ANALYSIS OF THE IMPACT OF THE DOCTRINE OF PERSONAE JURIS OF INCORPORATED COMPANY IN A DEVELOPING ECONOMY

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Abstract
The company, upon incorporation, becomes a legal entity with an identity different from that of its members/shareholders. Accordingly, neither the members nor the directors are held liable for the firm's obligations in excess of the value of their investment therein. Undoubtedly, practices, statutes and case laws support the toga of personae jurist of a company. This paper is aimed at appraising the imports of the doctrine of personae juris of an incorporated company. It is also aimed at identifying the excessive implications of this doctrine and the juridical measures to curb these excesses. It was found however that applying the personae juris principle strictly has led to injustice and perpetration of fraud, leading inexorably to threatened economy. By and large, the doctrine of piercing the corporate veil remains an exceptional act evolved by case law and developed by statute to curb the unwarranted gains of incorporation. However, the piercing of the veil is yet to serve its full purpose in the present legal context and in our slow-paced economic development. The exceptions permitting piercing the veil are strict but the scope limited. It is therefore recommended that for a court to lift the veil of incorporation, it must not only disregard the paramount principle of separate legal personality in statutorily defined circumstances but should also innovatively consider the duties owed by directors to the company in order to attach personal liability on them deservedly. In this way, the personae juris of an incorporated company with its limitations will be of great gains in the development of our economy.

Keywords: *Incorporated, Personae, Juris, Developing, Economy, Veil*

1.0 Introduction

In stressing the independent nature of corporate personality, once registered in a manner required by the Act, a company forms a new legal entity separate from the shareholders, even where there is only a bare compliance with the provisions of the Act and where all, or nearly all, of the company's issued shares are held by one person. In this vein, a person suing a company must sue in name by which the company is registered.[1] Hence, to maintain an action, it is not legally required to prove that the company is a legal person unless an issue has arisen thereof and the certificate of incorporation of such company will be prima facie evidence of incorporation under the 1990 Act. The above notwithstanding, there are general categories such as fraud, Agency, Sham or façade, unfairness and group enterprises, which are believed to be the most peculiar basis under which the common law court would pierce the corporate veil, but these categories are just a guideline and by no means far being exhaustive. The act of piercing the corporate veil until now remains one of the most controversial subject in corporate law, and it would continue to remain so, even for years to come. The concept of the separate legal personality of a company obtained through the 'veil of incorporation' and the limited liability and its entails are at the core of company law, enabling much of the dealings within it (e.g. through its protection for investors)[2]. However, piercing this veil has been subject to much controversy over its history, with many academic arguing for the need of clarification on both of its principles. Thus, two questions arise. A company specifically referred to as a 'legal person' is a subject of rights and duties that is capable of owning real property, entering into contracts, and having the ability to sue and be sued in its own name.[3] In other words a company is a juristic person legally treated as a person, and empowered with the attributes to own its property, execute contracts, as well as ability to sue and be sued. One of the main motivations for forming a company is the limited liability it offers its shareholders. By this doctrine, a shareholder can only lose what he or she has contributed as shares to the corporate entity and nothing more. Nevertheless, there is a major exception to the general concept of limited liability. There are certain circumstances in which courts will have to look through the company, that is, lift the veil of incorporation, and hold the shareholders, directors or officers of the company directly and personally liable for the obligations of the company. The doctrine of lifting the veil is invoked when shareholders blur the distinction between the company and the shareholders. It is worthy of note that although a separate legal entity, a company can only act through its members in general meeting, its board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.[4] The doctrine of lifting the veil of incorporation varies from country to country. However, there is a general consensus that the whole area of limited liability, and conversely of piercing the corporate veil, is among the most confusing in corporate law.[5] It was hitherto left for the court to decide on which circumstances to apply the doctrine. Courts are generally reluctant to pierce the

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[1] Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria 2010, section 37.
[2] *Ibid.*
[3] American Bar Association's Revised Model Business Corporation Act (RMBCA), section 3 (2).
[4] Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria 2010, section 63(1).
[5] See Frank H. Easter book & Daniel R. Fischel, Limited Liability and the corporation (1985). 52 U. CHI. L. Rev 89.

corporate veil, and this was only done where it was only just and equitable to impose personal liability. There are currently statutory provisions for specific circumstances upon which the corporate veil will be lifted in the interest of justice.

