

## **APPRAISING THE ESSENCE AND EFFECTIVENESS OF SHAREHOLDERS' DEMOCRACY IN NIGERIA**

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**ABSTRACT:** *This paper examined the essence and effectiveness of shareholders' democracy in Nigeria. Several materials such as Statutes, Texts, Articles, Reports, Bulletins, Case Law as well as internet materials relevant to the paper were consulted. It was observed that shareholders' democracy otherwise known as the rule in Foss v. Harbottle or the majority rule is central to Corporate Governance and if properly effected, can serve as management's watchdog. The majority rule states that while every member of a company has a right to take part in the decision process, he cannot insist on having his way if it is inconsistent with that of the majority. In Nigeria, the rule in Foss v. Harbottle, was firstly adopted by the Supreme Court in the celebrated case of Abubakar v. Smith, where the court was of the view that, it is only the Company that is clothed with the locus standi to sue in order to remedy a wrong that has been done to the Company and only the Company can ratify same. This Common Law rule has been statutorily recognised in S.299 of CAMA. Howbeit, strict application of this rule may lead to injustice. Thus, the majority rule has a potpourri of exceptions recognised at common law and under statutes. These exceptions include members' direct action, derivation action, and petition for winding up the affairs of the Company on just and equitable grounds amongst others. It was also discovered that lack of activism in shareholders' associations, illiteracy, poverty, corruption, and abuse of proxy rights are clogs to the effectiveness of shareholders' democracy in Nigeria. The paper calls for legal and institutional reforms.*

**KEYWORDS:** shareholders, democracy, proxy rights, illiteracy, corruption

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### **INTRODUCTION**

One of the most significant current discussions in Corporate Law Practice is Shareholders' Democracy<sup>1</sup>. To start with, the law has long been settled by a litany of judicial authorities that upon registration, a company acquires the status of corporate personality<sup>2</sup> and thus distinct from its owners<sup>3</sup>. Despite the statutory and judicial recognition of the doctrine of corporate personality, in reality, a company acts through the instrumentality of its organs which have

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<sup>1</sup> Otherwise known as the majority rule or the rule in *Foss v. Harbottle* (1843)67 ER 189

<sup>2</sup> That is, an artificial person in law.

<sup>3</sup> See *Salomon v. Salomon*(1891)A.C.22H.L

been judicially and statutorily recognised as: members in general meeting, board of directors and managing director<sup>4</sup>. The board of directors are saddled with the responsibility of piloting or managing the day to day affairs of the company and are required to act in the best interest of the company<sup>5</sup>. Members in general meeting are required to influence the decision of the board through a democratic process. Thus, the general rule is while every member of a company has a right to take part in the decision making process, he cannot insist on having his way if it is inconsistent with that of the majority<sup>6</sup>. In Nigeria, the rule in *Foss v. Harbottle*<sup>7</sup>, was firstly adopted by the Supreme Court in the celebrated case of *Abubakar v. Smith*<sup>8</sup>, where the court was of the view that, it is only the Company that is clothed with the *locus standi* to sue in order to remedy a wrong that has been done to the Company and only the Company can ratify same. This Common Law rule has been statutorily recognised in S.299 of CAMA. The practical effect of this rule is that, while the minority would always have the opportunity to have their say, the majority will have their way. It therefore, follows that, where an irregularity has been meted against the company, the injury is regarded to have been done to the company and it is left for the company, that is, majority of the shareholders or members to decide whether it should be redressed as a wrong or not. Although the majority will get their way due to the majority rule, it is imperative that minority shareholders<sup>9</sup> are given protection bearing in mind that the minority shareholders and/or the company will in one way or the other suffer from the dismal consequence of such decision<sup>10</sup>. Therefore, there exist exceptions to the majority rule both at common law and under statutes<sup>11</sup>. It must be noted that although the general rule is that shareholders form bulk of the members in general meeting and are christened as the ‘most powerful’ or ‘potent’ organ of the company<sup>12</sup>, but it seemingly appears that such appellation is a myth. In reality, the board of directors is the most potent or powerful organ of the company. Several studies have shown that due to the fact that the day to day administration of the affairs of the company lies in the hands of the board of directors, they are susceptible to abuse their powers and functions<sup>13</sup>. The practical effect of this is that shareholders stand at a disadvantaged position and are powerless. In recognition of the powerless nature of the shareholders, Gower,

