 37 of CAMA held as follows: 15 Soon after a commercial enterprise name is incorporated into a limited liability company, it legally assumes a distinct personality different from its members. A corporate veil is placed beyond which no one can penetrate, except when raised in a manner authorised by law. Subsequently, it is possible to own and accept the transfer of assets and liabilities on behalf of the company.

Removal of Directors

In England, the general rule is that in a meeting a company can remove a director before his term of office expires, despite his contractual agreement between the company, and himself. (Section 168(1) English Companies Act, 2006 (c. 46)). In doing so, the company must issue a special notice on the company's intention to remove a director by this section or to appoint someone to replace him (Section 168(2) English Companies Act, 2006 (c. 46)). Similarly, in Nigeria, (Section 262(1) CAMA) provides for the procedural steps to be followed for a valid removal of directors. This was the issue canvassed in the case of (Longe v First Bank of Nigeria (2010) 6 NWLR (pt. 1189) 1 S.C.), the issue before the Supreme Court was whether it was proper for the Court of Appeal to have failed in its judgment to resolve the issue whether a finding by the trial court that the Appellant was suspended under the common law met the requirement of the Companies and Allied Matters Act that a director must be given a notice of director's meeting unless the director is disqualified under the Act, an issue which if it had been pronounced upon would probably resolve the appeal in favour of the Appellant and by not doing so occasioned a miscarriage of justice. The facts of this case were that the Appellant was appointed the Managing Director/Chief Executive of the Respondent (F.B.N.) on 24th February, 2000, by its Board of Directors. Prior to this appointment, the applicant was the defendant's executive director. The Appellant was accused of impropriety, following which he was suspended by the Respondent's Board of directors on 22nd April 2002, and his appointment was later revoked on 13th June 2002. The applicant was not informed of the defendant's board meeting where the decision was made to terminate his employment. Consequently, the applicant filed an appeal against the defendant, alleging that he had the right to be notified of the meeting pursuant to Section 266 of CAMA and that the failure to communicate such notification made the termination illegal (Olarinde and Idem, 2020). The trial court rejected the applicant's claims. Dissatisfied with the ruling, the Appellant appealed to the Court of Appeal, but his appeal was dismissed. Still aggrieved, he appealed to the Supreme Court and contended that the Court of Appeal was wrong when it held 16 that a meeting of directors is not within the Companies and Allied Matters Act (CAMA) and in particular within section 266(1), and more importantly in light of the definition of the word "director" under CAMA in section 650 which the court did not take into account, the Supreme Court unanimously authorised the appeal on merit. Oguntade J.S.C (as he then was) in his lead judgment stated that: The removal of the plaintiff as CEO / executive director of the defendant without notice to attend the meeting where the decision to remove him was taken constitutes a clear violation of 266 (1), and (2) of Companies Law, and this violation must attract the sanction provided for by law in section 266 (3). This meeting is in accordance with the invalid law, and I pronounce it thus that the removal of the Plaintiff is not provided for by law; therefore, the Plaintiff must be regarded to remain the Chief Executive Officer / Executive Director of the Defendant Company. Indeed, from the above, it is clear that the essence of corporate management is to ensure that proper and right things are done in running the affairs of companies be it appointment or removal of directors. The improper dismissal or appointment of directors would be unhealthy corporate governance, and the courts will disapprove of these practices and ensure that the company's affairs are carried out in accordance with the provisions of the Enabling Law.

Financial Improprieties

The concept of corporate governance states that Directors who are major officers of the company act in the position of trustees of the properties and money of the company (Orojo,