2.0 The Concept of Corporate Legal Personality

This is a universal legal concept which postulates that an incorporated company is, as a matter of law a separate legal entity distinct from the individuals who are its shareholders and directors and are in control of its operations. The debts and obligations of the company are to be satisfied from the assets of the company and not from the personal assets of the shareholders or directors. This concept was first laid down under the common law in the celebrated case of *Salomon v Salomon and Co Ltd.*[6] The court (House of Lords) per Lord McNaughten stated the position as follows: When the memorandum is dully signed and registered, though there are only seven taken, the subscribers are body corporate capable forthwith of exercising all the functions of corporate company. Those are strong words; there is not period of minority on its birth, no period of incapacity. I cannot understand how a body corporate such as this made capable by statute can lose individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The company is at law a different person altogether from the subscribers… Nor are the members (subscribers) liable….[7]

On the above premise, it is submitted that the ratio settles the doctrine of corporate personality, which confers the toga of *personae juris* on a company. The doctrine created *personae juris* capable of enjoying legal rights, to wit: power to acquire property and dispose of same; having perpetual succession and common seal; limitation of liability of members, and power to sue and be sued in the company's name. In highlighting the foregoing position, the court in the case of *Lee v Lee's Air Farming*[8] and *DHN Food Distributors Ltd v Tower Hamlets LBC*[9] similarly held that

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[6] (1897) AC 22. In the case, Salomon, leather merchant and boot manufacturer in 1895 formed a limited company to take over his business. Salomon and six other members of his family subscribed to its memorandum for one share each, and two of his sons were appointed directors. The company paid about £39,000 to Salomon, £10,000 in debenture secured by a floating charge on the company's asset and £9,000 share of £1 each; the balance of £9,000 was paid to Salomon in cash. The business did not however prosper and when it was wound up a year later, its liabilities (including debenture debt) exceeded its asset by £8,000. The liquidator representing the unsecured creditors claimed that the company's business was in actual fact still Salomon's liability for debts incurred in carrying on the business and therefore Salomon should be ordered to indemnity the company against its debts and payment of the debt to him should be suspended until company's other creditors are paid. The trial judge agreed with the reasoning of the liquidator and he further held that all the subscribers of the memorandum (except Salomon) held their shares as mere nominees because Salomon's motive in forming the company was to use it as an agent to manage his business for him.

[7] (1897) AC 22, p. 51.

[8] (1960) 3 ALL ER 420.

[9] (1976) 3 ALL ER 462.

the shareholders of such companies are, *inter se*, separate from corporate legal personality.

The concept of corporate personality was, *inter-alia*, introduced to obviate circumstances which tend to attach all the debts and liabilities of a company on the individual members or directors. The doctrine therefore acts as a shield and helmet to such individual(s) who have shares or vested interests in the company. However, another dimension which cannot be overlooked was enunciated by Denning L. J. in *Bolton (Engineering) Co Ltd v Graham & Sons*[10] as follows:

A company may in ways be likened to a human body. It has a brain and never centre, which controls what it does. It also has hands, which holds the tools and act in accordance with direction from the centre; some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mud or will. Others are directors and Managers who represent the directing and will of the company and controls what it does….

The above assertion connotes the independent legal personality of a company as fundamental to the whole operation of business through companies. The legal personality concept thereof affects its structure, existence, capacity, powers, rights and liabilities. This reasoning was given approval in the celebrated case of *Lennards Carrying Co v Asiatic Petroleum Ltd*[11] where Viscount Haldane L.C said:

A corporation is an abstraction. It has no mind of its own anymore than it has a body of its own; its active and directive will must consequently be sought in the person of somebody who for some purpose may be called an agent but who is really the directing mind and will of the corporation, the very ego and center of personality of the corporation.

This ratio is in line with the decision earlier considered in Lee v Lee Air Farming Ltd[12] where the court held that Lee is an agent of company.

3.0 The Concept of Limited Liability in Corporate Management

The main idea behind the legal personality of a company is that it is separate from that of its members. The most important ingredient that flows from the separate legal personality clause is that of limited liability. This is given statutory cognizance in section 65 CAMA. Accordingly, any act of the members, the board of directors or of a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person. However, the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of

[10] (1934) 1 KB 57.