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<sup>4</sup> See S.65 of the Companies and Allied Matters Act Cap C20 Laws of the Federation of Nigeria, 2004 (hereinafter referred to as CAMA).

<sup>5</sup> See generally S.279-283 of CAMA

<sup>6</sup> This is the Majority rule otherwise known as the rule in *Foss v. Harbottle (supra)*. The facts of the case are that, there was an allegation of fraudulent act by directors. At the general meeting of the company, the majority decided that no action be taken against the directors. Two of the minority shareholders felt aggrieved and initiated proceedings against the directors on behalf of themselves and others except the defendants to compel them to pay damages. The court dismissed the action and held that ‘where an irregularity has been committed against the company, it is the company that has a right of action to redress the wrong and no individual member has the locus to so act.

<sup>7</sup> *Supra*

<sup>8</sup> (1973) EC 31

<sup>9</sup> A minority shareholder is regarded as one without a controlling interest in the Company

<sup>10</sup> See *Foss v. Harbottle (supra)*.

<sup>11</sup> The exceptions include Member’s Direct Action, Derivative Actions; Petition for the Investigation of the Company by the Corporate Affairs Commission; Petition for the Winding up the Company on Just and Equitable Grounds, etc. See S.300, 303,308-312,314, and 408 of CAMA

<sup>12</sup> This is anchored on the fact that it is at the meeting of members that imperative decisions of the company are being taken.

<sup>13</sup> Shareholders appear to be at the receiving end of companies’ administration in the sense that they actually do not oversee the day to day management of the company. See O.B Akinola and A. O Aboh, ‘The Roles of Shareholders’ Association in Corporate Governance in Nigeria’ (2013-15)(16) *The Calabar Law Journal* ; 281

L.C. B<sup>14</sup> opines that: ‘‘In reality, the board of directors of some widely local public companies are self-perpetual oligarchies which control the general meeting rather than controlling them...’’.Also lamenting on the powerless status of the shareholders in corporate governance, Shonekan, E.N<sup>15</sup> bemoans that:

Unless there is some measure of disunity or factionalism among the members of the board themselves, there is very little of which the average shareholders can do to exercise significant degree of control of the affairs of the company even if the company is not doing well...

Indeed, there is a need to protect the interest of members at a general meeting<sup>16</sup>and to ensure that they actively take part in the affairs of the company. There is also a need that the actions of the board of directors should be a true reflection of the minds and decisions of the shareholders of the company. Indeed, shareholders ought to be given a true role in corporate governance and this can be achieved through a formidable shareholders’ democracy.

Consequently, this paper seeks to chronicle shareholders’ democracy and its indelible role in corporate governance in Nigeria. Similarly, the paper will inspect closely the meaning, essence and the associated problems of shareholders’ democracy in Nigeria. Thereafter, the paper will make possible solutions to the said associated problems.

## **MEANING, SCOPE AND ESSENCE OF SHAREHOLDERS DEMOCRACY IN NIGERIA**

The phrases ‘member of a company’ and ‘shareholder of a company’ may be used interchangeably. But in strict legal sense, they do not mean the same thing. The general rule is that all members of the company are shareholders but not all shareholders are members of a company. A member of a company therefore is a person that has a constituent proprietary interest in the company and whose name is in the register of members. S. 79 of CAMA identifies two ways of becoming a member of a company, namely: Subscribers to the memorandum of association of the company<sup>17</sup>; and others who are not subscribers to the memorandum of association<sup>18</sup>. On the other hand, a shareholder is the proportionate owner of

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<sup>14</sup> L.C.B Gower, *Principles of Modern Company Law*, 5th Edtn. (London: Sweet & Maxwell Ltd, 1992) , 530-531

<sup>15</sup> E. N Shonekan, ‘The Powerlessness of the Average Shareholder’- Being a paper presented at a Workshop on Corporate Practice at the Hilton Hotel, Abuja, 28<sup>th</sup> March, 1997.

