

MINORITY SHAREHOLDERS' PROTECTION UNDER CAMA 2020: COMPLETE OR COSMETIC?

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Abstract

Majority rule and minority protection is an essential principle in corporate governance. It aims at balancing the interests of the majority shareholders who exercise significant influence in company decisions and operations. As a result of their high shareholding, they control significantly, major decisions of the company including electing directors, approving financial statements, mergers and acquisitions etc., and by their sheer powers, strategically steers the company to serve their interests. The CAMA 2020 provided mechanism for the protection of minority shareholder in the face of the overwhelming influence of the majority Shareholders which includes the right to bring derivative actions, enforce personal rights and petition the court for relief against oppressive or unfair prejudice. This Paper evaluated the protection afforded minority shareholders by CAMA 2020 and finds that the legal regime for the protection of minority shareholders under CAMA 2020 is complete. The minority shareholder only needs to be aware of their rights as delineated in CAMA 2020. This Paper recommended among others the improvement of regulatory oversight by the Corporate Affairs Commission (CAC) through insistence on massive advertisement of the rights of minority shareholders. The Commission should advise that companies should device ways of making the minority shareholders to be constantly aware or abreast of their rights as part of corporate governance strategy. A doctrinal approach is adopted, which includes the use of primary and secondary data with reference to case laws.

Keywords: CAMA 2020, Minority Shareholders, Protection, Complete, Cosmetic.

1. Introduction

The majority shareholders in a company through their enormous voting power and influence in corporate governance controls the affairs of the company. They strategically steers the wheels of the company by their high shareholding to their desired direction. The Companies and Allied Matters Act, 2020 provided the legal regime for the protection of minority shareholders in the face of the controlling attitude of the majority Shareholders. This paper evaluated these protection mechanisms of CAMA 2020, to ascertain whether they are mere cosmetic or complete. This paper is segmented. The first segment clarified some concepts; the second segment discussed the theoretical framework of minority shareholders protection; the third segment examined the Role of the Majority Shareholding and Corporate Governance; the fourth segment discussed the mechanisms for Protection of Minority Shareholders under CAMA 2020; the fifth segment reviewed some literature on minority protection under CAMA 2020; the sixth segment evaluated judicial attitude towards minority shareholders in Nigeria, South Africa and United Kingdom; the

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seventh segment summarized findings; and finally, the eight segment concluded this paper and made some recommendations.

2.0 Conceptual Clarification

2.1 CAMA 2020

The Companies and Allied Matters Act 2020 is a Nigerian Federal Legislation that governs the establishment and management of Companies in Nigeria. The Act replaced the Companies and Allied Matters Act¹. In Nigeria, it is the legislation that governs the activities of both business and non-business organization. It provides a comprehensive legal framework for the establishment, operation and regulations of various types of businesses or organizations. It is a most substantial legal reform of the Nigerian corporate sector.

The Act introduced measures to ensure efficiency in the registration and regulation of corporate vehicles, reduced the compliance burden of small and medium enterprises, enhanced transparency and stakeholder's engagement in corporate vehicles and, overall, promoted a more friendly business climate.²

The Act has 870 sections which are classified into chapters under parts A to G. Part A deals with the composition and administration of the registry which functions as a regulator i.e. the Corporate Affairs Commission (CAC). Part B has 29 Chapters, which stipulates the lifecycle of companies from their incorporation through to liquidation. Parts C & D have 11 and 2 chapters, respectively, and set out provisions that govern limited liability partnerships and limited partnerships. Parts E & F repeated sections on the registration and regulation of Business Names and Incorporated Trustees, with a few changes outlined in chapters 3 and 7, respectively. Part G introduces the quasi-judicial body i.e. the Administrative Proceedings Committee in its first chapter and covers general miscellaneous matters in its other chapter.³

The Act has been unanimously described as Nigeria's most revolutionary piece of business legislation in decades and a badly needed respite for the private sector and small scale businesses.⁴ It is equally said to have effectively administered the Nigerian business regime, providing guidelines and the structures that have kept the business framework running for decades.

The Companies and Allied Matters Act 2020 made copious provisions as regards the protection of minority shareholders' in a Company.