[11] (1915) A.C. 705 at 713 to 714.

[12] *Supra*

directors, or managing directors, as the case may be, had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of the irregularity. Besides, if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorized by the company's memorandum. Thus, the officers and members of an incorporated company are covered by the company's veil of incorporation and that veil cannot be lifted for the purpose of attaching legal responsibility or liability to its officers who are carrying on the usual business of the company, nor the individual members except to the extent of their unpaid shares or the amount they each undertook, *ab initio*, to pay in satisfaction of the company's debt in the event of the company being wound up.[13]

The concept of limited liability of an incorporated company is aimed at giving investors minimum insurance in their business over their own private lives. Therefore, the much a member in the company can lose is the amount paid for his shares and thus the values of his/her investment.[14] Thus, creditors who have claims against the company may attach only the corporate assets for the satisfaction of their claims as creditors and generally cannot proceed against the personal or separate assets of the members. This has the potential effect of curbing the investors' risk and enhancing their opportunities for gain. It is obvious that companies exist in the first place to protect their shareholders from personal liabilities for the debts of the firm. The concepts was invented in 17th century, and prior to this date, people were scared to invest in companies because any partner in a general partnership could be held responsible for all debts for the corporation. As the capital needed to finance the largest projects grew, and along with it the necessity of raising money, investors especially in the developing economies were reluctant to invest because of the risk involved in essentially guaranteeing the entire debt of the business entity.

In fact, the concept of separate legal personality goes hand in hand with the doctrine of limited liability. The main importance of the limited liability concept is that it protects the company and its members, as well as to facilitate commercial ventures in which the company may be interested in order to boost the economy.[15] The principle further operates to attract and encourage corporate investment, much needed in any

[13] *C.B. Ltd. v Intercity Bank Plc* (2009) 15 N.W.L.R. (Pt. 1165) p. 445 at 450; *Agbonmagbe Bank v G. B. Ollivant* (1961) 4 All NLR. p. 116; *Mailafia v Veritas Insurance* (1986) 4 N.W.L.R. (Pt. 105) 558; *Ogbodu v Quality Finance Ltd.* (2003) 6 N.W.L.R. (Pt. 815) 147; *Kurubo v Zach-Motisn (Nig.) Ltd.* (1992) 5 N.W.L.R. (Pt. 239) 102; *Yusuf v Adewuyi Brothers* (1991) 7 N.W.L.R. (Pt. 201) 39; and *Tuakli v N. B. C.* (1970) 2 All NLR 147.

[14] N. Hawke, *Corporate Liability*, (London: Sweet and Maxwell, 2000) p. 108.

[15] S.M. Bainbridge, 'Abolishing Veil Piercing', 26 *Journal of Corporate Law*, Spring, 2001 479.

society to speed up development. It is believed to be the spring board to raise managerial standards in a corporate organization. It goes without saying that it facilitates better investment strategies by the company in question.

4.0 The Jurisprudence of Separate Legal Personality Doctrine

Under the common law jurisdiction, the doctrine of piercing the veil remains one of the primary methods through which the courts mitigate the overreaching demands of the logic fulfillment of the concept of separate legal entity. The problem with finding some thread of principle through all the various court decisions basically stem from the false unity of the cases which, while involving vastly different underlying issues, are still linked with the metaphoric veil of incorporation. The application of the doctrine of separate legal personality in Anglo-Saxon jurisdictions is at the discretion of the courts as represented by the judges. This is not surprising, given that Ango-Saxon law is basically judge-made law.[16] The Nigerian court has at various times upheld the doctrine of corporate personality as it applies to corporate administration, governance and control. The principle was famously celebrated in the case of *Marina Nominees Ltd v Federal Board of Inland Revenue*[17] where the court per Aniagolu JSC (as he then was) stated as follow:

…the truth however is that it is a company registered under the Companies Act having its full legal status on the principles enunciated in Salomon v Salomon and Co. Ltd[18] and must be subjected to all incidents of incorporation.