<sup>16</sup> Otherwise known as shareholders

<sup>17</sup> Here, membership is automatic on the incorporation of the company without more and a holder of the shares for which he has been assigned. Also, there is no requirement as to allotment or that the name must be register in the register of members, and he will not lose his membership by reason of the refusal or omission on the part of the company to put his name in the register or to allot shares provided it is firmly established that he is a subscriber to the memorandum. See Jacob Abiodun Dada, *Principles of Nigeria Company Law*. 3<sup>rd</sup> Ed.( Calabar: University of Calabar Press, 2014),294

<sup>18</sup> Under this method, two conditions must be fulfilled before a person can be regarded as a member of a company. First, there must be a written application or written agreement by an applicant to become member, and the second requirement is that, the applicant’s name must be entered in the register of member. The requirements are cumulative in nature and must exist simultaneous as the absence of one will vitiate the whole process. Thus, by virtue of Section 125, 126 and 127 of CAMA, a person may agree in writing to become a member of a company by way of allotment, transfer or transmission respectively. However, in each case, before the allottee, transferee or personal representatives of the deceased holder of the shares becomes a member, he must have had his name entered in the register of members. Even where his written application to become a member has been approved by the board and shares allotted, transferred or transmitted to him as the case may be, he will just be a shareholder, and will only become a member when his name is entered in the register of members.

the company but he does not own the company's assets which belongs to the company as a separate and independent legal entity<sup>19</sup>. Further, Black's Law Dictionary<sup>20</sup> defines the term shareholder as a person who owns or hold a share or shares in a company. He could also mean a person who lawfully acquires shares in the capital of a company<sup>21</sup> and has rights, privileges and liabilities where application<sup>22</sup>. A cursory analysis of section 114 of CAMA reveals that the rights and duties that attach to one being a shareholder of a company depends on the terms of issue and of the company's articles. Generally speaking, the rights of the shareholder include but are not limited to the following:

- i. The right to receive a notice of meetings of the company<sup>23</sup>
- ii. The right to attend any general meeting of the company<sup>24</sup>
- iii. Right to vote at any general meeting of the company<sup>25</sup>
- iv. Right to be voted for at the general meetings of the company<sup>26</sup>
- v. The right to dividend while the company is a going concern<sup>27</sup>.

It should be noted that these rights are attached to the members or shareholders personally and are recognised and protected by law. Therefore, in the event of any deprivation or violation of these rights, individual member or shareholder can bring an action for redress without the consent or approval of any other shareholder<sup>28</sup>. Apart from these individual rights, membership of a company also carries corporate rights<sup>29</sup>. Once it has to these rights, that is, corporate rights, every member or shareholder is bound by the decision of the majority and this forms the hallmark of shareholders' democracy. Shareholder democracy has been defined as a process when shareholders vote and otherwise exercise their rights as the collective owners of a company, often against the goals or self-interest of incumbent management and board members<sup>30</sup>. It is also the ability of the shareholders to influence the board of directors through the exercise of their voting rights associated with share ownership<sup>31</sup>. The majority rule states that while every member has a right to take part in the decision process, he cannot insist on having his way if it is inconsistent with that of the majority<sup>32</sup>. The practical effect of this rule is that while the minority would always have the opportunity to have their say, the majority

<sup>19</sup> Dada, *op. cit.* at 202

<sup>20</sup> Bryan. A Garner, *Black's Law Dictionary* (8th Ed.)(U.S.A: West Publishers, 2009)P.1500

<sup>21</sup> See Principle 37 of the Code of Corporate Governance for Public Companies in Nigeria, 2011.

