Revisiting the Principle in Foss V. Harbottle: A Comparative Analysis of Nigeria and the United Kingdom

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Abstract

One of the effects of the epic decision of corporate personality decided in Salomon v. Salomon is such that companies are governed by the principle of majority rule. That is corporate decisions are taken by the majority of the owners of the company, only shareholders with a majority of voting shares makes decisions as the company. This is because though a company enjoys a distinct personality in the eyes of the law, it is however an abstraction that acts through its constitutional organs viz the Board of Directors, the general meeting and the managing director as the case may be. The General Meeting being the supreme body as it controls the board of directors through the appointment and removal of Directors. Decisions at the general meeting are taken by the majority of shareholders which can be by a simple majority. However, in order to prevent abuse by majority shareholders and also to safe guard the investments of minority Shareholders whose interest may not be protected, the principle of minority protection evolved. The rule originally developed as exception to the common law decision in the case of Foss v. Harbottle has been through variations and reforms in different common wealth jurisdictions. This paper examines the protections given to minority Shareholders in Nigeria and the United Kingdom and argues that there are similarities in the protection given to minority shareholders in the two jurisdictions. However, they are better protected in the United Kingdom especially in relation to the relief of derivative action and therefore recommends reform of the Nigerian company legislation.

Keywords: majority shareholers, minority shareholders, Nigeria, United Kingdom

Introduction

A company though a "person" in the eyes of the law, is however in the real sense an abstraction which can do nothing by itself but act through its human agents. Thus, a company acts through its constitutional organs[1]which are the Board of Directors, the General Meeting and the Managing Director. In fact, almost every action of a company can be ratified via a resolution made by majority of its Shareholders at the General Meeting and such resolution is considered to be the decision of the company. This is known as the principle of majority rule. This principle originally developed in the old common law case of *Foss v. Harbottle*[2]where Foss and Turton, two minority Shareholders of Victoria Park Company, owners of Victoria Park, Manchester brought an action for themselves and on behalf of other Shareholders except the defendants Directors on the ground that the company's property was misapplied and asking that the defendant Directors be held accountable and the court should appoint a receiver for the company. The court held that the company was the proper plaintiff to challenge a wrong done to it. Wigram VC held that it was wrong to assume that any member of a company can sue in the name of a company as the company and its owners are different under the law. He held further that the circumstances of the case did not justify a departure from that rule.

[1] Alan Dignam, Hicks & Goo's Cases & Materials on Company Law, Oxford University Press, 2011 7th edition, p.424

[2] (1843) 2 Hare 461 CD

The rule was further reiterated a century later in *Prudential Assurance Co v. Newman Industries Ltd*[3]where the English Court of Appeal held that the company was personally liable for its torts and contracts and the shareholder's liability is only limited to the extent of his investments through shares in the company. It held further that shareholder's powers are exercisable through votes at general meetings.

This rule is hinged on two fundamental Legal Principles: the Principle of Corporate Personality which is foundational to the proper Plaintiff/*locus standi* rule. Corporate Personality confers legal recognition on an entity separate from that of its owners and managers.[4]On *locus standi*, it is a settled principle of law that a person must have a right to bring an action; it is the ability of a party to show a connection to the action being challenged.[5]The second principle is the majority rule which is to the effect that if the wrong deed is one that can be ratified by a simple majority, the court will not interfere. Jenkins L.J in *Edwards v. Halliwell*,[6] held that the idea of the decision in *Foss v. Harbottle* is hinged on the proper plaintiff rule and this power it exercises through its members in general meeting or the Board of Directors.

It can be argued that the justification for the rule in *Foss v. Harbottle* is noble as it prevents multiplicity of actions and allows the company to focus on its business without distractions from legal suits.[7]It also help entrench corporate democracy where by the rule of the majority is supreme.[8]However, it is not without some limitations. One is that it makes individual access to court difficult and this might result to less litigation than necessary for the overall interest of the company.[9]Besides, there is also the likelihood that the concentration of powers in the hands of a small majority may lead to an abuse as absolute power corrupts absolutely. This is especially true in private companies as minority Shareholders are better protected in public companies since it is easier to just sell off their shares even if at a loss[10]. Thus, in order to prevent the likely abuses that a minority Shareholder might suffer because of this rule, Common Law courts developed exceptions and protects the interest of minority shareholders in certain circumstances.