What transpired in this case was that Peat Marwick Casselton and Co, a firm of accountants acted as secretary to the number of its client companies. In March, 1964, the firm incorporated the Marina Nominee Ltd, and 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 were employees of the holding company. A dispute arose between the company, Marina Nominees Ltd and the Federal Board of Inland Revenue as to whether the company should be liable to pay tax as income it earned and the Supreme Court held *inter-alia* that an incorporated company must be regarded as a separate entity from anyone of its shareholders and subject to all incidents of a company so registered under the Companies Act.

Jurisprudentially, within the Nigerian context, the underlying foundation upon which the above position was premised was handed down in the case of *Iyke Merchandize v Pfizer*[19] where the doctrine of juristic personality was generally appraised and recognised to include natural persons and incorporated companies. This doctrine was concretized in the management of incorporated companies with the attendant

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[16] *Ibid*.
[17] (1986) 2 NWLR (Pt. 20) p. 61.
[18] *Supra*
[19] (2001) NWLR (Pt. 53) p. 62.

incidents of incorporation especially within the Nigerian context. The court in the case of *A.C.B. v Emostrade Ltd* per Uwaifo JSC also held 'what was needed to be proved as to the juristic personality of the plaintiff was whether there was evidence that it was duly incorporated'.[20] Accordingly, upon production of certificate of incorporation, the company wears the elegant corporate personality cloak. The court in *Habib Nig Ltd v Ochete*[21] held that as from the moment of its incorporation, the company legally assumed a separate and distinct personality from the plaintiff and his wife as well as others behind it. It is thus submitted that from that moment, it puts on a corporate veil beyond which no one can penetrate except if lifted in a manner authorized by law. The doctrine further postulates that only a company can bring an action for any wrong done against it since it is a corporate person and has its own name by virtue of its incorporation.[22] The legal implication also appears to be that a company registered in Nigeria is a legal person and may sue and be sued in a Nigerian court.

Fundamentally, the shareholders are not the individual owners of the company's property and have no powers as individuals to dispose of the company's property. This in essence implies that the liability of individual shareholders is limited to the number of shares subscribed to and does not cover the unsubscribed assets of the shareholders since they are distinct from the company's assets. A company operates through its officers and agents who act as its alter ego. The ratio of Lord Denning in the case of *Bolton (Engineering) Co. Ltd v Graham & Sons*[23] is to the effect that a company can be likened to a human body with its organs that executes its functions. This was upheld by Aniagolu JSC (as he then was) when he quoted Viscount Haldane L.C's ratio in the case of *Leonard's Carrying Co. v Asiatc Petroleum Ltd*[24] in *Trenco Nig Ltd v African Real Estate Ltd*[25] to the effect that a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; it's active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent or its officers. It has further been held that as a legal person, a company can sue and be sued but the action must be in the name by which the company is registered. [26]

The doctrine separate legal personality has been statutorily recognised under the Companies and Allied Matters Act[27] thus:

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[20] (2002) NWLR (Pt 104) p 540.
[21] (2001) NWLR (Pt 54) p. 384.
[22] *Ramanchandi v Ekpenyong* (1975) 5 S.C. 29.
[23] (1915) AC 705 at 713-714
[24] (1978)1 LRN 146 at 15336
[25] (1977) 10 Sc 43
[26] *Njemanze v Shell B. P. Petroleum* (1966) 1 ALL NLR p.4.
[27] Cap. C20 Laws of the Federation of Nigeria 2010, section 37.

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

The Nigerian version of the organic theory was also jurisprudentially explained in the case of *Adeyemi v Lan & Baker Nig. Ltd*,[28] where the court held that one of the consequences of a company's incorporation is that a limited liability company only exists in the eye of the law as it can only operate by means of human beings. Usually, a company acts through its human agents such as directors, managers, and officers whose action can be attributed to that of the company. However, a person will be personally liable for a contract made in his own name without disclosing either the name of or the existence of a principal to the other contracting party even though he may in fact be acting on a principal's behalf. Once a person puts himself as a contracting party, whether as an agent or a principal, he will continue to be liable even after the discovery of the agency by the other party. The only condition in which such an agent will be free from personal liability is a clear and unequivocal election by the other contracting party that the searchlight to detect such an illegality or fraud is to attach vicarious liability on the principal alone.