1992). They, therefore, owe a duty of care to the company on the handling of its fiancés and properties. They should act under some basic honesty in any transaction they engage in for the company and must give an appropriate account of such transactions as and when due. In (E.F.CC v. Oceanic Bank & Ors (Suit No F.C.H./1/CS/514/201) (www.nairaland.com/528223/former_md_oceanic_bank_cecilia), the former C.E.O. of Oceanic Bank Plc, Ms. Cecilia Ibru, was sentenced to 18 months imprisonment. The anti-graft agency had alleged in the amended charge that Mrs Ibru granted a credit facility in the sum of 20 million U.S. Dollars to Waves Project Limited, which was above her credit ceiling power given by the bank. She was also accused of not taking all reasonable steps to ensure the accuracy of the monthly return from the Ocean Bank to the Central Bank of Nigeria (C.B.N) between October 2008 and May 2009. Mrs Ibru was further said to have carelessly approved the credit facility in the sum of 17 N2 billion by the bank to one Petosan Farms Limited without adequate security as laid down by the regulations of Oceanic bank, thereby committing an offence punishable under section 15 of the Failed Banks (Cap. F2, Vol. 6, LFN 2004). The charges were, reduced by the commission from twenty-five to three and apparently based on the plea bargain. The voluntary forfeiture of assets by the former Managing Director to cover the credit facility given was also a term of the plea bargain. The Federal Supreme Court held that although the law provided for 10 to 13 years' imprisonment for her crime, she would have been lenient with Ms Ibru because she had agreed to voluntarily renounce assets that could substantially cover the sum (K2wise, 2010) she was accused of; also, all the asset recovered from her were to be handed over to the Federal Government of Nigeria. In the Oceanic Bank situation, the problem required a governance structure that dealt with a framework for ethical behaviour, defined the boundaries, and prohibited managerial self-aggrandizement and illegal transfer of wealth from the company or their subsidiaries to managers. In all the cases analysed above, the Courts intervened to ensure that there is a financial discipline on the part of those with the responsibility to manage and direct the affairs of the company. In this case, the Court has given out sentences in all the charges that will serve as deterrents to others and thereby promoting good corporate governance. 9.

The Enforcement Influence of the Courts and Promotion of Good Corporate Governance

This section discusses one of the objectives of this Paper, which sought to establish the influence of Court on the promotion of good corporate governance, in listed companies in Nigeria. Indeed, an independent, fair and efficient judiciary is considered a key aspect of any country's corporate governance, and the courts are expected to be the last hope of any aggrieved person, be it individuals or corporate bodies. Courts in Nigeria generally commit to assert corporate governance cases only in two specific situations, namely: (1) where the law provides that in order to assert a matter, the Nigerian Exchange Commission and other regulatory agencies must pursue and (2) where private litigant, such as shareholders, seek to clarify and extend directors duties. In this way, one might be tempted to say that the courts have less of a role to play than, say, the regulator, in influencing corporate behaviour or the perceptions of the wider community to corporate governance. The function of the courts in influencing corporate behaviour can, 18 therefore, at times be disproportionate to the number of matters dealt with overall (Warren, 2005). Below are some of the contemporary high-profile cases of the breakdown in corporate Governance in Nigeria where Nigerians people were interested to see the outcome of the Court's decisions. In October 2006, Cadbury revealed that it discovered what is described as a "significant and deliberate" exaggeration of profits in its balance sheet for some of the past few years, in the amount of N15 billion. This came to light when Cadbury Schweppes (the parent company) retained Price Waterhouse Coopers (P.W.C) to review the accounts. Cadbury Nigeria's previous auditors had not discovered the misstatements. In 2007, the Administrative Proceedings Committee (A.P.C.) of the Securities and Exchange Commission was empanelled to investigate these findings of misstatements in Cadbury Nigeria's financial statements. The Defendants Directors and Registrars of the Union of Cadbury Nigeria Plc have been invited to appear before the A.P.C., but they challenged their competence to sit and investigate the matter while the A.P.C. was created by S.E.C. Consequently, the Defendants filed an action at the Federal High Court seeking preservative orders to restrain and halt the proceedings. The Court granted an interim order, but following S.E.C.'s application to allow the stay of proceedings, the injunction was removed. In 2008, the A.P.C. went ahead with the proceeding, and based on its findings, it

