SHAREHOLDER PROTECTION, CORPORATE FINANCE AND MINORITY RIGHTS IN PUBLIC COMPANIES: A COMPARATIVE STUDY OF NIGERIA, THE UNITED KINGDOM, AND SOUTH AFRICA

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Abstract

The protection of shareholders is one of the issues that continues to shape the relationship between companies, their directors, and shareholders. This becomes even more important in public companies, where ownership is often spread among a large number of shareholders and minority shareholders may have little influence over decisions taken by those in control. This paper examined the relationship between shareholder protection, corporate finance and minority rights in public companies, using Nigeria, the United Kingdom and South Africa as comparative jurisdictions. The paper pays particular attention to the remedies available to minority shareholders when their interests are threatened or disregarded. Through a comparative examination of Nigeria, the United Kingdom and South Africa, the paper identified similarities, differences and areas where the Nigerian framework may be strengthened. It argues that meaningful shareholder protection requires more than the creation of statutory rights; it requires remedies that shareholders can realistically access, regulators that are willing and able to enforce the law, and corporate decision-making that recognizes the legitimate interests of both majority and minority shareholders.

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Keywords: Corporate finance, Minority rights, shareholders protection

1. INTRODUCTION

One of the principal advantages of operating as a public limited company is its capacity to raise substantial share capital.[1] Subject to applicable legal and regulatory requirements, a public company may offer its shares to the public and obtain admission to a recognized securities exchange.[2] This provides access to a wider pool of investors than is ordinarily available to a private company. The ability to attract investment from individual shareholders, hedge funds, mutual funds and other institutional investors may enable the public company to raise significantly more capital and pursue larger commercial projects.[3]

However, the advantages of public financing are accompanied by important governance challenges. Public companies commonly have a wide and dispersed shareholder base, resulting in a separation between ownership and control. Although shareholders possess proprietary interests in their shares, they do not ordinarily participate directly in the management of the company.[4] Instead, management is entrusted to the board of directors; whose strategic position gives it substantial authority over the company's affairs and, in some circumstances, over the proxy machinery used in general meetings.[5] The separation of ownership from control is particularly significant in contemporary company law and corporate capitalism. The conventional description of shareholders as owners and directors as stewards does not always

[1] Johnathan Korchak, 'Advantages and Disadvantages of a Public Limited Company' Inform Direct, 17 April 2024 < https://www.informdirect.co.uk/company-formation/public-limited-company-advantages-disadvantages/> accessed 10 August 2026.
[2] ibid
[3] ibid
[4] ibid
[5] ibid

accurately reflect the relationship between shareholders and directors in public companies. Shareholders may regard their shares as personal property that can be bought, sold or transferred, but ownership of shares does not amount to ownership of the company's assets or direct control over its management.[6] The public company is, in part, designed to enable individuals to invest without becoming involved in the day-to-day administration of the business.[7] The problem begins where a substantial proportion of the shares is held by a small number of individuals or entities. Although the company may formally have numerous shareholders, effective control may remain concentrated in the hands of a few persons. These controlling shareholders may influence the appointment and removal of directors, determine the outcome of shareholder resolutions and shape the company's major commercial decisions. By contrast, minority shareholders may possess limited information about the company's affairs and may play little practical role in corporate decision-making.[8] Their involvement may be confined to receiving annual reports and attending general meetings, which are often poorly attended. The result is an imbalance of power between those who formally own shares and those who exercise effective control over the company.

This imbalance raises important questions concerning the protection of minority shareholders in public companies. The majority-rule principle is necessary for the efficient functioning of the company because

[6] Oteyi Kpomasiruchi, 'Corporate Governance: An Appraisal of the Concept of Separation of Ownership and Control in Public Companies' (2024) 4(7) The Journal of Law and Policy 259 <https://www.researchgate.net/publication/387796358_CORPORATE_GOVERNANCE_AN_APPRAISAL_OF_THE_CONCEPT_OF_SEPARATION_OF_OWNERSHIP_AND_CONTROL_IN_PUBLIC_COMPANIES/link/677dc690fb021f2a47e1cc10/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19 > accessed 10 August 2026.

