



BALANCING LEGAL FICTION AND JUSTICE: RETHINKING THE DOCTRINE OF PIERCING THE CORPORATE VEIL

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Abstract

The doctrine of piercing the corporate veil acts as a crucial exception to the principle of separate legal personality, a fundamental aspect of company law. In Nigeria, although this principle is firmly established through both statutory laws and judicial decisions, courts have sometimes pierced the veil to prevent fraud, illegal activities, or abuse of the corporate structure. However, the absence of clear and consistent criteria for applying the doctrine has caused uncertainty and inconsistent enforcement. This paper critically explores the development and use of veil piercing in Nigerian law, evaluating its effectiveness in balancing the legal fiction of corporate identity with the needs for justice and accountability. Using case law, statutory review, and comparative perspectives, the paper advocates for a more consistent and principled approach to ensure the doctrine remains a reliable tool against corporate misconduct without undermining the legitimacy of incorporation.

KEYWORDS: Corporate Personality, piercing the corporate veil, legal fiction, Judicial discretion, corporate accountability, Veil lifting, corporate veil doctrine.

1.0 INTRODUCTION.

The evolution of the doctrine of corporate personality is one of the judicial innovations and milestones that not only fostered commercial interactions among people but also ensured commercial convenience and fostered trust among business people. This innovation has also solved myriad of problems which would have demystified corporate administration were it not for its evolution.

The court, in the case of P.A.I.S.C. Ltd v Jkpez Co. Ltd,¹ held that a company is an aggregation of persons carrying out commercial or industrial enterprise. A company attains maturity at the date of its birth and maintains a separate life from the persons who incorporated it. When a company is incorporated, it becomes a legal personality and possesses power akin to those of a natural person of full age and capacity, for example, entering

¹ (2010) 3 N.W.L.R. (Pt. 1182) p. 449

into legal transaction either with natural person or with another company. It has the capacity to acquire, own or dispose of a property and above all, it has the capacity to sue and be sued on its corporate name. In this wise, the subscribers will not be liable for any action done by the company. This presupposes that is the company is liable for its own actions. It goes without saying that the essence of corporate existence of incorporated companies is to remove all the necessary clogs on the wheel of business. The common law principle as was enunciated in the Salomon case was captured by the Companies and Allied Matters Act.²

The case of *Salomon v. Salomon*³ is the locus classicus for the doctrine of legal personality. In this case, Aron Salomon a leather merchant and wholesale boot manufacturer was the owner of a profitable business, and in order to obtain the advantages of limited liability converted his business to a company. The nominal share capital of the company was £40,000, divided into £1 shares. Of that amount he, his wife and his five children had subscribed one share each and a further 20,000 shares were issued to Aron Salomon. No other shares were issued. Salomon received also debentures to the amount of £10,000 in part-payment by the company for the business. A year after the formation of the company, it got financial difficulties, the holder of the debentures appointed a receiver and the company went into liquidation. The court was asked to decide whether the debentures originally issued to Salomon was valid and had priority over the unsecured creditors who denied them priority on the ground that the company was a “one-man business” and so, was a sham. The trial court and the Court of Appeal agreed with the arguments of the unsecured creditors but on the appeal to the House of Lord, the court held Salomon and Salomon Limited were two different people, hence, Salomon although, was the brain and mind of the company should not be denied the right vested on him by law since the law did not prohibit the formation of a company by people who have relations with one another.

2.0 CONCEPTUAL CLARIFICATION OF LIFTING THE VEIL

The word “lifting the veil” “piercing the veil” or going behind the corporate veil have been often used interchangeably and the difference that exists between them is only based on semantics. The Black’s Law dictionary defined piercing the corporate veil as “the judicial act of imposing personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation’s wrongful acts.”⁴

In the case of *Littlewoods Mail Order Stores Ltd v. I.R.C*⁵ the court per Lord Denning held that:

“the doctrine in *Salomon v. Salomon & Co. Ltd* has to be watched very carefully. It has been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can and often draw aside the veil. They can, and often do, pull off the mask. They look to see what really lies behind. The legislature has shown the way with group accounts and the rest. And the courts should follow suit.”⁶

In Nigeria, the Company and Allied Matter Act (CAMA) is emphatic under several sections that provide for how the directors and managing directors should carry the affairs of any incorporated company under their care.

Accordingly, a managing director who carried out any transaction that he has no power to do, do that to his peril and will be personally liable to any third party he must have transacted the business with. It is a trite law that the veil of the company can be lifted either as provided by the statute or under courts discretion. As regard lifting the veil of incorporation under the discretion of the court, it had been held in several cases that the guiding principle upon which the court should base their judgment should be the business realities of the day. A director will not be liable for both criminal and civil wrong done in the course of the business of the company. But if such director was reckless or negligently carried out such transaction, he will be liable under the case law.⁷

² Companies and Allied Matters Act, Cap. C20 Laws of the Federation of Nigeria, 2020, section 37

³ (1897) AC 22; See, *Farrar v. Farrars Ltd* per Lord Lindley (1888) 40 Ch.D 395; See, Funso Adaramola, *Basic Jurisprudence* (1st edition, Sa-bast Printing & Publishing Co., Lagos) p. 132 on jurisprudential analysis of the concept of legal personality.

⁴ Ed. Bryan Garner, *Black’s Law Dictionary* (9th edition, Thomas Reuters Publishers, USA 2008) p.1264

⁵(1969) 1 WLR 1241

⁶See, Joseph E.O Abugu, *Foundations of Corporate Law* (University of Lagos Press, Lagos, 2011)

⁷ Olusegun Yerokun, *Casebook on Company Law: Comments and Cases* (Nigerian Revenue Project Publications, 2015) p. 130

3.0 INSTANCES WHEN THE VEIL OF INCORPORATION IS LIFTED BY STATUTE

There are two situations that would warrant the court to lift the veil of incorporation. The first is, when the statute says so i.e. statutory lifting of the veil. The second is then the court would lift the veil i.e. judicial lifting of the veil. These would be discussed in turn.