<sup>22</sup> Thus, in *Kotoye V Saraki* (1994)7-8 S.C.J.N 524 at 575, the Supreme re-echoed this principle when it held *inter alia* that 'by being registered as a holder of shares in a company, the registered holder becomes entitled to certain rights, benefits and privileges'.

<sup>23</sup>See generally S. 211-239 of CAMA

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*

<sup>27</sup> Where the Act expressly accords member of a company some rights, a shareholder who is not a member of the company cannot benefit from such rights.

<sup>28</sup> See generally Section 300-314 of CAMA which creates exceptions to the rule in *Foss V Harbottle* (*supra*)

<sup>29</sup> Corporate rights are rights not enjoyed by a single individual but a number of individual members acting together, for example, resolution. Dada, *op. cit.* at 380

<sup>30</sup>Michael Volkov, "The Debate Over Shareholders Democracy"<https://blog.Volkovlaw.com/2016/07/debate-shareholders-democracy>>accessed on 20/10/2020

<sup>31</sup> *ibid*

<sup>32</sup>See *Foss v Harbottle* (*supra*), and S. 299 of CAMA.

will have their way. It therefore follows that where an irregularity has been meted against the company, the injury is regarded to have been done to the company and it is left for the company, that is, majority of the shareholders or members to decide whether it should be redressed as a wrong or not.

Several reasons have been identified as justification for shareholders' democracy or majority rule. These reasons include the following:

- i. As a recognition of the doctrine of separate legal personality<sup>33</sup>
- ii. To prevent a situation where there will be multiplicity of suits<sup>34</sup>
- iii. To avoid a situation where court judgements or orders will be rendered nugatory<sup>35</sup>
- iv. Base on the need recognise and preserve the majority rule<sup>36</sup>

### **THE EFFECTIVENESS OF SHAREHOLDERS' DEMOCRACY IN NIGERIA**

The majority rule or shareholders' democracy is pregnant with a plethora of problems or challenges which has hindered its effectiveness in Nigeria. Some of these challenges are discussed hereunder:

#### **Injustice or Hardship on Minority Shareholders:**

It is trite that one of the unique characteristics of the majority rule is that, in taking decisions as it relates to affairs of the company, votes are only counted but not weighed. Whatever the majority shareholders of the company agree stands not minding the effect on the company. The practical effect of this is that the minority shareholders and/or the company will in one way or the other suffer from the dismal consequence of such decision<sup>37</sup>. It must however be noted that, in recognition of the hardship or injustice that may be occasioned by the application of the rule, several exceptions have been recognised both at common law and by statutes. Principally, S. 300 of CAMA provides the following Member's Direct Actions as exceptions to the majority rule:

- a. Where shareholders agreed at the general meeting of the company to carry out an act or do something which is ultra vires<sup>38</sup> or illegal<sup>39</sup>
- b. Where the purportedly uses an ordinary resolution to do an act where by either the law or memorandum of the company, such was supposed to be effected by a special resolution<sup>40</sup>

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<sup>33</sup> An appendage of the concept of corporate personality is the right to sue and be sued. It necessarily follows that whenever a wrong is done to the company, only it should have the locus to redress the wrong.

<sup>34</sup> The absence of this rule will create an environment that is characterised by influx of litigations and if not properly checked, will distract the company from pursuing its objects of registration and also have a multiplier effect on the economy as a whole.

<sup>35</sup> The efficacy of any court judgment is when such is obeyed and enforced. Suffice it to say that the rule is to ensure that that court judgments are disobeyed or rendered ineffective by sheer resolution of members. Similarly, courts are as a general rule not interested in interfering with internal affairs of the company

<sup>36</sup> Thus, without the rule, there will be a deadlock in company's management owing to the act that every shareholder will want his position to prevail over other shareholders.