The above assertion will give rise to a circumstance where the corporate shell will be cracked but before that, it will be apposite to appreciate the position in *Sotuminu v Ocean Steamship Nig. Ltd*[29] where the court held that a solicitor may institute an action in the name of the company without the company authorizing the action but the court has the power to have such suits struck out. This decision was restated by the court in *Ramanchandi v Ekpeyong*[30] to the effect that only the company can bring an action for any wrong done to it, since it now has its own name by virtue of incorporation. Varieties of exceptions to this sacred doctrine were statutorily codified in the Companies and Allied Matters Act (CAMA). For instance, where the interests of the shareholders demands that the affairs of a particular company should be investigated, the Corporate Affairs Commission can appoint an inspector to investigate the affairs of the company. The inspector, may if he thinks it necessary for the purpose of his investigation, investigate also the affairs of any other related company, and then report on the affairs of such other related company so far as he

[28] (1972) 12 S.C. 93
[29] (1975) 5 S.C. 29.
[30] *Supra*

thinks the result of his investigation thereof are relevant to his main investigation.[31] This provision is in consonance with the ratio per Denning L.J. in the case of *Norwest Holst v Secretary of State for Trade*[32] where section 16 of the UK Companies Act was applied. It is apposite to submit that the section was not meant to witch-hunt but the court has the power to have such suits struck out. Hence, the court buttressed this assertion to ensure that the veil is unveiled for accountability in the face of economic realities. In addition, a fair look at section 338 of CAMA elucidate on the dichotomy between holding and subsidiary companies in the face of lifting the veil so that subsidiaries will not hide under the toga of corporate personality of the holding company to perpetuate fraudulent practices or deprive the government of revenue accruing to her from the profit made. The section provides as follows:
Subject to subsection 4 of this section, a company shall for the purpose of this Act be deemed to be a subsidiary of another company if… the company is a member of it and controls the composition of its board or director, or holds more than half in nominal value of its equity share capital or the first mentioned company is subsidiary of any company, which is that other's subsidiary. [33]

It is therefore pertinent to pierce the veil of incorporation of a holding company and its subsidiaries to discover the actual financial return of either company. Be that as it may, the courts will not hesitate to unveil the mask of incorporation where it discovers that there exists reckless or fraudulent trading. In the Nigeria case of *Nathaniel Adeiyi v State*,[34] the court held that any business which appears to have been handled recklessly or with intent to defraud, the court held that any persons who knowingly were parties to the carrying on of the business in the manner aforesaid shall be personally liable for all or any of the debts or other liabilities of the company.[35] It is submitted that the work of the court has been made easy by section 506(1) of CAMA which provides that if in the course of winding up of a company, the act has been arrived on in a recklessly manner or with intent to defraud, the creditors of the company or creditors of any person for any other purpose, the receiver or liquidator or contributory of the company may, if it thinks proper to do so, declare that any person who were knowingly parties to the act aforesaid be made liable personally.

The court went further in *Yesufu v Kupper Int'I N.V.*[36] to hold that where a director is in the eyes of the law, an agent of the company, for which he acts, the general principle of agency will apply. The Supreme Court held that when a director enters

[31] Companies and Allied Matters Act, Cap. C20, LFN 2010, section 316.
[32] *Marina Nominees Ltd v. FBIR, Supra*
[33] Companies and Allied Matters Act, op. cit.,section 338(1).
[34] (1992) 4 NWLR (Pt. 248) p. 1.
[35] (1996) 5 NWLR (Pt. 248), p. 1.
[36] Failed Banks Decree No 18 of 1994

into a contract in the name of or purporting to bind the company, it is the company, the principal, that will be held liable, not the director. The director is not personally liable unless it appears that he undertook personal liability. For instance, a company's director cannot be liable for the loan granted to the company in good faith. Recent developments have shown that the 'Failed Banks Tribunal' was also empowered to lift the veil of incorporation. In the case of *Macebuh v National Deposit Insurance Corporation*,[37] the power of the tribunal to veil was provide in the judgment thus:

By virtue of section 3(3)(6) (ii) of Failed Banks Decree the power to lift the veil was vested in the tribunal and the corporate veil of a corporate body indebted to a failed Bank to determine the liability of its members who may be liable jointly or severally for the debts owed by the corporate body to the failed banks…[38]

The tribunal further opined that the power to lift the veil as provided above should be exercised where the tribunal is satisfied, by the evidence before it, that it is necessary to do so in the interest of Justice. It is therefore submitted in this case that once this subject is brought to the fore, no judicial body should hold tight the principle of corporate personality, where the interest of justice, convenience and evasion of tax obligation will render a person liable for the debt of a corporate body.