Exceptions to The Principle in Foss V Harbottle

Lord Jenkins LJ in *Edwards v. Halliwell*[11] highlighted four instances that constitute Common Law exceptions to the rule in *Foss v. Harbottle*. In that case, some of the members of a Trade Union sued the Executive of the Union for increasing fees successfully. Under the Union's Constitution, such alteration could only be done by two thirds majority. However, the purported increase was done via a resolution passed by a Delegate meeting in obvious violation of the Union's Constitution. In granting the case of the plaintiff, Jenkins LJ held that the rule in *Foss v. Harbottle* will not be appropriate if the action done is ultra vires the company because there will be no justification for the majority to ratify. Also, where the act done is a fraud against the minority Shareholders and those responsible control the Company; thus there is no hope of the Company as the proper Plaintiff suing to remedy the wrong. The third exception given is that when the act is a violation of the provisions of the article with regards to the requirement of special majority which was the situation in the instant case. The rationale for this is probably to discourage the Company from getting away with continuous breach of its Constitution. The last exception is when the rights of individual members are affected.

[3](1982)1ALL ER 354

[4] See Salomon v. Salomon & Co. Ltd (1897) AC 22, See also section 37, Companies and Allied Matters Act, Cap C20 L.F.N 2004

[5] See https://definitions.uslegal.com/i/locus-standi/ accessed on 18th December, 2018

[6](1950) 2 ALL ER 1064, C.A

[7]Hicks and Goons, p.432

[8]This is also known as Shareholders democracy.

[9]ibid

[10]Hooks and Goos, pgs 424-425

[11]supra

Thus, from the holding of Jenkins LJ supra and a long line of cases decided thereafter,[12] it seems settled that the Common Law exceptions are:

i. When the act is ultra vires to the company
ii. When the act is a fraud on the minority and the majority are in control
iii. When the act is a violation of the requirement of the article for a special majority
iv. When members personal rights are violated.

Thus, in *Prudential Assurance Co Ltd v. Newman Industries Ltd (No2),*[13]minority Shareholders sought to bring derivative action on behalf of a Company alleging that fraud had been committed against the Company and the majority are in control. The Plaintiff was an investor and minority Shareholder in the defendant. It sought a derivative action against two of the Directors of the defendant for allegedly defrauding the Company. The Court of Appeal reiterated that a minority shareholder must prove Prima facie that it is in the ultimate interest of the Company to sue on behalf of the Company and that the Company is entitled to the relief claimed.[14] In *Esmanco (Kilner House) Ltd v. Greater London Council*,[15] a minority Shareholder initiated an action on behalf of the Company to prevent the majority from executing a resolution made which had the effect of depriving the Company a right of action under a contract. The court restated that the majority must not perpetuate fraud on the minority and should act in the interest of the Company.[16]

Earlier in *Cook vs. Deeks,*[17] the Directors improperly used their positions as managers and obtained for themselves a contract which should have gone to the Company. By virtue of their position as majority shareholders, they secured the passing of a resolution at a general meeting declaring that the Company had no interest in the contract, thereby ratifying and approving what was done. In an action by minority shareholders, the court held the ratification invalid as the benefit of the contract belonged in equity to the Company and the Directors ought to account for it.

Remedies Available to a Minority Shareholder in the United Kingdom.