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

Some of the Statutory Instances are highlighted as follows:

1. Where the number of the directors or members fall below that required by law: By the provision of the Companies and Allied Matters Act,⁸ if a company carries on business without having at least two members and does so for more than 6 months, every director or officer of the company, during the time that it so carries on business after those six months who know that it is carrying on business with one or no member shall be liable jointly and severally with the company for the debts of the company contracted during that period.
2. Where donation is made to a political party: The CAMA⁹ prohibits a company from giving or exercising power either directly or indirectly to make donation or gift of any of its property or funds to a political party or political association, or for any political purpose. If a company in breach of this section makes.
3. Personal liabilities of directors: section 290 of CAMA states that where a company receives money by way of loan for specific purpose; or receives money or other property by way of advance payment for the execution of a contract or project; and with intent to defraud, fails to apply the money or other property for the purpose for which it was received, every director or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received.¹⁰
4. Publication of Company Name: section 548(1) of CAMA states that every company shall after incorporation ensure that it paints or affix and after painting and affixing ensures that remains painted and affixed, the name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letter easily legible.

4.0 THE INSTANCES WHEN THE JUDICIARY CAN LIFT THE VEIL OF INCORPORATION

There are several instances, where the judiciary has lifted the veil of incorporation. There would be an analysis of some of those occasions. Some of them are: agency, fraud, and sham, public policy, guarantee etc. They are discussed as follows:

1. Fraud and sham: the courts have often never hesitated to lift the veil of incorporation where there are instances of fraud or where the company is merely used as a sham or puppet of another. It is a common principle in equity that it will never allow the law to be used as an instrument of fraud. In the case of *NDIC v. Vibelko Nigeria Limited*¹¹, the court held that the veil of the company would be lifted if the company is used as a sham by the director to avoid recognition in the eyes of equity.
2. Illegality: the court will lift the veil of incorporation where the purpose is for illegality. This is because a company cannot be used to perpetrate illegality. In the case of *Merchandise Transport Ltd v.*

⁸ Section 93 Cap C20 LFN 2020

⁹ S 38(2) CAMA LFN 2020, see *Olusegun Obasanjo v. Mohammed Dikko Yusuf*, (2004) 9 NWLR (Pt. 877) 144

¹⁰ Emeka Chianu, *Company Law*, (1st edition, Lawlords Publication, 2012) pp. 303 - 321; See, *Olakunle Orjo*, *Company Law and Practice in Nigeria* (3rd edition, Mbeyi & Associates (Nig) Limited, 1991) p. 87

¹¹ (2006) All FWLR (Pt. 336) 386 @ 399; See, *Adeyemi v. Lan Baker* (Nig) (2000) 7 NWLR (Pt. 663) p. 34

British Transport Commission,¹² where the parent company wanted to obtain licenses for its vehicles and after studying the regulations for obtaining licenses, discovered that it would not succeed if the application was made on its own behalf. It therefore, transferred the vehicles to its subsidiary company which applied for the license but the licensing authorities refused to grant it because it was held that both company constituted a single commercial unit. In the case, although, the parent company intended to defeat the purpose of the regulation, yet, the court refused them. The court held that a company would not be allowed to be used for illegal purposes.

3. Public Policy: The court would also lift the veil of incorporation in circumstances where public policy is involved. In the case of *Daimler Co v. Continental Rubber*¹³, the court readily lifted the veil of incorporation to ascertain the character of those managing the affairs of the company. There was a law in Britain that company with enemy character should not be allowed to trade in the county. The court held that the company possessed an enemy character, since all its directors and shareholders except one were German.

4. Agency: this is another instance where the court can lift the veil of incorporation. The courts often use the basic principle of agency to lift the veil of incorporation. In the case of *Re: F.G. Films Ltd*, an American film company wanting to enjoy the privileges accorded to British-made films incorporated a company in England. The company had a capital of £ 100 divided into £ 1 each, 90 of which were held by an American and 10 by a Briton. The company was wholly financed by the American company with £ 80,000. The court lifted the veil of incorporation to determine the shareholders and held that the company was merely an agent of the American company and cannot properly be described as a British company.

5.0 CONCLUSION

The company, being a separate legal entity, can only act and think either through corporate structures which are defined in the company's constitution as having authority, such as the board of directors or committees of the board or through individuals who have the requisite authority by the operation of the principles of agency and vicarious liability as was enunciated in *Meridian Global Fund Management and Asia Ltd v. Securities Commission*¹⁴. Accordingly, the court held that these principles could not always apply where a statutory provision required a state of mind expressed in terms of a natural person as is generally the case in criminal law.

Where the court needs to ascertain some physical or mental attitude then it is necessary to look at the human management involved in the governance of the company. In attributing physical or mental characteristic to a company, reference must be made to the corporate structures or specific human individuals involved. It is therefore, recommended that the statutory grounds for ignoring the corporate entity in order to attach responsibility on the individual culprits should be widened to accommodate all perceived incidents of crime and tort. The fact that a company is conferred as much powers as a natural person of full capacity is no subterfuge to circumvent the civil and criminal responsibilities of wrongs and offences committed in satisfaction of the personal avarice. It goes without saying that the essence of disregarding the corporate personality of a company is to avoid fraud.

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¹² (1933) Ch. 935

¹³ (1916) 2 A.C. 307

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