[7] ibid

[8] ibid

corporate decisions cannot ordinarily depend upon unanimous shareholder consent.[9] Nevertheless, majority power and managerial discretion may be abused through transactions or decisions that prejudice minority interests.[10] Examples include the improper allotment of shares, dilution of voting rights, related-party transactions, diversion of corporate opportunities, withholding of dividends and the misuse of corporate assets. Corporate-finance decisions are particularly important in this regard because the raising, restructuring or deployment of capital may alter the ownership structure, voting power and economic value of existing shares. These concerns provide the foundation for examining minority shareholder remedies in Nigeria, the United Kingdom and South Africa. The three jurisdictions recognize legal mechanisms intended to protect shareholders against corporate misconduct, including derivative actions and remedies for oppression or unfair prejudice. Their legal systems also regulate corporate-finance transactions and impose disclosure and governance obligations on public companies. The effectiveness of these protections, however, depends not only on their formal existence but also on their accessibility, judicial interpretation, regulatory enforcement and capacity to promote investor confidence.

2. CONCEPTUAL FRAMEWORK

2.1. Minority Shareholder

A minority shareholder is generally understood as a shareholder who lacks sufficient voting power to control the management or decision-making processes of a company.[11] In practical terms, this usually refers to a shareholder holding less than 50 per cent of the company's voting shares, although the relevant consideration is not merely the percentage of shares held but whether the shareholder can exercise

[9] ibid
[10] ibid
[11] LexisNexis, 'Minority Shareholder' <https://www.lexisnexis.co.uk/legal/glossary/minority-shareholder

effective control over corporate decisions.[12] A minority shareholder may therefore include a person or group whose combined voting strength is insufficient to block ordinary resolutions, influence the appointment of directors or prevent the approval of decisions supported by the controlling majority.

The concept is particularly important in public companies, where ownership is often dispersed among numerous investors but effective control may remain concentrated in the hands of a small group.[13] The Court of Appeal in *Okoye & Anor v Ecobank Nigeria Plc & Anor* described a minority shareholder as a shareholder who owns less than half of the total shares outstanding and is consequently unable to control the company's management or single-handedly elect its directors.[14] This judicial description is useful, although shareholding percentage should not be treated as conclusive in every case. A shareholder holding less than 50 per cent may exercise effective control where the remaining shares are widely dispersed or where other shareholders do not participate actively in corporate voting. The Companies and Allied Matters Act 2020 does not expressly provide a general definition of "minority shareholder." Nevertheless, the concept underlies several statutory protections designed to prevent the majority, directors or other persons in control from abusing corporate power.

2.2. Shareholder Protection

Shareholder protection refers to the legal, regulatory and institutional mechanisms designed to safeguard shareholders against unlawful,

[12] Adedunmade Onibokun, *et al*, 'Minority Protection under Nigerian Companies and Allied Matters Act' (4 July 2025) <https://aocsolicitors.com.ng/minority-protection-under-nigerian-companies-and-allied-matters-act > accessed 10 August 2026.

[13] ibid

[14] ibid

oppressive or unfair conduct within the company.[15] It includes rights to receive corporate information, participate in general meetings, vote on significant matters, challenge improper corporate action and obtain judicial or regulatory relief where their interests have been violated.[16]

The need for shareholder protection arises from the separation of ownership and control that characterizes public companies. Shareholders provide capital but usually do not manage the company directly. Directors and controlling shareholders, by contrast, may possess substantial influence over corporate decisions and access to information unavailable to ordinary investors. Shareholder protection may take different forms. Derivative actions allow a shareholder to bring proceedings on behalf of the company where the company itself has suffered a wrong. Oppression and unfair-prejudice remedies address conduct that unjustly harms the interests of a shareholder or group of shareholders.[17]

2.3. Corporate Finance

Corporate finance concerns the manner in which a company raises structures, allocates and manages its financial resources.[18] It includes decisions relating to equity and debt financing, capital structure, investment, working capital, dividends and the use of corporate funds.[19] Its central purpose is generally to allocate financial resources in a manner that promotes the value and sustainability of the company while balancing risk and profitability.

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[15] Umenweke M N, 'Minority Shareholder Protection: New Frontiers in Nigerian Company Law' (2024) 5(1) Ezenwa Ohaeto *Journal of Corporate Law* 12 <https://journals.ezenwaohaetorc.org/index.php/coou/article/download/3444/3575 > accessed 10 August 2026.

[16] ibid

[17] ibid

[18] Corporate Finance Institute, 'What Is Corporate Finance?' <https://corporatefinanceinstitute.com/resources/fpa/corporate-finance-industry/> accessed 10 August 2026.