Irrespective of the exceptions highlighted above, the Common Law courts have developed some palliative measures to a Shareholder who feels aggrieved or cheated by the majority decision. In the old English case of *East Pant Du United Lead Mining Co. vs. Merrywheather,*[18] the owners of a derelict mine formed a Company and sold the mine to it for a substantial sum. The outside Shareholders sought to relieve the Company of the purchase and to recover the money paid to the sellers. An action was commenced in the name of the Company but was dismissed when the miscreants secured, through the exercise of their votes, the passing of a resolution directing that the Company should discontinue the proceedings. A Shareholder then started another action in the name of himself and all other shareholders, except the fraudulent Directors. It was held that, notwithstanding *Foss vs. Harbottle*, the remedies available to personal and representative actions are either injunction or declaration.[19]

[12]See Pavlides v. Jensen (1956) Ch 565, Regal (Hastings) Ltd v. Gulliver (1962) 2 AC
[13](1980) 2ALL ER 841, (1981) Ch 257 Chancery Division CA
[14]See also <http://www.lawteacher.net/free-law-essays/company-law/shareholders.coy.shares.php?vref=1 accessed 31st October, 2018
[15](1982) 1 ALL ER 437
[16]Facts as reported in O. Orojo, Company Law and Practice in Nigeria 3rd edition Mbeyi& Associates, 1992 p.206
[17] (1916) 1 A.C. 554
[18](1864) 2 H. & M.254.
[19] However, the remedies for bringing a derivative action are more thorough.

It must be stated that the while the Common Law is a major source of the Company Law of the United Kingdom, the Company Act 2006[20] also plays a significant part in the regulation of Company affairs. Thus, remedies for aggrieved minority Shareholders in the United Kingdom are both statutory and the Common Law remedies as there are provisions in the Company's Act which seeks to protect the rights of minority shareholders. It can safely be said that the Common Law remedies have been given statutory validation as they have been codified and modified in the Act. For example, the Common Law derivative claim as used in the case of *Cooks v. Deeks*supra[21]is given statutory backing in section 260 of the Company Act although with some variations. By the provisions of section 260, a derivative claim can succeed even if the act complained of does not constitute a fraud on the minority. Also, the Common Law condition that the wrong doer must be in control of the company is no longer a requirement[22].Section 260 recognises two arms to the derivative action viz brought pursuant to section 994 which seeks to protect members against unfairly prejudicial actions[23] and that arising out of an act or omission which constitutes breach of duty by a director or negligence.[24]In addition, permission of the court must be got before a derivative action can be initiated.[25]

In addition, section 263 provides guidelines which helps the court to decide whether or not permission for instituting or continuing a derivative action should be given. Factors like whether or not the aggrieved member is acting in good faith, whether the act complained of will be authorised or subsequently ratified as the case may be, whether the member is acting with a view to promote the success of the Company and whether a personal action would suffice.[26] As a result of the modifications provided in the Act, some of the erstwhile cases decided under the Common Law derivative claim may be decided otherwise today.

Another remedy available to minority Shareholders in the UK is the unfair prejudice remedy which is also both a Common Law and statutory remedy.[27]It gives protection to a minority Shareholder where the Company's affairs has been managed in a way that is oppressive and unfairly prejudicial to the interest of such a minority Shareholder.

As stated in section 996 of the Act, a Shareholder can petition the court for an order alleging that the affairs of the Company are being or have been managed in a way that is unfairly prejudicial to the interests of all or some of its members. Common allegations made in petitions under section 994 are that a minority has been prevented from management; assets misappropriation; hoarding information, wrongful increases in share capital, over or under payment of dividends. It should be noted that the statutory remedy of unfairly prejudicial is wide as both oppression and unfairness must be proved. Also, the act complained of need not be illegal so long as it has an unfairly prejudicial effect.[28]Once it is established that an act is unfairly prejudicial, the court has the power under section 996 to make any order it thinks appropriate. The power is such that the court can even grant a relief that is the petitioner did not seek. Stanley Burnton LJ highlighted in *Re Neath Rugby Ltd (No 2)*[29] that the court has the discretion to give any order it deem appropriate irrespective of the fact that the petitioner did not ask for it.

It is submitted that court can even award damage in favour of the petitioner against the Directors. No doubt, the unfairly prejudicial remedy as modified by section 996 is a potent means by which the rights of minority shareholders are protected.