<sup>37</sup> See *Foss v. Harbottle* (supra).

<sup>38</sup> That is, beyond its powers as contained in its memorandum.

<sup>39</sup> S. 300(a) of CAMA. See also *F.A.T.B V.Ezeogbu* (1994)9NWLR Pt.369 149, where the court refused to apply the majority due to the fact that there was some element of illegality in such resolution of the company.

<sup>40</sup> S. 300(b) of CAMA. For instance, Section 106 of CAMA is of the effect that a special resolution is required to effect a reduction in the share capital.

c. Where there is an alleged infringement or likelihood of infringement of the personal rights of the plaintiff shareholder<sup>41</sup>

d. Where the instruments of management of the company are perpetuating fraud against the company and/or the minority shareholders<sup>42</sup>

e. Where a meeting cannot be called in time in order to redress a wrong that has been done to the company or to the minority shareholder<sup>43</sup>

f. Where the directors benefit or are likely to derive a profit or benefit from their negligence or from the breach of duty<sup>44</sup>

Apart from the above exceptions, other statutory exceptions to the majority rule include:

i. Derivative Action<sup>45</sup>

ii. Action for Illegal or Unfairly Prejudicial and Oppressive Conduct<sup>46</sup>

iii. Investigation of Companies and their Affairs<sup>47</sup>

iv. Petition for Winding Up Under Just and Equitable Grounds<sup>48</sup>

### **Inadequate Awareness, Poor Orientation of Shareholders as it Relates to their Rights and Lackadaisical Attitude of the Shareholders**

As pungently stated in the introductory part of this paper, one of the incidences of being a shareholder or member of a company is shareholder's rights. One of such rights is the right to know how the affairs of company are being managed. They also have the right to attend and vote in the general meeting of the company. It is however, pathetic that due to high illiteracy, a quite number of shareholders are ignorant of such rights, and where they do, they have indifferent attitudes towards upholding same. Majority of the shareholders know little and are told little<sup>49</sup>. They receive the glossy annual reports and most of them throw them into waste bin. There is an annual general meeting but few shareholders attend<sup>50</sup>. The whole management and control is in the hands of the directors<sup>51</sup>. They are self-perpetuating oligarchy, and are virtually unaccountable<sup>52</sup>. The functioning of the company sometimes happen that companies are conducted in a way which is beyond the control of the ordinary shareholders. They exists shareholders' associations<sup>53</sup> but members are not active .All these constitute a bane to the effectiveness of shareholders' democracy in Nigeria.

### **Abuse of Proxy Rights.**

It is a cardinal principle of the Nigerian legal jurisprudence that shareholders have the right to attend the general meeting of the company and to vote through a proxy subject to certain

<sup>41</sup> S. 300(c) of CAMA. See also *Obikoye v Ezenwa*(1973)8NSCC,504

<sup>42</sup> S. 300(d) of CAMA

<sup>43</sup> S. 300(e) of CAMA

<sup>44</sup> S.300(f) of CAMA; *Daniel V. Daniel*(1978)All E.R.89

<sup>45</sup> Here, the shareholder is not suing on his own behalf or on behalf of the members generally but on behalf of the company itself. See S. 303,304 and 309 of CAMA

<sup>46</sup> S. 310 of CAMA

<sup>47</sup> S. 314 of CAMA

<sup>48</sup> S. 408(e) of CAMA

<sup>49</sup> See the dictum of Lord Denning in *Northwest Holst v. Dept. of Trade Org.*(1978)ALL ER 280

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

<sup>52</sup> *ibid*

<sup>53</sup> An example of such shareholders' association in Nigeria is the Progressive Shareholders' Association.