[19] ibid

Corporate finance is directly relevant to minority shareholder protection because financing decisions may alter both the economic and voting position of shareholders.[20] A company may raise capital through an offer of new shares, a rights issue, a private placement, debt financing or convertible securities. Although these methods may be commercially legitimate, they may also dilute existing shareholdings, transfer control or favor selected shareholders. For example, a private placement made primarily to a controlling shareholder may reduce the voting influence of minority shareholders, while a rights issue may disadvantage investors who lack the financial capacity to subscribe for additional shares.

The legal assessment of corporate-finance decisions must therefore consider more than whether the company has raised sufficient funds. It should also examine the purpose of the transaction, the fairness of its terms, the adequacy of disclosure, the involvement of interested directors or shareholders, and whether existing shareholders were given a meaningful opportunity to protect their interests. Corporate finance consequently provides an important context in which minority rights may either be respected or undermined.

2.4. Investor Confidence

Investor confidence may be understood as the willingness of investors to participate in available investment opportunities and related financial-market channels based on their perception of risk and expected return.[21] The United States Securities and Exchange Commission explains that investor confidence has two principal

[20] ibid

[21] US Securities and Exchange Commission, 'Economics Note: Investor Confidence' (October 2017) <https://www.sec.gov/files/investor_confidence_oct2017.pdf > accessed 10 August 2026.

dimensions: investor optimism and investor trust.[22] Investor optimism concerns perceptions of the fundamental risks and expected returns associated with an investment, while investor trust concerns confidence that investors will be protected against theft, fraud, misconduct and expropriation by other market participants.[23] An investor may be optimistic about the profitability of a public company but still decline to invest if there is inadequate confidence in the company's directors, controlling shareholders, courts or securities regulator. Investor confidence therefore depends not only on the likely financial performance of a company but also on the quality of the legal and institutional framework governing the investment.[24]

For minority shareholders, investor trust is particularly significant. Minority investors may have little influence over management and may depend on disclosure, regulatory supervision and judicial remedies to protect their interests.

3. CONCEPT OF MINORITY SHAREHOLDER PROTECTION

A shareholder is a person who owns shares in a company and thereby acquires proprietary and participatory rights within the corporate structure.[25] Shareholders possess proprietary and participatory rights within the company.

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[22] ibid
[23] ibid
[24] ibid
[25] Ojogbo SE and Ezechukwu NV, "Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and Nigeria" (2020) 64(3) Journal of African Law 399, 405 <https://www.open-access.bcu.ac.uk/9882/1/Shareholder%20Protection-%20A%20Comparative%20Review.pdf> accessed 10 August 2026.
; Umenweke M N, 'Minority Shareholder Protection: New Frontiers in Nigerian Company Law' (2024) 5(1) Ezenwa Ohaeto Journal of Corporate Law 12<https://journals.ezenwaohaetorc.org/index.php/coou/article/download/3444/3575> accessed 10 August 2026.

Minority shareholders are shareholders whose voting powers are insufficient to influence company decisions. Their vulnerability arises principally from their inability to control corporate policy or restrain oppressive decisions by majority shareholders.[26]

Minority oppression refers to conduct by majority shareholders or directors that unfairly prejudices minority interests. Such conduct may include exclusion from management, diversion of company opportunities, refusal to declare dividends, discriminatory allotment of shares, and abuse of fiduciary powers. According to Okolocha and Ogbu, minority shareholder protection is essential for maintaining investor confidence, ensuring accountability, and preventing abuse of corporate power within modern company law systems.[27]

3.1. The Rule in Foss v Harbottle and Its Exceptions

The rule in *Foss v Harbottle* established that where a wrong is done to a company, the company itself is the proper plaintiff to institute proceedings. Courts will generally not interfere in matters capable of ratification by a simple majority of shareholders. The rationale for the rule is rooted in the doctrine of separate legal personality established in *Salomon v A Salomon & Co Ltd*. Since the company possesses legal personality separate from its shareholders, wrongs done to the company should ordinarily be remedied by the company itself rather than individual members.

Although the rule promotes managerial efficiency and prevents multiplicity of suits, its rigid application often operates harshly against minority shareholders. Where the alleged wrongdoers control the

[26] ibid
[27] ibid

company, it becomes practically impossible for the company to sue them.