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[20] The Company Act 2006 is the main legislation regulating company law in the UK in addition to the Common Lawand it contains a substantial framework for the protection of minority shareholders rights.

[21]In this case, the controlling shareholders committed a fraud on the minority.

[22]Hicks and Goons, pgs 431-432

[23] Section 260 (2)b

[24]Section 260 (3)

[25]Section 261

[26]See generally section 263

[27]section 994 of the Companies Act 2006.

[28] See Hooks and Goos p.447

[29][2009] EWCA Civ 291, [2009] 2 BCLC 427

Another remedy available to an aggrieved minority shareholder is a petition for winding up of the company. This remedy is provided for under section 122(1)g of the Insolvency Act 1986. It empowers a court to wind up a company if the court believes that it is just and equitable to do so. Section 125 provides guidelines on what the court considers in giving a winding up order to the effect that the court should consider whether the petitioners are entitled to a relief and that in the absence of any other relief, winding up will serve the justice and equity of the case. Section 125 however has a caveat that the court can refuse to wind up a Company if there are other available remedies. Thus, winding up will be a relief of last resort.

It should be stated however that the remedy of winding up as provided under the Insolvency Act is seldom used or as evident in the wordings of the Act, not intended to be frequently used. The discretion given to the court not to grant the order if there are other remedies available is proof that it is a remedy of last resort. Besides, the ground of "just" and "equitable" can actually be covered under the unfairly prejudicial remedy, after all what is unjust is unfair, the words are just a matter of semantics. This seems logical as the essence of regulating company's affairs is not to stifle the Company's growth but rather to ensure that it continues to exist but acts in acceptable ways. One of the cases decided under this provision is *Ebrahimi v. Westbourne Galleries Ltd*[30] where the Plaintiff and one other formed a Company after successfully running a business for years. The new Company Westbourne Galleries Ltd took over the business. The two erstwhile partners were the only Directors and equal Shareholders. After a while, the other Director's son joined the company becoming a Director Shareholder. The Plaintiff thus became a minority. There was a disagreement between the Parties and the Plaintiff and the Plaintiff was removed from the board. Hence the petition which succeeded as the House of Lords was of the view that the just and equitable thing to do was to dissolve the association by winding up.[31] It must be stated that this case was decided before the reforms and modifications of the unfairly prejudicial remedy in sections 994-996. Thus, if the circumstances of the case were in present times, the probability is that the minority shareholder would have succeeded under 994.

Protection of Minority Shareholders Under the Nigerian Company Law

Nigeria's company law is essentially statutory. Hence, the Companies and Allied Matters Act 2004 (CAMA) is the major legislation regulating corporate affairs in Nigeria. It recognises the principle of corporate personality as it states in section 37 that when a company becomes incorporated, it becomes a person in law.[32]However, it recognises the fact that a Company is an artificial person and can only act through its natural persons. Such natural persons are typically the Members or Directors of the Company who are tasked with the day to day organization of the Company and are expected to act in the best interests of the Company. Thus, section 65 provides that actions done in the General Meeting, by the Managing Director and the Board of Directors in the course of the Company's business shall be treated as that of the Company.

Consequently, decision making is done in a democratic manner i.e. issues are discussed and put to vote in meetings and resolutions passed either unanimously or by a majority vote; giving vent to the rule of the majority even though minority Shareholders are given an audience prior to any major decision relating to the Company.

Generally, the Nigerian legal system is greatly influenced by the British Common Law as a result of it being a former British Colony.[33]Hence, Section 299 of CAMA seems to be the codification of the rule in *Foss v.*

[30](1973) ac #^) HL

[31]Facts as reported in Hicks and Goons p.

[32] See K. O. Akanbi, Perspectives on the Legacy of Salomon v. Salomon on the Nigerian and Malaysian Company Laws. Legal Network Series 1LNS (A) IVii; 1-28 available online athttp://www.newcljlaw.om/public/default.asp?apge=subscription

[33]ibid

Harbottle[34] as it provides that only a Company can initiate an action to remedy a wrong or irregularity done to it. However, the provisions of section 299 have been made subject to some other provisions of the Act.