2.2 Shareholders

Any member of the Company is a shareholder of the Company. By the provisions of the Act,⁵ shareholders or members of a company are those that subscribe to the memorandum of a company

¹ 1990 (CAP C20, LFN 2004), <https://en.wikipedia.org> "Companies and Allied Matters Act, 2020" Accessed on 4th June, 2025

² <https://assets.kpmg.com> "The Companies and Allied Matters Act, 2020 Aspires to Optimize Corporate regulation in Nigeria" Accessed on 4th June, 2025

³ *ibid*

⁴ <https://www.thisdaylive.com> "Revolutionary Highlight of CAMA 2020" Accessed on 4th June, 2025

⁵ Companies and Allied Matters Act 2020 s.105

and are deemed to have agreed to become members of the company, and on its registration every one entered as member in its register of members. However, a person other than those that actually subscribed to the memorandum of Association can still validly become members of a company.⁶ Therefore, anyone who after the company has been incorporated agrees in writing to become its member shall become a member when his name is put in the register of members.

In public Limited liability companies noted for large membership, the majority of the shareholders only become members after the company has been incorporated and there is a public offer of shares. A person then, can become a shareholder in such a company by acquiring shares in a company limited by shares. This is not the case with a company limited by guarantee. A person can become a member of a company limited by guarantee by agreement. Therefore, a shareholder as a member of the company can be derived from either (a) subscription to the memorandum of Association, (b) by agreement to become a member in which entry is made in the Register of members. The court, in the case of *Birlet Co (Nigeria) Ltd V. Frances*,⁷ held that the practice is that a prospective shareholder, making application for allotment of shares in writing is an offer which the company may accept by allocation of shares. The acceptance is communicated by a letter of acceptance and the allottee becomes a member as soon as his name is entered in the register of members. The same position was upheld in case of *Edokpolor & Co. Ltd Y. Sem-Edo Wire Industries*.⁸

A person can become a shareholder of a company by purchase of shares,⁹ transfer of shares,¹⁰ transmission of shares,¹¹ conversion of debentures into shares¹² etc.

2.3 Majority shareholders

The Act,¹³ did not define majority shareholder. Black's Law Dictionary defined a majority Shareholder as "a shareholder who owns or controls more than half of the corporation's stock."¹⁴ Similarly, a majority shareholder has been defined as "a person natural or non- natural who owns more than 50% of a company's shares."¹⁵ They are shareholders who own or control more than half of the corporation's stock.¹⁶ They are shareholders who are in controlling position because of the bigger amount of shares they own. In essence, they control the company's management and can single handedly elect the directors of the company.

A majority shareholder is considered a stakeholder in the company because they make a substantial financial investment in the company.¹⁷ They have a vested interest in the company's performance and are endowed with special rights.¹⁸ They are referred to as the controlling shareholders (those

⁶ *ibid.* s. 105 (2)

⁷ (1987) 2 NWLR (pt.58) 673

⁸ (1984) 7 SC 480.

⁹ Companies and Allied Matters Act, 2020. S.141

¹⁰ *ibid.* s.175

¹¹ *ibid.* S.179

¹² *ibid.* s.197

¹³ CAMA 2020

¹⁴ Black's Law Dictionary (10th ed. 2014), Bryan A. Garner (ed.), Thomson Reuters, p. 1586

¹⁵ J.A Dada, "Principles of Nigeria Company Law" (4th Edition, Calabar, University of Calabar Press, 2023) p. 471

¹⁶ O. Aduma, "The Balancing of Interests between Minority and Majority Shareholders In Corporate Law: A comparative An analysis," *Journal of Refugee Law and International Criminal Justice*, Volume 2 No 1.2023.

¹⁷ <https://corporatefinanceinstitute.com> "Majority Shareholder-Overview, Rights, Privileges" Accessed on 5th June 2025

¹⁸ *ibid.*

with a higher percentage of shares). They have significant voting power when it comes to company decisions.¹⁹ They can out vote all shareholders combined with their majority of shares. They have the right to vote for and elect members of a company's board of directors, which means majority shareholders have a direct say in how a company is run.²⁰ They are known for their essential role in decision-making processes within a company. This makes them an important element in the complex world of corporate ownership and management.