To prevent injustice, several exceptions developed.

i. Fraud on the Minority: Minority shareholders may institute derivative proceedings where majority shareholders perpetrate fraud while controlling the company machinery. Fraud in this context includes abuse of power for personal benefit.
ii. Ultra Vires and Illegal Acts Minority shareholders may challenge acts which are illegal, unconstitutional, or ultra vires the company because such acts cannot be validated by majority approval.
iii. Infringement of Personal Rights A shareholder may institute a personal action where individual membership rights such as voting rights or rights to notice of meetings are violated.
iv. Failure to Obtain Special Majority
v. Where company law requires a special resolution and such procedures are ignored, minority shareholders may challenge the validity of the transaction.

These exceptions significantly influenced the statutory remedies later codified under CAMA 2020.

3.2. Minority Shareholder Protection under Nigeria's Companies and Allied Matters Act 2020

The enactment of CAMA 2020 marked a significant reform in Nigerian company law.[28]

[28] Ugwuozor, Walter Chinonso, 'Corporate Democracy is a Fable: A Comparative Analysis of the Minority Protection Rule under the Nigerian and United Kingdom's Company Law' (2019) 4(2) IDOSR Journal of Arts and Management 53–62 < https://www.idosr.org/wp-content/uploads/2019/08/IDOSR-JAM-42-53-62-2019.-WA.pdf > accessed 10 August 2026.

Chapter 13 of the Act specifically provides for "Protection of Minority against Illegal and Oppressive Conduct." Injunctions and Declaratory Reliefs Section 343 of CAMA 2020 empowers courts to grant injunctions or declaratory reliefs restraining companies or directors from engaging in wrongful acts. Such acts include illegal transactions, fraud on the minority, infringement of shareholders' rights, and acts requiring special resolutions but carried out improperly[29].

This provision strengthens minority protection by enabling preventive judicial intervention before irreversible harm occurs.

Section 344 of CAMA 2020 permits shareholders to institute personal or representative actions where their rights are infringed. Such rights include voting rights, dividend entitlements, and rights relating to participation in meetings.

Representative actions enable shareholders to sue on behalf of members with similar interests and thereby improve access to justice.

Sections 346–351 of CAMA 2020 provide statutory recognition for derivative actions. A derivative action allows a shareholder to institute proceedings on behalf of the company where directors or controlling shareholders refuse to act against wrongdoing.

Derivative actions are particularly relevant in cases involving breach of fiduciary duties, diversion of company assets, negligence, or fraudulent conduct by directors.

[29] ibid

Under section 346 of CAMA 2020, leave of court is required before commencing proceedings. The court may grant leave where the applicant acts in good faith and the action appears to be in the company's best interest.

Importantly, section 350 of CAMA 2020 provides that shareholders instituting derivative actions shall not be compelled to furnish security for costs merely because they sue on behalf of the company.[30]

Therefore, Chapter 13 of CAMA 2020 strengthens the legal protection available to minority shareholders in Nigeria. Through injunctions, declaratory reliefs, personal and representative actions, and derivative actions, the Act provides shareholders with effective mechanisms to challenge illegal, oppressive, fraudulent, or prejudicial conduct. The requirement for judicial leave in derivative actions also ensures that such proceedings are brought responsibly and in the interest of the company. These provisions promote corporate accountability, responsible management, and the protection of minority shareholders' rights, thereby addressing important weaknesses that existed under the previous legal framework.

4. MINORITY PROTECTION UNDER THE UNITED KINGDOM'S COMPANY LAW

Fundamentally, the rule in Foss v. Harbottle (supra) was a judicial policy creation borne by the need to prevent the courts from hearing claims arising from the affairs of a company brought by a member or members of the company.[31] The rule, sort to advance in this case, the distinctiveness of a company's personality (corporate personality) and

[30] ibid

[31] Stephen Griffin, *Company Law: Fundamental Principles*, 4th edn (Pearson Longman, Harlow 2006) 125. <https://ghanalawfinder.com/wp-content/uploads/2023/03/Stephen-Griffin-Michael-Hirst-Peter-Walton-Company-Law-Fundamental-Principles-2005.pdf> accessed 10 August 2026.