This rule has been given judicial validity in a long line of cases even extending it to unincorporated associations.[35]In *Abubakri v. Smith*[36], the rule was applied to Jamat-Ul-Muslim of Lagos[37] on the ground that the Association was a legal entity with the capacity to sue and be sued. An interesting twist to the rule can be seen in the case of *Shell Petroleum v. Nwaka*[38] where Nwaka, an employee of Shell Petroleum Company. brought an action against it to ask for among other things, a declaration that Shell was engaged in fraudulent expatriate quota. He had earlier been dismissed by Shell. A preliminary objection was raised by Shell on the ground that he had no Locus standi. This objection was rebutted by Nwaka relying on *Foss v. Harbottle* that he was fighting for the interest of other Nigerians from oppression by Shell. The case went up to the Supreme Court which agreed with the fact that the rule was applicable.

In *Alex Oladele Elufioye & Ors v. IbrahimHalilu & Ors*, [39]the Supreme Court gave a justification of the rule when it held that the justification for the rule is because the Company acts through majority decisions and the majority can ratify the wrong or irregularity complained of so long as such wrong is intra vires the Company, hence there is no need for the court to ordinarily interfere.

In this case, members of a Trade Union brought and action against the trade union and its officers seeking some declarations and injunctions. Meanwhile, the Constitution of the Trade Union contained a clause which allowed members to initiate actions whenever there is a breach of any of the constitutional provisions. The court held that based on the clause in the Constitution, a member can institute an action to challenge breaches of the Union's Constitution notwithstanding that such breach affects the individual's rights.

Exceptions to the Rule in Section 299

Like the position under the Common Law, there are exceptions to the rule in section 299 and these are found in sections 300.

Section 300 provides six instances when the rule as stated in section 299 may be jettisoned. It provides[40] that when a Company enters into an illegal or Ultra vires act, a minority Shareholder can bring an action. This provision should be read together with sections 38 and 39 which also forbids Companies from exercising some powers and which makes both the Company, officers of the Company or any member who voted for the breach to be jointly and severally liable. Therefore, the majority cannot ratify any conduct of the Director that falls within this subsection. Similarly, the Directors cannot bind the Company with their acts; neither is the company going to be liable or able to ratify such illegality.[41]

In *Ohanenye & Ors v. Ohanenye and Sons Ltd & Anor,*[42]the 2ndrespondent as Plaintiff along with three (3) others sometimes in 1970 were the subscribers to the Memorandum and Articles of Association of the 1st respondent. Around 1994, the Shareholders and Directors of the Company were recomposed leaving one *Cyril Ohanenye* (deceased) and the 2nd respondent as the only Shareholders and Directors of the 1st respondent. In 1998, *Cyril Ohanenye,* who doubled as Chairman/Managing Director of the 1st Respondent, died, leaving the 2nd respondent as the only Shareholder and Director of the 1st respondent. According to

[34] Nigeria's past history as a British Colony means that the influence of the English common law is still evident in its legal system as the Common Law remains one of the sources of the Nigerian law. See K. O. Akanbi supra

[35]Mbene v. Ofili (1968), 1 ALR Comm 235; (1968) NCLR 293

[36] (1973) 6S.C. 31

[37] Lagos located in the South West is one of the thirty-six States in Nigeria and the former capital of the country. It is often referred to as the commercial capital of Nigeria

[38](2003) 6NWLR, Pt.815, 184

[39](1993) 6NWLR (Pt.301)570

[40]Section 300 (a)

[41]NIB Investment W/A vs. Omisore (2006) 4 NWLR (Pt. 969) p. 172 at 198.