imposed sanctions on the Defendants, for violating the provisions of the Investments and Securities Act 1999, the S.E.C. Rules and Regulations 2000. Some of the directors filed appeals to the Investment Securities Tribunal (I.S.T.) seeking to upturn the decision of S.E.C. Still, I.S.T. upheld the sanctions imposed by the Securities and Exchange Commission on Cadbury Nigeria Plc and its directors for liability in the misstatements of the accounts of the company. (Ituah, 2014). Dissatisfied with the decision of the investment securities Tribunal, the managing Director Bunmi Oni applied to a Lagos State High Court, praying the Court to declare the dismissal of appointment null and void. Justice Ayotunde Phillips, in his ruling issued November 12, 2010, stated that Oni was fired from a letter dated December 11, 2006, and signed by Dr. Imo Itsueli, President of Cadbury (as he was then), was illegal, (Anaba, 2011). She further contended that the sack was a breach of his employment contract (Anaba, 2011). Being dissatisfied with the court's decision, Cadbury appealed against the decision of the A.P.C. Tribunal to the Court of Appeal, and also asked the lower court to suspend the execution of the sentence until the hearing and final determination of 19 the appeal. Both the Court of Appeal and the Supreme Court held that they had no jurisdiction over a suit to decide on the case since you cannot put something and expect to stand. In (EFCC v. Oceanic Bank Plc & O.R.S. Suit No: FCH/1/CS/514/2012), the accused person, the former Managing Director of Oceanic Bank Plc, Mrs Cecilia Ibru was sentenced to 18-month imprisonment on a three-count charge to run concurrently. The anti-graft agency had alleged in the amended charge that Mrs Ibru granted a credit facility in the sum of 20 million U.S. Dollars to Waves Project Limited, which was above her credit ceiling power given by the bank. She was also accused of not taking all reasonable steps to ensure the accuracy of the monthly return from the Ocean Bank to the Central Bank of Nigeria (C.B.N) between October 2008 and May 2009. Mrs Ibru was also accused of having carelessly approved a loan of a credit facility in the sum of N2 billion by the bank to one Petosan Farms Limited without adequate securities as laid down by the regulations of Oceanic Bank, thereby committing an offence punishable under section15 of the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act. The charges were reduced by the commission from twenty-five to three, apparently based on the plea bargain. The voluntary forfeiture of assets by the former Managing Director to cover the credit facility given was also a term of the plea bargain. In his judgment, the Federal High Court held that though the law stipulated imprisonment of between 10-13 years for her crime, she was sentenced to a term of six months imprisonment and a fine, involving a forfeiture of 199 assets scattered all over the world, especially United States, Nigeria, Europe and the Middle East and shares, worth over N190 billion (over US$ 1.5 billion). The sentences run concurrently. Also, in (Eromosele v. Fed. Rep of Nigeria (CA/L/55OA/2013), the Court of first instance ordered the winding up of the company and sentence two companies employees to a total of 28 years imprisonment. The facts of this case were that in 2012 Berewa Pharmaceutical Company, located within the Lagos State of Nigeria produced, conspired and sold harmful teething mixture, which was found to have caused the death of 84 babies in Nigeria after taking fake drugs. The National Agency for Food and Drugs Administration & Control charged the pharmaceutical company and production manager Mr Adeyemo Abiodun and its Quality Assurance manager Mr Egbele Eromosele to the Federal High Court in Lagos. After the evaluation and conclusion of the body of evidence, the Federal High Court had in a judgment delivered in 2012 by Justice Okechukwu Okeke (retd.) convicted Abiodun, Eromosele and Barewa Pharmaceutical Company, for conspiracy and sale of 20 a mixture of harmful dentition brought against them by the National Agency for the Management and Control of Food and Drugs. The court also sentenced Abiodun and Eromosele to seven years in prison each and ordered the liquidation of the company, and their resources would be lost to the federal government (Oladimeji, 2016). Being dissatisfied with their conviction, prison sentence, and the winding up and forfeiture orders, the company and its officers filed separate notices of appeal before the Court of Appeal, seeking to set Justice Okeke's judgment aside. The court upheld the sentence of Abiodun and Eromosele and quashed the order for dissolving the Barewa Pharmaceutical Company by the Federal High Court (Oladimeji, 2016). Being dissatisfied with the Court of Appeal's decision, Abiodun, Eromosele, and Barewa Pharmaceutical Company, later on, appealed to the Supreme Court (Oladimeji, 2016). On March 18, 2016, the Supreme Court quashed the appeal court's decision and ordered a de novo trial on the case (Oladimeji, 2016). After a new hearing by the Court of Appeal, the Court held that the complaint of the appellants was without merit because, throughout the gamut of the trial, the appellants never denied that they were not the manufacturers of the contaminated drug -" My Pikin" teething syrup. The Court further held that there was no contradictory evidence as both the appellants and the Respondent confirmed that the contaminated drug was manufactured by the appellants. The Court

reaffirmed her earlier position. From the two cases, which are examples of many cases that our courts should be appreciated for making pronouncements that promote good corporate governance in Nigeria. The Court can also promote good governance in companies by ordering the arrests, detentions, imprisonment, or dismissal of erring directors and managers as in the two cases cited. The Court can further enforce standards of directors' behaviour through both criminal and civil sanctions as charges against a director who misappropriate and commit wrongdoings. The above findings are in agreement with those of (Ndlovu et al., 2013), who acknowledged that courts are the last resort for shareholders as the enforcement of laws via courts assumes that courts have resources to handle cases and enforce the law. This is also supported by (Millstein et al., 2005), who revealed that good corporate governance protects investors and requires both law and effective enforcement of the law. The law is 'incomplete' and is unable to cover all foreseeable wrongs; hence, it is important to devise enforcement mechanisms to ensure compliance. Enforcement by 21 the Court is therefore needed to address gaps in the law and to deal with clear violations of the law (Millstein et al., 2005).