conditions<sup>54</sup>. The justification for the proxy machinery is not far-fetched, namely, to restore the balance of power to the shareholders and to ensure that shareholders who due to inevitable reason(s) could not attend the meeting of the company should not be denied the right to make a resolution but may effect same such through a third party. Sadly, the use of the proxy machinery has been grossly abused and misused by directors who surreptitiously manipulate the whole process to drive home their egoistic quest. For instance, in *Re Caratal (New) Mines Ltd*<sup>55</sup>, where a special resolution was to put the meeting. The chairman then said “ those in favour, 6; those against, 23; but there are 200 voting by proxy and I declare the resolution carried”. The implication of this is that manipulations of the proxy system have rendered the members’ right to vote at a meeting a mirage.

### **Corporate Corruption**

In general terms, corruption connotes a form of dishonesty or criminal activity undertaken by a person or organization entrusted with a position of authority, often to acquire illicit benefit<sup>56</sup>. It encompasses many activities including bribery<sup>57</sup> and embezzlement. Corporate corruption is a generic term which is used to describe crimes of corruption carried out by a corporation or by individuals who are identified with company<sup>58</sup>. It is everywhere and affects corporate governance across the globe<sup>59</sup>. It is tripartite in nature, namely: it may be on the part of the government<sup>60</sup>, the members<sup>61</sup> or even the company itself. Corporate corruption exist in different forms and facets which include inducement of members by way of corporate gifts, pecuniary benefits, lopsided allotment of shares or appointments and /or non-approval of share transfers by the management so as to influence them to vote in a resolution that will favour the interest of the management. It could also be in form of giving inadequate or no notice to shareholders who are entitled to receive such notices. Corruption creates a major distortion of trade as well as undermines shareholders’ rights and democracy.

### **The Financial Burden of Enforcing Minority Rights and Fear of Victimization by the Management**

Generally speaking, the Nigerian criminal justice is one that requires much financial commitment to initiate proceedings in court<sup>62</sup>. This serves as a disincentive to shareholders who may wish to challenge a majority misrule and oppression on the minority. The financial

<sup>54</sup> See S. 228 and S.230 of CAMA

<sup>55</sup> (1902)2Ch.498

<sup>56</sup> Corruption <<https://en.wikipedia.org/wiki/Corruption>> accessed on 20/10/2020.

<sup>57</sup> Bribery as a form of corruption is limited to the giving or acceptance of payment of illegitimate advantages. See Bribery and Corruption<<https://www.icaew.com/technical/legal-and-regulatory/business-crime-and-misconduct/bribery-and-corruption>> accessed on 21/10/2020

<sup>58</sup> *ibid*

<sup>59</sup>Michael J.Coren, “Corporate Corruption is everywhere. Can Data catch the criminals?”><https://www.google.com/amp/s/qz.com/1209659/Corporate-Corruption-is-everywhere-Can-Data-catch-the-criminals-placeholder-hed-amp/>>accessed on 21/10/2020

<sup>60</sup> Most times, members of the management offer bribes to heads and staff of the various regulatory agencies so enable them to cover them up against complaint brought by the minority shareholders. The effect of this is that when petitions are being lodged against the management, same are being swept under the carpets.

<sup>61</sup> Sometimes, the management may offer pecuniary benefit to some shareholders so as to lure them vote for and pass a particular resolution

<sup>62</sup> Litigant needs to engage a lawyer to which a mammoth professional fees is usually paid. Apart from the professional fee, much is also required as filing fees

burden of enforcement of minority action which is further compounded by ineffective judicial system<sup>63</sup> in Nigeria and fear of victimisation. In most circumstances, members of the management whose oppressive acts are to be challenged usually send dead threats to shareholders and or members so as to deter them from challenging their actions in court or launching a petition at the relevant institutions of government. All these constitute a conundrum to shareholders' democracy in Nigeria.