[42] (2016) LPELR-40458(CA)

the 2nd Respondent without his knowledge and consent, the Defendants/Appellants began to dabble into the affairs of the 1st Respondent. First, they allegedly rented out the 1st Respondent's property and made false forms Co2 and Co7 of the 1st respondent. They were also alleged to have appointed themselves as members and Directors of the 1st respondent. The Appellants/Defendants acknowledged that the 1st and 7th Appellants/Defendants were not initial subscribers to the Memorandum and Articles of Association of the company. Yet, they still averred that by 1999 they had acquired the status of Subscribers and Directors of the Company and with the consent of the 2nd respondent. According to them, the 1st respondent's incorporation was conceived from efforts and investments of its deceased former Chairman/Managing Director, Cyril Ohanenye and the 1st Appellant who was his wife. They also argued that the 2nd Respondent and the 2nd – 7th Appellants are siblings and uterine brothers while the 1st appellant being their mother and the Late Cyril Ohanenye their father. They also averred that the 2nd respondent had knowledge of, and gave his consent to the renting of the 1st respondent's property. However, not in contention by both parties is the fact that the 1st respondent is a limited liability company within the contemplation of the Companies and Allied Matters Act for the purpose of carrying on business and maintaining this suit. The appellants had predicated their issue on the fact that membership of the company had fallen below the minimum prescribed by law which should be not below two (2) at all times. The Court of Appeal even though the matter before it was an interlocutory application on the competence of the suit, while analysing the issue and determining who the majority and minority Shareholder is held the opinion that the 2nd Respondent/Plaintiff is the minority Shareholder. However, unanimously held that a minority Shareholder has the right to sue to redress what he perceived to be fraudulent practice by the majority in the affairs of the Company.[43]

Another exception given in section 300 is when a Company does by ordinary resolution any act which by its constitution or by the provisions of CAMA ought to be done by special resolution.[44] Ordinary resolution is made by simple majority of votes of members of the Company entitled to vote, either personally or by a representative at a General Meeting. It is the common mode used to approve the ordinary business of an Annual General Meeting of a Company.[45] While special resolution requires three-fourths of votes cast.[46]

Section 300 also provides in (c) that the rule in 299 be jettisoned when the individual right of a member is affected. Generally, members of a company enjoy some statutory rights as stated under the CAMA which even the Company through its majority cannot abrogate. For example, section 81 provides for rights attached to membership in respect of attending and speaking in the general meetings subject to the proviso therein. It seems this provision gives credence to the principle of corporate democracy which means that while the majority will have the way, the minority is allowed to say their minds. Also, a member is entitled to a notice of general meeting. Failure to give him a notice of the meeting which he is qualified to receive will annul the meeting except such failure is a fortuitous oversight. Other membership rights include the right to dividend where it is declared, the right to redress against oppressive and unfair actions and rights to apply to the court or Corporate Affairs Commission where his right is infringed. In *Iwuchukwuvs. Nwizu,*[47] the Supreme Court *per Adio JSC* re- emphasised that the fact of shareholding confers some rights and privileges on the holder. Thus, unless otherwise provided by CAMA or the Memorandum and Articles of Association of the company, he has the right to sell, mortgage, or otherwise dispose of his shares; he is also entitled to receive dividends on the shares in his name and to retain the dividend received.

It is also provided in 300(e) that where a meeting is not called in time to redress the wrong done either to the Company or the minority, then the principle of majority rule be jettisoned. This envisages a situation where due to the nature of the breach complained of, it would be impracticable to call a Company meeting

[43]ibid

[44]Section 300 (b)

[45] See section 214, CAMA

[46]See section 233(2) CAMA

[47] (1994) 7 NWLR (Pt. 257) 379 at 467

to redress the wrong; or where the Directors are reluctant or unwilling to summon such meeting to address the wrongful issues. In such circumstances, the law allows a member to approach the court to arrest the situation before it degenerates.