its members in the context of being capable of suing and being sued in its own name rather than members suing in their personal capacity on matters concerning or affecting it (the company).[32] In this case, Mr. Foss and Mr. Turton, who were members of a statutory company called the Victoria Park Co, alleged that various people, including five directors of the company (one of whom was Mr. Harbottle), had made secret profits as promoters of the company and that the directors had breached their fiduciary duties to the company by causing it to enter improper and fraudulent transactions. Foss and Turton commenced an action against the alleged wrongdoers on behalf of themselves and all other proprietors of shares except the defendants‟ Hence, Wigan V-C had this to say:[33] "The Victoria Park Co is an incorporated body, and the conduct with which the defendants are charged in this suit an injury not to the plaintiffs exclusively; it is an injury to the whole corporation...It was not, nor could it successfully be, argued that it was a matter of course for any individual member of a corporation thus to assume to themselves the right of suing in the name of the corporation.[34] In law the corporation and the aggregate members of the corporation are not the same thing for purposes like this" Owing to this development, the „derivative claim principle‟ emerged as against the proper claimant principle, being an avenue for accessibility to redress injustice by a member or few members of the company in the event that majority rule surfaces to kill the justice pursued over a dispute in companies limited by shares.[35] For the purpose of clarity,

[32] ibid
[33] ibid
[34] ibid
[35] Ojogbo SE and Ezechukwu NV, "Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and Nigeria" (2020) 64(3) Journal of African Law 399, 405.<https://www.open-access.bcu.ac.uk/9882/1/Shareholder%20Protection-%20A%20Comparative%20Review.pdf> accessed 10 August 2026.

majority rule envisages that in any corporate organization, the settlement of disputes is reached based on a decision agreed upon by the majority of the members of such organization. Essentially, it is an internal management policy where matters are conclusively settled by majority decision in a general meeting and it is not reviewable by the courts. This then leads to establishing and explaining the ramifiability principle.[36]

Ramifiability principle is a common law principle which presupposes that the majority in a general meeting have the right to decide on whether or not to litigate in the company's name.[37] This again was succinctly explained by Wigan V-C in Bagshaw v. Eastern Union Railway Co[38] ...If the act, though it be the act of the directors only, be one which a general meeting of the company could sanction, a bill by some of the shareholders, on behalf of themselves and others, to impeach that act cannot be sustained, because a general meeting of the company might immediately confirm and give validity to the act of which the bill complains.
Vitally, derivative claim cannot be discussed in isolation without touching on related subjects like the rule in Foss v. Harbottle (supra), the majority rule and the ramifiability principle.[39]

Derivative claim in this context is the right of action of a company granted to a member of the company by the court to pursue a

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[36] Stephen Griffin, Company Law: Fundamental Principles, 4th edn (Pearson Longman, Harlow 2006) 125. <https://ghanalawfinder.com/wp-content/uploads/2023/03/Stephen-Griffin-Michael-Hirst-Peter-Walton-Company-Law-Fundamental-Principles-2005.pdf> accessed 10 August 2026.
[37] ibid
[38] (1849) 7 Hare 114, 130 (Wigram VC).
[39] Stephen Griffin, Michael Hirst and peter Walton Company-Law-Fundamental-Principles-2005.pdf <https://ghanalawfinder.com/wp-content/uploads/2023/03/Stephen-Griffin-Michael-Hirst-Peter-Walton-Company-Law-Fundamental-Principles-2005.pdf> accessed 10 August 2026.

proceeding in his (members) own name. This has been treated as an exception to the proper claimant principle. Accordingly, the proper claimant principle presupposes that the legal right of a company belongs to the company as a separate person and not to its members.[40] Therefore, the company is the only person able to claim redress for injury to itself. It then suffices to state that a member of a company bringing proceedings to enforce a right of the company is said to be deriving a right of action from the company.

Hence, a derivative claim is defined in s 260(1), of the UK"S Companies Act 2006 as a proceeding by a member of a company in respect of a cause of action vested in the company, and seeking relief on behalf of the company.[41]

A derivative claim occurs where there is a dispute between a member of a company and its directors over the merits of bringing a claim and normally, the power to decide on litigation vests in the very persons who ought to be sued.[42] To this end, the court is usually implored to ignore the company's decision not to sue because the company's decision not to sue is in fact, taken by the same people who should be sued.