Procedurally, in *Gresham Assurance v The Registrar of Companies*,[39] the Nigerian Supreme Court held that the veil of incorporation can be lifted in order to determine whether a foreign company has a place of business in Nigeria or not. Furthermore, within the Nigerian context, it is worthy of note to state that section 290 of CAMA is an in-road lifting veil where the directors of a company fail to apply borrowed money for the purposes for which it was borrowed, they shall be personally liable. However, the intent to defraud must be proved before they can be liable. In consolidating the above statutory provision, the same Act (CAMA) under provides that where it appears that a company is being carried out in reckless manner, the veil of incorporation may be lifted especially where a company is sham or puppet of its controlling shareholders.[40]

5.0 The Impact of *Personae Juris* of Companies in a Developing Economy

The concept of separate legal personality obtained through the veil of incorporation and the limited liability it entails are at the core of company law, enabling enhanced business dealings with adequate protection for investors. This paper seeks to address two nagging issues. First is whether the veil of incorporation truly separate companies from the members and officers of the company. The second is whether piercing the veil serves its purpose in averting fraud and ultimately adding value to our developing economy. Recall, the doctrine of separate legal personality was established *Salomon v*

[37] (1973) 1 ALL NLR pt 1 pg 617

[38] (1964) NWLR 30.

[39] (1973) 1 All NLR (Pt.1) p.617.

[40] Companies and Allied Matters Act, *op. cit.* section 506.

Salomon. It entails the notion that incorporation sets a 'veil' between the company thus created and its incorporators, forming it into a separate legal person capable of holding property and being liable for its own actions and providing a shield for its investors to protect them from liability. As a consequence, property owned by the company will not be connected to its shareholders.[41] This has recently become a response to economic development and the need to ease transactions and provide security for creditors in order to permit companies to raise capital.

However this doctrine has not been without criticism. Strict adherence to the principle in *Salomon v Salomon* and reluctance to adopt a permissive approach have led to a wide scope for application of the rule and to the creation of a range of exceptional circumstances where the corporate personality could be ignored in order to identify the real culprits. This development raises the question as to the extent in which the applicability doctrine is still in effect as they negate the corporate veil's impenetrability and, thus, its certainty. Undoubtedly, the doctrine of separate legal personality is fundamental to good and effective corporate practice and management. The courts do not indulge in wide latitude to disregard the legal personalities of companies. It only states the parameters in which the veil could be pierced while maintaining the principle itself. The veil cannot be pieced outside of specifically set out precedent and statutory provisions.

On the second issue of whether the doctrine of lifting the veil has served its purpose, given the strict limitations imposed upon it. The phrase 'piercing the veil' refers to situations where the judiciary or legislature decide to overlook the separate personality of the company, in effect disregarding it and allowing the courts to look beyond and find personal liability with the members, directors or officers of the company for their actions. It is a mechanism to safeguard against misuse of the veil principle where the conditions for its application are fulfilled. Therefore, the courts have, in deserving cases, intervened to correct the potentially unjust outcomes derived from the strictness of the veil principle, allowing its overturning in the interests of justice. Arguably, this was done in the spirit of the rule rather than the letter, as to not allow a wrongdoer to abuse the principle which otherwise has tremendous economic benefit of boosting the confidence of investors. The ultimate purpose for piercing the veil of incorporation is to prevent the controlling shareholder of a company from excessively benefitting from advantages obtained through utilising the separate personality of a company.

At a general level, by establishing that corporations are separate legal entities, the principle in Salomon's case endowed the company with all the requisite attributes with which to become the powerhouse of capitalism. At a particular level, however, it was

[41] *Macaura v Northern Assurance Co Ltd,* (1925) AC 1.

a bad decision. By extending the benefits of incorporation to small private enterprises, Salomon's case has promoted fraud and the evasion of legal obligations. However, this article argues that the overall balance is positive.