Similarly, section 300 (f) states that where the directors are likely to gain some advantage, or have gained from their breach of a fiduciary duty, then a minority shareholder can seek a redress in court in respect thereof. This is because in such a scenario, the probability is that the directors will neglect to seek redress for the Company or for the minority. In *Omisade vs Akande,*[48] the Director breached his fiduciary duty and committed fraud on the company. The Company was owned by two persons, one of them used his privileged position to divert the money intended for the Company to his other personal company. The court rightly held that it represents a clear situation where a minority is allowed to sue because a fraud had been committed against the Company and the Director equally breached his fiduciary duty. In *YalajuAmaye v. Arec,*[49]itconcerned the company acting ultra vires the article of association. The Board of Directors purportedly appointed new Directors contrary to the articles of association. In addition, the Directors were financially reckless with regards to the Company's money. The Supreme Court held that any act which would amount to an abuse of confidence or power between a Trustee and his Shareholders is a fraud which may take the issue outside the rule in *Foss v. Harbottle.*

Thus, it seems the provisions of section 300 (a-f) are a codification of the exceptions given in the English case of *Edwards v. Halliwell*[50]with some modifications. While the exceptions listed in 300 a-d are as provided in Edwards v. Halliwell, 300 e and (f) are the modifications.

Remedies Available to a Minority Shareholder in Nigeria

The Companies and Allied Matters Act provides three categories of reliefs for an aggrieved minority in the event of any of the above scenario.

Section 301 empowers aggrieved minorities to institute personal or representative action. This means that where the rights of the minority have been breached, such minority has a cause of action against the Company or the Directors. This right can be enforced by individual minority or jointly with other minority Shareholders. Thus, there can be separate personal actions or a minority shareholder bringing an action in a representative capacity on behalf of him and some other Shareholders. Irrespective of whether the action is personal or representative, the relief of damages cannot apply, only the reliefs of injunction and declaration can be given.[51]

Section 303 also provides another category of relief. A minority Shareholder can bring an action on behalf of or as the Company subject to leave of court. This remedy is not limited to instituting an action; it also includes intervening in an existing action involving the Company for the purpose of continuing or discontinuing the action. It should be noted that this relief under section 303 is an exception to the provisions of section 65 and 66 which provides that only the Board of Directors and the general meeting can maintain such actions on behalf of the Company. Therefore, it is subject to the existence of the following circumstances[52]:

i. The minority must prove to the court that the Directors controlling the Company are the wrongdoers and thus will not take an action in respect thereof
ii. The minority must also prove that he or she had given reasonable notice to the Directors of his intention to seek permission of the court to bring an action on behalf of the Company if the Directors persistently refuse to act.

[48](1987) 2 NWLR (Pt. 55) 158.

[49] (1992) 4NWLR (Pt.145)422 at 466

[50]supra

[51] However, section 301 (3) provides that costs may be awarded to the minority shareholder personally irrespective of whether the case succeeds or not.

[52]Section 303(2)

iii. The minority should prove that he/they is acting in good faith.
iv. The court must be satisfied that it is in the ultimate interest of the Company to grant the leave.

In *Omisade vs, Akande (supra),* the Supreme Court reiterated that in order to remedy a wrong done to the Company, the action must prima-facie be initiated by the company itself; but that where the wrong doers are in control of the Company, a minority shareholder is allowed to bring an action in their own name.

When a derivative action brought pursuant to section 303 above is successful, the court may make order authorising the applicant or any other person that the court deem fit to take control of the action under the direction of the court.[53]The court can also order that whatever amount payable by the defendant be paid not to the Company but to its security holders;[54]it may in addition offer that the Company bear the legal fees incurred by the applicant.[55]Section 305 provides further that an action pursuant to section 303 shall not be dismissed or stayed simply because the alleged breach on which the action was based has been or may be approved by the Shareholders; though it may be put into consideration by the court in arriving at a decision under section 304.[56] It should be stated that the provision of section 303 is similar to the relief of derivative action under section 260 of the UK's Company Act but with some differences. Under the Company's Act, the wrongdoers need not be in control as decided in *Omisade v. Akande* (supra). In addition, it is not mandatory that the act complained of be a fraud on the minority. Also, one of the conditions which the court will consider under the Company's Act is whether the act complained of can be subsequently ratified by the Company. This requirement is not a condition which the court will consider under section 303 of CAMA.