### **Financial Burden on the Part of Minority Shareholders in attending Meetings**

Company meeting is central to corporate governance and its importance cannot be overemphasized<sup>64</sup>. It provides a platform for directors to apprise the shareholders of the company's performance including its strategies. At the meeting of the company, members are afforded the opportunity to pose questions to the directors as it relates to the affairs of the company. Decisions are generally taken at meetings. It is at the meeting that directors are elected; auditors are retired or re-appointed or replaced<sup>65</sup>. Despite the utilitarian value of company meetings, most members do not attend such meetings due to the financial burden involved. This financial burden includes high cost of transportation, lodging, feeding and other logistics. The practical effect of this is that due to their absence at the meeting of the company, such members do not take part in the decision of the company and any decision<sup>66</sup> taken in their absence becomes binding on them provided that a valid notice of meeting was served on them.

### **Poor Funding/ Staffing/ Inadequate Enforcement Mechanisms**

The institutional framework such as the Corporate Affairs Commission, the Securities and Exchange Commission, etc. are not only poorly funded but also under staffed. As a result of this, they cannot function effectively and this affects the efficacy of the majority rule.

### **Political Interference**

Although most regulatory institutions such as the Corporate Affairs Commission, the Securities and Exchange Commission<sup>67</sup> are created as 'independent' bodies with perpetual succession<sup>68</sup>, the power of the president to appoint the Director General and full time members of the

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<sup>63</sup> The Nigerian judicial system is one that courts are reluctant to interfere in the internal affairs of companies. Similarly, Nigerian courts rely heavily on technicalities rather than substantial justice. For instance, recently, the Supreme Court of Nigeria dismissed the appeal filed by the Peoples Democratic Party and its Governorship Candidate in the September 2018 election in Osun State, challenging the election of Governor Adegboye Oyetola of the All Progress Congress. Despite that some of the justices admitted that the Independent National Electoral Commission was wrong to have declared the election inclusive, the apex in its judgement held that the absence of Justice Peter Obiorah who later read the lead judgment of the Tribunal during the February 6, 2019 hearing, rendered the entire proceedings of the said Tribunal a sheer academic exercise. See Ade Adesomoju, 'Supreme Court Dismisses Adeleke, PDP's Appeal, Affirms Oyetola's Election'. Abuja: *The Punch*, July 5, 2019 <<https://www.google.com/amp/s/punchng.com/breaking-supreme-court-dismesses-adeleke-pdps-appeal-affirms-oyetolas-election>> accessed on 21/10/2020.

<sup>64</sup> In recognition of the importance of Company meeting in corporate practice, S.65 of CAMA recognises members in general meeting as one of the organs of the Company.

<sup>65</sup> See generally S.209 – 248 of CAMA

<sup>66</sup> Including obnoxious decisions

<sup>67</sup> Hereinafter referred to as SEC

<sup>68</sup> See Section of the Investments and Securities Act, 2007 (hereinafter referred to as ISA 2007) and Section of CAMA



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commission<sup>69</sup> constitutes a serious problem. Thus the Commission cannot function effectively due to lack of independence and unwarranted legislative interference.<sup>70</sup>

### **Lack of Activism in Shareholders' Associations**

Shareholders' associations have been described as the independent voice of the private shareholders<sup>71</sup>. It has also be stated that one of the reasons which justifies the creation of shareholders' association in Nigeria is their ability to sensitize or orientate and protect their members' rights and interests by ensuring that there is accountability on the part of those saddled with the responsibility of managing their affairs of the company<sup>72</sup>. Shareholders ought to be the watchdog of companies. Sadly, shareholders' association in Nigeria have not been active in upholding their mandate whereas in countries like Australia, New Zealand there is shareholders' activism. Shareholder activism is a way in which shareholders can influence a corporation's behaviour by exercising their rights as owners<sup>73</sup>.