2.4 Minority Shareholders

The CAMA 2020 did define the term "minority shareholder." According to the court of Appeal in the case of *Okoye & Anor v Eco bank & Anor*,²¹ a minority shareholder was defined as "a shareholder who owns less than half the total shares outstanding and thus, cannot control the corporation's management, or single handedly elect directors"

The Black's law Dictionary²² defined a minority shareholder as "a shareholder who owns less than half the total shares outstanding and thus, cannot control the corporation's management or single handedly elect directors. They are at the mercy of the minority shareholders who owns or controls more than half of the corporations' stock"

Minority shareholders are investors who own a smaller percentage of a company's shares. Their ownership is not sufficient to exert significant influence over corporate decisions. They generally hold less than 50% of the company's shares and therefore do not have control over key votes such as those for board elections or major corporate actions.²³ Their interests oftentimes are not paid much attention as a result of their limited ownership and voting power. They are vulnerable or susceptible to having their concerns or interests overlooked or disregarded by the majority or controlling shareholders. Minority shareholders are equally vulnerable to oppression and marginalization due to their limited voting power and lack of influence over the board of directors.²⁴ To uphold their rights and interests therefore necessitates upholding fair corporate governance principles and implementing legal protections.²⁵ If this is achieved, it will wedge against unfair practices ensuring that corporate actions align with the interests of all shareholders, regardless of their stake size.²⁶

The companies and Allied Matters Act 2020 provided some safeguards for minority shareholders. It offers specific protection including the right to take legal action against the company or its officers in cases of misconduct, the right to convene meetings, and the ability to seek redress for oppressive or unfair treatment.²⁷

¹⁹ *ibid*

²⁰ *ibid*

²¹ (2019) LPELR – 47350 (CA)

²² B.A Garner, *Black's Law Dictionary* (9th edition. Minnesota: West Publishing Company, 2009) p.1500

²³ <https://manifieldsolicitors.com> "The Role of Corporate Governance in Protecting Minority Shareholders Rights in Nigeria" Accessed on 4th June, 2025

²⁴ *ibid*

²⁵ *ibid*

²⁶ *ibid*

²⁷ Companies and Allied Matters Act, 2020. Ss.348-348

3.0 Theoretical Framework

Corporate governance has been variously defined and described.

The Organization for Economic Development (OECD), defined corporate governance as:

The system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the Board, managers, shareholders, and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set and the means of attaining those objectives and monitoring performance²⁸

Corporate governance refers to the structures, processes and practices through which companies are directed and controlled as well as the mechanisms of internal and external control of the actions and inactions of the organs of a company in a manner that ensures compliance with public policy, acts in the interest of stakeholders. And ultimately avoids corporate failure and abuse.²⁹ It provides the framework which aims at building and strengthening corporate transparency, accountability, credibility, integrity, and trust.

3.1 The Theories of corporate Governance

3.1.1 Agency Theory

Agency theory explores the relationship between principals (such as shareholder) and agents (such as corporate directors or managers) in organizations. When agents and principals interests come into conflict, a principal-agent problem can arise that may result in inefficiencies, mismanagement, or self-serving behaviors from managers.³⁰

This theory explores the relationship between the principals i.e. the shareholders and the directors ie the agent principals, highlighting the challenges that may arise when the directors interests conflicts with that of the shareholders which ultimately will lead to conflicts and inefficiencies. Proper corporate governance may resolve the conflict.

The principal here is the shareholders and the directors are the agents saddled with the responsibility of corporate governance in Nigerian companies.³¹ Where this conflict of interest between the Shareholders and the directors arises, the company may need to address the conflict by auditing, board oversight, and other mechanism in order to realign the interests of the agent and the principal. Corporate governance can create incentives for an agent to act in the best interests of the principal, using agency theory to help design appropriate incentive and resolve conflicts³²

²⁸<https://corpgovnigeria.org>. 'Corporate Governance in the Age of Digital Transformation' Accessed on 16th March 2025

²⁹ *ibid*

³⁰ <https://www.investopedia.com> "What is the Role of Agency Theory in Corporate Governance" Accessed on June, 2025