5. MINORITY SHAREHOLDERS PROTECTION UNDER SOUTH AFRICA COMPANY LAW

Minority shareholders often face challenges, especially when the majority shareholders or company management make decisions that could adversely affect their interests. South Africa's Companies Act 71 of 2008, through Section 164, provides a safeguard for minority shareholders by giving them the right to exit the company while

[40] ibid
[41] ibid
[42] ibid

receiving fair compensation for their shares.[43] This protective measure, known as the right of appraisal, discourages oppressive actions from majority shareholders and fosters fairness in corporate actions.[44] Section 164 of the Companies Act introduces the right of appraisal, which enables minority shareholders to require the company to repurchase their shares at a fair value if certain corporate events occur.[45] This right is triggered when the company undertakes significant changes that could diminish the value of the shares held by minority shareholders.[46]

When a corporate action is perceived to harm their interests, minority shareholders can invoke this right to ensure they are compensated fairly. This measure is particularly relevant in situations where shareholders disagree with a company's major decisions or believe their interests are being overlooked. Minority shareholders may exercise their right of appraisal in specific circumstances, known as affected transactions, as outlined in the Companies Act. These include:[47]

Sale of a Substantial Portion of Assets: When a company disposes of a significant part of its assets or operations, it may dramatically alter the company's nature and financial prospects.

[43] Companies Act 71 of 2008 (South Africa), s 163. <https://www.albaraka.co.za/blogs/legalease-1-2023/protection-of-minority-shareholders-in-south-africa-a-brief-overview-of-section-163-of-the-companies-act-71-of-2008> accessed 10 August 2026; Johan De Lange, "Appraisal Rights for Minority Shareholders in South Africa" (2024) Polity, 3 October 2024< https://share.google/Tmd1neA9LhXkb62Ro> accessed 10 August 2026.

[44] ibid

[45] ibid

[46] ibid

[47] ibid

Scheme of Arrangement: This formal arrangement involves restructuring a company's capital, assets, or liabilities and typically requires court approval. Such restructurings may have a profound impact on shareholder value.

Mandatory Offers: In the event that an individual or group gains control of the company, they must make an offer to buy the remaining shareholders' shares on equitable terms, thereby ensuring fair treatment.

Mergers or Amalgamations: When two or more companies combine, shareholders need assurance that their interests are not undermined. Appraisal rights allow them to exit if they are dissatisfied with the terms.

Change of Control Transactions: Shareholders are given the opportunity to evaluate any changes in corporate control, such as takeovers or acquisitions. The right of appraisal ensures that their shares are not unfairly devalued during these transitions.

Section 165 allows shareholders to initiate legal proceedings on behalf of the company itself. This is particularly valuable when the board refuses to act against wrongdoing due to conflicts of interest or internal politics.[48]

If the shareholder acts in good faith and for the benefit of the company, they can step into the company’s shoes to hold directors or third parties accountable for conduct causing material harm. This

[48] Ojukwu-Ogba NE and Osode PC, ‘Democratic Corporate Governance and the Rights of Minority Shareholders: Perspectives from Nigeria and South Africa’ (2021) 11(1) University of Ibadan Law Journal 1–25<https://journals.ui.edu.ng/index.php/uilr/article/view/1043> accessed 10 August 2026.

provision pierces the traditional barrier of "separate legal personality," giving minority shareholders a meaningful enforcement tool.

6. COMPARATIVE ANALYSIS BETWEEN THE UK, NIGERIA AND SOUTH AFRICA

Under the English Act 5 the shareholder right provision is found in section 994. The section states that any member may petition the court for relief because: "that company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interest of its members generally or some part of the members (including at least himself) or that any actual or proposed act or omission of the company (including any act or omission on its behalf) is or would be so prejudicial".[49] Under the South African Act, section 163 (1) provides that a shareholder or a director of a company may apply for relief if: (a) any act or omission of the company or a related person has had a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of the applicant. (b) the business of the company or related person is being or has been carried on or conducted in a matter that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of the applicant; or (c) the powers of a director or prescribed officer of the company, or a person related to the company are being or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the applicant.

A person who may have the right to remedy under the South African Act, as prescribed in section 157 (1), is one:

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[49] Adenyuma Iji Gabriel, 'Shareholder Protection through Legislation: Comparing the Approaches of Nigeria, Singapore, the United Kingdom and South Africa' (2018)<https://www.researchgate.net/publication/328629775_Shareholder_Protection_through_Legislation_Comparing_the_Approaches_of_Nigeria_Singapore_the_United_Kingdom_and_South_Africa> accessed 10 August 2026.

a. directly contemplated in the particular provision of the Act;

b. acting on behalf of a person contemplated in (a) above, who cannot act in his own name;

c. acting as a member of, or in the interest of a group or class of affected persons, or an association acting in the interest of its members; or

d. acting in the public interest, with leave of court.