Section 310 allows an aggrieved minority to petition the court when the Company is being managed in a way that is discriminatory, unfairly prejudicial and oppressive of him.[57] However, before a minority can petition, he must show that the affairs of the Company is being managed in a way that is discriminatory, unfairly prejudicial and oppressive of him and/or other members in total disregard of his/their interests.[58]Also, he may allege that an act or omission or scheduled act or omission will be discriminatory, unfairly prejudicial and oppressive of him/other members.[59]As stated, the reliefs under sections 310 and 311 are not only applicable to minority shareholders but also to other "stakeholders" that can be affected by the acts of a company and as spelt out under section 310. Thus, section 311(2)b provides that such other categories of "stakeholder" must also prove that the company's acts or omissions or proposed acts and omissions are/will be oppressive and discriminatory which will affect their interests too. Specifically, the Corporate Affairs Commission (CAC) may apply to the court when it appears to it (the CAC) that the Company's affairs are done in a way that is oppressive of a member or contrary to the interest of the public.[60] This gives further protection to a minority because irrespective of whether the minority is even aware of the oppression or not, the CAC can apply to court when it is satisfied that a minority shareholder is being or may be oppressed.

Upon a successful petition, section 312 provides ten orders which the court may give as follows:

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[53] Section 304 (2)
[54] Section 304(2)c
[55] Section 304(2)d
[56]Section 307 provides that there is no need for an applicant to provide security for costs in any action under 303. Also, the court may at any time order the company to interim costs to the applicant before the final disposition of the action. See section 308
[57] It must be stated however that the right to petition under this section is not limited to a minority Shareholder alone, as this section also includes a creditor of the Company, Directors and Officers both past and present, the Corporate Affairs Commission and any other person who in the opinion of the court has a locus standi to petition in respect thereof.
[58] Section 311(2)(a) i
[59] Section 311(2)(a) ii
[60]Section 311 (C) i and ii

- A winding up order;
- An order regulating Company's affairs;
- An order that shares of a member be bought by other members; or the Company and for possible decreasing the Company's capital;
- The court may order the company or member(s) to initiate, continue or discontinue specific proceedings on behalf of the Company;
- An order requesting that an investigation be made by the Corporate Affairs Commission;
- The court may also appoint a receiver and manager in respect of the property of the Company; An order preventing a person from doing a specific conduct or directing a person to act specifically.
- The court may also vary or terminate any transaction involving the company though reimbursing the other party to the transaction.
- It must be stated that section 310 is also similar to section 996 of the Company's Act. However, for the relief to be successful under 996, both oppression and unfairly prejudicial must be proved. While in 310, any of oppression, unfair prejudice or discrimination will suffice as stated in section311.

Conclusion

The principle of majority rule laid down in Foss v. Harbottle together with its exceptions have become one of the viable means of regulating and promoting corporate activities. This is because it is when investors' rights are secured that the motivation to invest in businesses is high. Thus, the rule especially its exceptions have under gone reforms in most common wealth jurisdictions.

This paper has compared the application of the rule in both United Kingdom and Nigeria its former colony. Understandably, there are lots of similarities between both jurisdictions. This is because of the continuing influence of the Common Law on the Nigerian legal system. However, there are differences in the two legislations from which lessons can be drawn from both jurisdictions. For example, with respect to the relief of derivative action, the provisions of the Company's Act are much more comprehensive and seem to protect a minority shareholder more. Section 260 allows the action even when the act done does not amount to a fraud against the minority and the wrongdoers not in control. It also protects a minority with respect to an act or omission bothering on negligence or the Director's breach of duty. In addition, courts are given almost limitless powers as they can award a relief that is not sought by a petitioner. Thus, the Nigerian Companies and Allied Matters can draw lessons from it and make appropriate amendments. However, with respect to the remedy for oppressive conduct against a minority Shareholder, the provisions of the Companies and Allied Matters Act seems better as a minority shareholder only need to prove either oppression or unfair prejudice. The reverse is the position under the UK Act as both unfair prejudice and oppression must be proved. It is submitted that it is harder for an aggrieved minority to prove both oppression and unfairness than to prove either.