³¹ CAMA 2020. S. 260

³² <https://www.investopedia.com> "What is the Role of Agency Theory in Corporate Governance" Accessed on 6th June, 2025

3.1.2 Stewardship theory

The stewardship theory is almost an alternative to agency theory. The stewardship theory is the theory that managers, left on their own, will act as responsible stewards of the assets they control, and describes the existence of a strong relationship between satisfaction and organizational success.³³

The theory posits that a steward recognizes that individualistic, opportunistic, and self-serving goals will be met if work is done for the greater good of the company. They are motivated by intrinsic rewards such as trust, reputational enhancement, reciprocity, discretion and autonomy, level of responsibility. Job satisfaction, stability and tenure, and mission alignment.³⁴

The stewards need intrinsic and extrinsic motivation to protect and maximize the shareholder's wealth so both could empower trust. Or similar to the company's performance may increase because the nature of the trust and loyalty of company managers to commitments in company.³⁵

The Directors are the stewards empowered by the law to manage the resources of the shareholders. Good stewardship according to this theory is based on the mutual trust between the shareholders and the directors which is contrary to the position in the agency theory model.

3.1.4 Resource Dependency Theory

Resource dependence theory explains the dependency of organizations on resources in their external operating environment. It focuses on how companies manage their dependence on external resources and power dynamics within their environment to achieve their goals.³⁶

Resource dependence theory predicts that businesses need external resources to grow and survive in the market. Companies depend on suppliers, investors, and government policies to keep running. They are responsible for obtaining the necessary resources and building partnerships to help their businesses prosper in an ever-competitive marketplace.³⁷

This theory suggests that the directors, as the managers of the company should drive the company by establishing links and networks that could lead to the growth and prosperity of the company for the benefit of the shareholders.

This theory is adjudged too focused on external factors and misses on internal factors like company culture and leadership.³⁸

3.1.5 Stakeholder Theory³⁹

The stakeholder theory of corporate governance focuses on corporate activity's effect on all stakeholders rather than focusing only on shareholders. With the stakeholder theory corporations

³³ <https://accounting.binus.ac.id> "the Stewardship Theory-Accounting BINUS" Accessed on 6th June, 2025

³⁴ *ibid*

³⁵ <https://accounting.binus.ac.id> "the Stewardship Theory-Accounting BINUS" Accessed on 6th June, 2025

³⁶ <https://plutuseducation.com> "Theories of Corporate Governance: Agency, Stewardship & More" Accessed on 5th June, 2025

³⁷ *ibid*

³⁸ *ibid*

³⁹ <https://www.diligent.com> "The Stakeholder Model of Corporate Governance" Accessed on June, 2025

are accountable to myriad groups and must try to mitigate or reduce conflicts between them. The theory also incorporates the interests of any third parties that are in some way dependent on the corporation.

Stakeholders anticipated here are the internal stakeholders, such as corporate directors, managers and employees and the external stakeholders including creditors, vendors, auditors, customers, and the community and government agencies.

The stakeholders may not be directly involved in the governance process, but they influence how the company operates one way or the other. This theory suggests that the Board of directors should endeavor to meet the varied interests in the operations of the company and not just the interests of the shareholders. This theory may lead ultimately to the concept of Corporate Social Responsibility because the Directors are in business to make maximize the profit of the shareholders.⁴⁰

3.1.6 Transaction cost Theory

The transaction cost is the cost incurred while conducting economic transaction. It could be monetary, extra-time of inconvenience caused. Cost efficiency is then used to explain corporate governance through the transaction cost theory. Its attention is on transaction cost minimization through the efficient structuring of governance systems.⁴¹ This theory serves as a guide in determining the cost effective method of running a business.

This theory may in the long run, jettison ethical and social responsibilities in governance. Since it is mostly cost –driven, stakeholder’s wellness, which is essential for sustainable business in the long term may be relegated.

The directors are therefore to look for the most cost effective method of maximizing the shareholders profit. They may decide to out-source or retain in-house resources.⁴²

3.1.7 Political Theory

The political theory sees corporate governance as a relationship between firms and government policy. This theory ultimately points us to the role of government in corporate governance. It delves into how businesses can adapt to legal frameworks and regulatory changes. But it assumes that company’s act based only on political factors. It also ignores internal governance players like leadership, ethics and organizational culture that propel business results.⁴³

There is no doubt that the policies of government can affect direct or shape corporate governance but the directors through astute leadership can maximize the profit of the shareholders through intelligent compliance.