By virtue of section 156 of the Act, a person contemplated in section 157(1) shall have the right to seek remedy:

a. to address an alleged contravention of the Act;

b. to enforce provision of, or right in terms of the Act;

c. to enforce a company's Memorandum of Incorporation or rules.

Under this Act too, shareholder rights action on the ground of unfair, oppressive or prejudicial conduct also includes acts which, in the main, result from the abuse of the separate juristic personality of a company.

The exercise of powers by a director or prescribed officer which are oppressive or unfairly prejudicial can, under South African law, be questioned separately from that of the company as a juristic entity.[50] This is a potent shareholder protection tool which is absent in the Nigerian Provision. The provision of the English Act relating to

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[50] ibid

shareholder rights and protection is compact but gives greater options of protection to the shareholder than its Nigerian counterpart.

The South African provision, though lengthier than the Nigerian provision, envisions a shareholder space that would put controlling members on their toes to ensure compliance with the provisions of the Act.[51] The Nigerian provision is, however, bland, suffers grave inadequacies and has no in-built safeguards to give it a competitive edge in the modern economic field.[52] The Nigerian investor is hamstrung by a law which ordinarily ought to protect him.

It is instructive to note that in the English jurisdiction, a member who intends to petition for relief under the grounds herein stated but particularly under the grounds of oppression and unfair prejudice and for a winding up order may supplement the provisions of the Companies Act with those of the Insolvency Act.[53] The English shareholder thus has a far greater advantage to leverage his shareholder action options than his Nigerian counterpart. Under the South African Companies Act, however, any person may file a complaint in writing to the Companies Commission for investigation that a person has acted in a manner inconsistent with the Act or that the complainant's rights under the Act or the Companies Memorandum have been infringed.[54]

In contrast, the Nigeria Act empowers the Corporate Affairs Commission to petition the court to seek relief on behalf of an aggrieved shareholder as a product of investigation where "persons concerned with the company's formation or management of its affairs

[51] ibid
[52] ibid
[53] ibid
[54] ibid

have in connection therewith been found guilty of fraud, misfeasance or other misconduct towards it or towards its member."[55] As can be gleaned from the above, the South African provision is generalized while that of Nigeria is restrictive and clearly lacks any shareholder protection potential.

A derivative action under the English Act may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company. The cause of action may be against the director or another person (or both). It is immaterial whether the cause of action arose before or after the person seeking to bring or continue the derivative claim became a member of the company.

Generally, in this jurisdiction, derivative action is permissible only in circumstances, as stated by Professor Gower, where the wrong is one which is not rectifiable as being a fraud on the minority, and even then, only when the wrongdoers are in control.[56] A derivative claim may equally be brought in pursuance of an order of the court in proceedings under section 994 (proceedings for protection of members against unfair prejudice).

Under the South African Act, a derivative action may be undertaken by a shareholder, director or any member of the public, with leave of court, by serving a demand upon a company to commence or continue legal proceedings, or other related steps, to protect the legal interests of a company in the name or on behalf of the company. This provision is more robust and affords a departure from the rule in Foss v Harbottle even in derivative actions, as it is shorn of the many

[55] ibid
[56] ibid

conditions that have to be surmounted in derivative actions. An interesting provision which is absent in the other three Acts is that a shareholder under the South African Act can employ an alternative dispute resolution mechanism for the resolution of disputes as may arise under the Act as between members inter se and the company.[57] It provides that a person who would be entitled to apply for relief or a complaint in terms of the Act may refer a matter which is a subject of such an application or complaint "for resolution by mediation, conciliation or arbitration". The inclusion of an alternative dispute resolution provision, in our opinion, is to ensure that holders of small shares or otherwise indigent aggrieved members have some less costly and cumbersome avenue to ventilate their grievance. There is no gainsaying the fact that the establishment of an alternative avenue for redress distinct from the regular courts is a high point for the South African Act.

In general, among the three jurisdictions, the South African Companies Act affords a far more encompassing, flexible and time-saving option for shareholder protection than the two other Acts. The South African shareholder is able to leverage his position to be a check on the majority or controlling members by ensuring probity, accountability and integrity in the management of the company.