Deterrence and Prevention Measures in Promotion of Good Corporate Governance

The issue of enforcement has concerned economists, legal practitioners, criminologists, jurists, and criminal justice lawyers over the years who are tried to study the relationship between enforcement and compliance. (Stigler, 1974). The 'deterrence theory' has often been used to highlight the need for court enforcement, particularly within the field of criminal justice. While the theory is more frequently used within the context of criminal behaviour and criminal justice, this Paper applies the deterrence theory in justifying the need for enforcement in corporate law. Deterrence generally means refraining oneself from an act or omission due to the fear of penalty. It is more formally defined as 'the omission of an act as a response to the perceived risk and fear of punishment of contrary behaviour. The role of the Court is to deter individuals, manager or director and corporation before them from committing further crimes ("specific deterrence") or from making further civil breaches and also to deter others in the community who might potentially commit corporate crimes ("general deterrence") or otherwise breach civil provisions (Warren, 2005). For instance, in the Nigerian fake drugs case of (Eromosele v. Federal Republic of Nigeria, CA/L/550A/2013), deterrence was an important issue when deciding whether to allow the appeal against the penalties ordered against appellants. The judge at first instance sentenced the company's production manager Adeyemo and its quality assurance manager Eromosele to seven years imprisonment each. The stated that when considering the period of imprisonment, general deterrence was considered but noted that personal deterrence was a particular factor. Eromosele appealed against imprisonment, but the Court of Appeal upheld the decision of the Federal High Court on conviction of Abiodun, Eromosele but set aside the order for the windingup of the company because the duration of the imprisonment order was deemed moderate rather than severe. In this way, it may be seen that the courts are seeking to deter not only the individual before them from re-offending, but also seek to protect the community through preventing others who might otherwise have thought to produce harmful drugs into the market. However, several factors have been thought to determine the deterrent effect of punishment; this study would focus on four key ones (Scholz, 1984). The first is the certainty of punishment It is argued that the 22 greater the likelihood of punishment being imposed, the greater the deterrent effect of such punishment, the second factor is the speed with which the punishment is applied. This is also known as celerity (swiftness) of punishment (Scholz, 1984). The idea is that when punishment is swiftly applied, there is a greater association between the criminal acts and its costs in the minds of offenders. The third element, which is also considered essential, is the severity of punishment. To ensure its effectiveness, punishment should be sufficiently severe and proportionate to out weight any possible gain attribute to the offence (Scholz, 1984). Another rationale for sentencing is the prevention of crimes. As the name implies, this theory seeks to prevent the offender from committing a further offence(s) in the future. It has to do with the elimination of the offender to prevent him from repeating the prohibited act. Imprisonment of erring corporate officers and winding-up of companies' cases fall within this category aimed at removing the offender from the society and thus preventing his further commission of crimes (Yoder, 1978). If a corporation commits serious crimes against public order, public policy, or morality (such as trafficking in hard drugs) or deliberately breaching constitutional provisions relating to the sanctity of human life or

the security of the state, courts should be able to order a winding up of the company. The above arguments are in agreement with those of (Musikali, 2008) who revealed that the most effective way to achieving good corporate governance is by the criminal sanctions within the companies Act and Penal Code to a level that reflects the business.