The Salomon case firmly established that upon incorporation, a new and separate artificial entity comes into existence. At law, a corporation is a distinct person with its own personality separate from and independent of the persons who formed it, who invest money in it, and who direct and manage its operations. It follows that the rights and duties of a corporation are not the rights and duties of its directors or members who are, most of the time, obscured by a corporate veil surrounding the company. Indeed every system of law that has attained a certain degree of maturity seems compelled by contractual exigencies and the ever increasing complexity of human affairs to create persons who are not human beings. In fact, from a practical perspective, the separate legal personality of a company is often the reason why a corporation has been favoured for the conduct of commercial enterprise or social organisation. Accordingly, Gonzalo asserted as follows:

Companies will be desirable or necessary when the arrangements that are to pivot on them are not conveniently or realistically to be erected directly around individual human beings... The individual human being is fickle, short-lived, and difficult to organise into larger-scale economic and political associations on a permanent basis.[42]

Essentially, a company is an artificial person composed of natural persons. Being a legal artifice, however, the company is metaphysical in form rather than physical. Incorporation involves the interposition of a legal person between the natural persons who have interests in and control it, and the business activity to be undertaken. It is therefore imperative to establish commercial enterprises having the membership separate from the management.

Limited liability arguably reduces the costs involved in the separation of membership and control, and reduces the need to monitor management and other shareholders. The free transfer of shares with which limited liability is arguably linked facilitates the market for control. This acts as an incentive to management to perform efficiently. Limited liability also improves the information fed to the market place by the increased volume of transactions. It allows shareholders to diversify their holdings, and ultimately facilitates optimal investment decisions since the shareholders will imbibe a positive attitude to risk taking.

Primarily, a corporation enables the investing public to share in the profits of an enterprise without being involved in management. It also enables a single trader or a small partnership to carry on a business. Similarly, a corporation provides a structure

[42] G.V. Puig, 'Under the Concept of Separate Legal Entity', Murdoch University Electronic Journal of Law, Volume 7, Number 3 (2000), available at: http://www.austlii.edu,au/au/journals/MurUEJL/2000/32.htm/#n5, accessed on 28 September, 2016.

for joint venture; holding family assets; continuing trusteeship; fund management; cooperating with government enterprise; and, the co-enjoyment of property. Marshalling participants in large commercial enterprises and acting as a nominee to hold the legal title to assets are two other important functions. Corporate personality is essentially a metaphorical use of language clothing the formal group with a single legal identity by analogy with a natural person. Accordingly, Cardozo J said in the American case of *Berkey v Third Avenue Rly*: 'metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they often end by enslaving it.'[43]

Furthermore, it is also possible for traders not merely to limit their liability to the capital which they invested in the enterprise but even to elude any serious risk to the major part of that by subscribing for debentures rather than shares. Limited liability attracts small traders to the corporate form not because it represents an effective device with which to raise capital, but because it gives them access to an avenue via which to escape the 'tyranny of unlimited liability'. The principle is that a limited company's creditors must look at the capital, the limited fund, and that only. Limited liability discourages shareholders from monitoring and controlling their company's commercial ventures.

6.0 Conclusions

The doctrine of separate legal personality has become a universal concept. Its pertinence especially in developing economies is overwhelming as it enhances smooth and effective running of the business of the company. It indeed encourages promoters to engage in setting up incorporated companies on the strength that the arising liabilities, debts and other bugging consequences in the event of the company winding up can only be borne by the company and not the individual members. In Nigeria, the culture of impunity is prevalent. Since the members and directors are saddled with the control of the assets of the company, they would most likely demonstrate their propensity to diverting the property of the company to their personal use but for the restrictive principle of separate corporate personality. Indeed, the legislature can forge a sledgehammer capable of cracking open the corporate shell. And, even without statutory assistance, the courts have often been ready to draw aside the veil and impose personal liability on members and directors where to apply the *personae juris* principle strictly would lead to injustice, inconvenience or damage to investors, the general public, government finances and the economy. The exceptions permitting piercing the veil are strict and their scope limited. For a court to lift the veil it must not only disregard the paramount principle of separate legal personality but should also consider the duties owed by directors to the company as a whole, and it is not for the courts to interfere in the internal management of a company. Therefore, applying both these principles of separate legal personality and lifting the veil of incorporation is an exercise of balancing different interests of justice and duties, alongside the toga of *personae juris* principle which is a cornerstone to company law.

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[43] (1926) 244 NY 84 at 94-5.