### **CONCLUSION AND RECOMMENDATIONS**

The importance of shareholders' democracy cannot be overemphasized. It is central to good corporate governance and if properly practiced may serve as the management's watchdog. This paper has x-rayed the meaning, essence and problems of shareholders' democracy in Nigeria. In order to find a lasting solution to the aforementioned problems, the following suggestions are important:

1. Regulatory institutions such CAC and SEC should embark on intensive sensitization and education of shareholders on their rights and how to enforce them, including what they stand to lose if they fail to protect same. This can be effected by organizing Seminars, Educational Workshops or even Television and Radio Talk Shows, mainly to educate key shareholders about the shareholders' democracy. Once there is adequate information, there will be increase in participation in shareholders' democracy.
2. As a solution to the problem of outstanding litigations orchestrated by unnecessary adjournments and reliance on unwarranted technicalities, judges should ensure that they give accelerated hearings to matters brought before them. They should also ensure that cases are not stroke out based on technicalities bearing in mind that the era of technicality is gone and the current trend tilts towards the attainment of substantial justice. Courts should also interfere in

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<sup>69</sup>S. 5 of ISA 2007

<sup>70</sup>For example, on the 18<sup>th</sup> of day of July, 2012, the Federal Government recalled Aruma Oteh- the then Director-General of SEC (A member of the Economic Management Team). She was sent on compulsory leave by a resolution of the Board of the Commission in order to enable SEC's external auditors - The Price Waterhouse Coopers Limited (PWC) examine the records of the commission's transaction covering SEC's project 50 which she supervised. Her recall follows the outcome of the findings of the external auditors - Price Waterhouse Coopers (PWC). The SEC board initially engaged the PWC, a renowned audit firm, to look into the allegations against Oteh in relation to her office and the project 50. The findings/report of the audit firm exonerated her from all accusations of fraud and criminal breaches. She was however cautioned for some administrative lapses. The next day, the House of Representatives insisted that the Director General stands suspended, hence the ding dong affair continues. This indeed cannot allow the SEC to wax stronger and perform her role as the apex regulatory authority of the Capital Market. See M. O. Olatunji, 'Securities and Exchange Commissions – Waxing Stronger Under Investment and Securities Act 2007'. *The Calabar Law Journal* (2013/2015) Vol.16, p p.215

<sup>71</sup> Akinola and Aboh., *op cit*;284

<sup>72</sup> See Principle 22 and 26 of the Code of Corporate Practice for Public Companies, 2011

<sup>73</sup>Akinola and Aboh., *op cit*

the internal affairs of the company especially where it is expedient to protect the interest of the minority shareholders, the company itself and the national economy.

3. To ease the financial burden of enforcement of minority action, it is suggested that government should reduce the filings fees as it relates to such actions. Similarly, in consonance with their paramount duty to uphold the rule of law, lawyers are encouraged to offer pro bono services to litigants in special circumstances, particularly, where minority shareholders will suffer undue hardship as a result of the failure to render such legal services.

4. The endemic corruption among enforcement officers should be checked. Also, any corrupt enforcement officer should be appropriately punished in terms of being sacked so as to serve as deterrent to others. In line with president Buhari's anti-corruption campaign, anti-graft agencies such as the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), should aggressively perform their duties.

5. To solve the problem of political interference in the management of the affairs of the company and to ensure that regulatory agencies perform their duties without fear or favour, the agencies should be made independent. That is, the appointment of its chairmen should not be made by the president as it is today. Appointment of members should be with utmost care with nominating/appointing bodies selecting qualified members. Such appointees should apply themselves to their duties. This will enable the agencies function properly and accountably

6. There should be a holistic review of the current legal framework so as to abolish proxy rights.

7. The Government should ensure that she timeously and properly fund the regulatory institutions such as CAC and SEC. Also, the staff of these agencies should be properly paid as this will go a long way to curbing their susceptibility to corruption and enhance effectiveness the performance of their duties

8. Shareholders' associations should step up that their game by being active and provide necessary orientation to shareholders as it is obtained in other climes such as Australia and New Zealand.

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