Court Guiding Principles and promotion of good Corporate Governance

Nigeria courts were operating the common law doctrine and followed the doctrine of judicial precedent in the enforcement of the judicial process. Indeed, there are several case laws cited in this study that justifies the role and enforcement measures of courts in promoting corporate governance in Nigeria. Those laws have, to a large extent, impacted positively on corporate governance and have become reference points in areas of guidelines, structures, and processes on how companies should be organised and managed for effective performance. In some instances, the pronouncements of courts have resulted in the enactment of codes of Corporate Governance and amendment of the Companies Act. Although the judges are not interested in legislating, when they judge and pronounce on cases, their decisions become laws which, in turn, become precedents which unite in similar cases in the future under the doctrine of judicial precedents (Ituah, 2014). Therefore, it follows that judges do much more than simply apply the law as it is 23 (Ituah, 2014). They every so often and at different times, create new legal guidelines that continue to be binding on all till reversed or overruled by means of Courts that are higher in the hierarchy of courts and competence to do so (Oguntade, 2014). For example, in the Nigerian case of (Artra Industries Nig. Ltd v. Nigerian Bank for Commerce & industry (1998) 4 NWLR (pt 546) 375). Justice Onu J.S.C. (as he then was) when interpreting section 279 (3) of the CAMA relating to the duty to act bona fide for the benefit of the company, said in the exercise of the management power and duties conferred upon the directors by sections 63(3) of the same Act, the directors of a company must adhere strictly to the statutory provisions which enjoin them to consider the interest of the company as paramount. The Court further held that if the directors give evidence that they had honestly believed that they had acted in the best interest of the company, and if that evidence were believable, then no breach has been done. This duty would seem to attract the same approach advocated by (Keay, 2010). Nevertheless, courts will not accept without a director's statement that he or she acted in good faith, and where it is pertinent that the act complained of led a significant detriment to the company a director will have according to Justice Onu, a difficult task in convincing the Court that he or she honestly believed the action to be in the best interests of the company. From the findings, it can be deduced that courts guiding principles measures such as courts' precedents and interpretations of the law gives clear guidance on corporate governance principles which promotes good corporate governance in the companies in Nigeria. The finding is supported by Keay (2010), who provided several case studies that justify the role of courts in promoting corporate governance. The King Report on Corporate Governance in South Africa, for example, incorporates a Code of enterprise behaviour and Conduct, which aims to promote the highest company governance preferred in South Africa (Cliffe, 2002).

Concluding Remarks

This paper has analysed the role of courts in the promotion of good corporate governance and practice in Nigeria. It is found that the courts have played the role of enforcing good corporate governance in the companies to a great extent. The courts have been promoting good corporate governance in most of the companies listed in the Nigerian Securities Exchange Commission by enforcing compliance with the laid down regulatory legal framework. The research also revealed that the standards of directors' and companies' behaviour are enforced through both criminal and civil sanctions. This paper has shown instances through case 24 laws where erring directors and managers were imprisoned for various offences and sometimes, ordered to pay fines while some companies were wound-up to act as a deterrence to the others (Ogbechie, 2013; Okike, 2007). The study further shows that the fines given in courts were inadequate to deter both the companies and their directors from wrongdoings. The regression result shows that there is a positive and significant relationship between deterrence and prevention role of the courts in promoting good corporate governance. These findings are supported by a report by (OECD, 2003) which asserted that the courts have a role to play, not only in enforcing but also putting mechanisms to deter others who may be involved in

malpractices. The function of the courts is now not only to put in force current legal guidelines but to promote and facilitate market discipline (OECD, 2003). The work also analyses the influence of guiding principles of the courts in the promotion of good corporate governance in Nigeria. The study found that the courts gave guiding principles to promote good corporate governance in companies quoted in the S.E.C. to a great extent. The study revealed that the Court's precedents effectively guided on the principles of good corporate governance and interpreted the law giving clear guidance on corporate governance principles in Nigeria. The results found out that there was a positive and insignificant relationship between the guidance of courts on the principles of corporate governance and the promotion of corporate governance. These findings are in line with those of (Keay, 2010) who presented case studies that justify the role of courts in guiding on matters of corporate governance especially on the role of directors and repercussions of their actions. The legal decision taken by the courts of the authority acts as judicial precedents in the future in similar cases. Our review of the cases and legislation relating to corporate governance and the analysis of the standard of Corporate Governance in Nigeria shows clearly that largely the institutions and the laws for effective corporate governance appear to be in existence. The authors believe that the mere provision of good laws in statutes books cannot substitute a weak enforcement mechanism. Therefore, it is recommended that for Nigeria to reap all the advantages of requisite corporate governance, both good laws and effective enforcement mechanism must complement each other. In the absence of good laws, enforcement will not be successful, and conversely, in the presence of a weak enforcement mechanism, mere good laws in the statute's books cannot protect investors. 25 The courts roles as regard fines given in Court should also be adequate to deter companies and their directors from wrongdoings. This paper shows that many collapses of the companies in Nigeria have political connotations. Accordingly, the paper suggests a set of possible solutions that include government policies on a clear boundary between businesses, politics, and government. And that being the case, there is a dire need for establishing a special designated Corporate Affairs Court within the judiciary to try offenders of the country's corporate disputes that occur between directors inter se, shareholders inter se, and shareholders and employee inter se without delay. The present situation where violators are tried through our current adversarial judicial system whereby some cases can last for onward of ten years and above before a final decision is made does not promote corporate Governance in Nigeria.

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Companies Act

Companies and Allied Matters Act of 2004 Constitution of the Federal Republic of Nigeria 1999 (as amended) English Companies Act 2006 (c. 46) Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act LFN 2004

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