7. RECOMMENDATIONS

i. **Expand the Scope of the Unfair Prejudice Remedy Under CAMA 2020**

CAMA 2020 should be amended to provide a broader and more clearly defined remedy for shareholders who suffer oppression, unfair prejudice, or disregard of their interests. The Nigerian provision should expressly cover not only the conduct of the company but also

[57] ibid

acts or omissions of directors, prescribed officers, controlling shareholders, and persons related to the company. This would bring the Nigerian framework closer to the South African model and ensure that directors cannot escape scrutiny merely because the impugned conduct is technically attributable to them rather than the company.

ii. **Introduce a Comprehensive Statutory Oppression and Unfair Prejudice Provision**

Nigeria should consider reformulating its shareholder protection provisions to expressly recognize oppression, unfair prejudice, and unfair disregard of shareholders' interests as independent grounds for relief. The legislation should provide the courts with a broad range of remedies, including regulating the future conduct of the company's affairs, ordering the purchase of a shareholder's shares at a fair value, setting aside transactions, restraining proposed conduct, and making appropriate orders against directors or controlling shareholders.

iii. **Strengthen Protection Against Abuse of the Separate Legal Personality of Companies**

CAMA should expressly empower courts to intervene where the corporate personality of a company is used as an instrument for oppressive or unfairly prejudicial conduct against minority shareholders. This would provide an important safeguard against controlling shareholders and directors who may otherwise use the separate legal personality of the company to conceal or facilitate improper conduct.

iv. **Broaden the Categories of Persons Entitled to Seek Corporate Remedies**

Nigeria should review the restrictive approach to standing under its existing framework. Drawing from section 157 of the South African Companies Act, CAMA should recognize that, in appropriate circumstances, applications for corporate remedies may be brought not only by individual shareholders but also by persons acting on behalf of affected persons, members of an affected class, recognized associations acting in the interests of their members, and, subject to leave of court, persons acting in the public interest. This would make shareholder protection more accessible, particularly where minority shareholders lack the financial or institutional capacity to pursue complex litigation individually.

v. **Make Derivative Actions More Accessible**

The Nigerian statutory framework on derivative actions should be reformed to reduce unnecessary procedural barriers. The South African model demonstrates that derivative proceedings can be structured in a manner that enables shareholders and other qualified persons to demand that a company take proceedings to protect its interests.

CAMA should therefore provide a clearer statutory procedure for commencing and continuing derivative actions, while preserving judicial control to prevent frivolous or vexatious claims. The law should also clearly identify the circumstances in which the court may grant leave and the factors it should consider in doing so.

vi. **Give Courts Wider Remedial Powers**

CAMA should expressly provide Nigerian courts with a flexible and comprehensive range of remedies where shareholder oppression or unfair prejudice is established. The court should not be restricted to a single form of relief. It should, depending on the circumstances, be empowered to:

a) order the purchase of the minority shareholder's shares at a fair value;
b) regulate the future management of the company's affairs;

c) restrain particular acts or proposed acts;
d) require the company to institute or discontinue proceedings;
e) set aside or modify certain transactions;
f) order disclosure of relevant corporate information;
g) regulate the exercise of directors' powers; and
h) Make any other order necessary to bring the unfair prejudice to an end.

This would make the Nigerian legal framework more responsive to the varied forms that shareholder oppression may take.

8. CONCLUSION

Nigeria should undertake a comprehensive reform of the shareholder protection provisions of CAMA 2020 by adopting a more expansive, flexible and remedial approach modelled substantially on the South African Companies Act 2008, while retaining useful elements of the English Companies Act 2006. In particular, CAMA should broaden the grounds upon which shareholders may seek relief, expressly recognize oppression, unfair prejudice and unfair disregard of shareholders' interests, extend liability to oppressive conduct by directors and controlling persons, simplify derivative actions, strengthen the investigative and remedial powers of the Corporate Affairs Commission, and introduce mediation, conciliation and arbitration as alternative avenues for resolving corporate disputes. Such reforms would move Nigerian company law away from a predominantly reactive and restrictive model towards a more accessible and effective minority shareholder protection regime. The ultimate objective should be to maintain the principle of majority rule while ensuring that majority power is exercised consistently with the principles of fairness, accountability, good faith and corporate governance.