⁴⁰ ibid

⁴¹ ibid

⁴² ibid

⁴³ ibid

4.0 The Role of the Majority on Shareholding and Corporate Governance

The concept of majority rule in corporate governance reflects a democratic approach, where the will of the majority of shareholders is generally accepted and implemented.⁴⁴ Majority rule and minority protection are so essential and a fundamental principle in corporate governance and ultimately aims at balancing the interests of the majority shareholders who exercise significant influence in company decisions and operations, and the minority shareholders with fewer shares. A common parlance is that the majority will have their way and minority will have their say.⁴⁵

However, the principle of majority rule is balanced by the need to protect minority shareholders from potential oppression.⁴⁶

4.1 Majority Shareholders and Corporate Governance

4.1.1 Voting power

Majority shareholders play a crucial role in corporate governance or influences corporate governance through their voting rights. They hold a large percentage of a company's shares, which gives them substantial voting power on key issues like election of board members, mergers and acquisitions, major policy changes. These votes help to shape the company's strategic direction and governance practices⁴⁷

4.1.2 Election of Board of Directors

The significant shareholding of majority shareholders enables them to be part of the election of the Board of Directors. The Board acts on behalf of the shareholders to oversee the management of the company. The majority shareholders generally appoint their representatives who will steer the wheel of the company according to their desire and interests.⁴⁸

4.1.3 Dividend Decisions

The distribution of dividends to shareholders is also influenced by majority shareholders. The amount to be distributed and the time of the distribution are all voted by them. As a result they have a say on the return on investment of all shareholders, including minority shareholders.

4.1.4 Corporate Strategy

The powers exercised by the majority shareholders enables them to provide strategic direction for the company. By the means of this major powers, they introduce plans and strategies that align with their objectives. These plans could be expansion plans, cost-cutting plans or capital allocation, investment plans, etc. are all carried out as is desired by the majority shareholders.⁴⁹

Much as the majority rule can be said to be the chief of corporate governance, it is essential to ensure that minority shareholders' interests are also protected. The Company and Allied Matters

⁴⁴ <https://scholar.smu.edu> "A Democratic Participation Model for Corporate Governance" Accessed on 6th of June, 2025

⁴⁵ *ibid*

⁴⁶ E, Nelson, "Democratic Corporate Governance and the Rights of Minority Shareholder: Perspective from Nigeria and South Africa", *UI Law Journal Vol. 11*

⁴⁷ <https://corporatefinanceinstitute.com>. "Majority Shareholder- Overview, Rights, Privileges" Accessed on 6th June, 2025

⁴⁸ *ibid*

⁴⁹ *ibid*

Act 2020, which is the principal legislation governing companies and Allied matters along with other regulations has provide legal and regulatory mechanisms that limit the potential for majority shareholders to act unfairly or oppressively.⁵⁰

4.2 Mechanism for Protection of Minority Shareholders under CAMA 2020

The principal legislation for the management of a company in Nigeria is the Company and Allied Matters Act 2020. There are other laws and legislations which provides for minority shareholders protection in Nigeria. The Investments and Securities Act 2007 as amended, The Securities and Exchange Commission corporate code form some of those laws which ensures minority shareholders protection in Nigeria. The Companies and Allied Matters Act 2020 provides the following mechanisms for minority shareholder protection:

4.2.1 Fair Treatment

The Act,⁵¹ mandates a director to at act all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skillful director would act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations.

The directors therefore are under fiduciary duty not to act only in the interest of the majority shareholders but shall also protect the interest of the minority shareholders.

4.2.2 Right to financial information.

The minority shareholders have right to access financial information, annual reports and other relevant documents. This right is important as it helps the minority shareholder to monitor the performance of the company.

The Act,⁵² spells out the rights of shareholders to inspect the company's books and records. It provides that a shareholder may apply to the court for an order to inspect the company's books and papers subject to certain conditions.

By the provision of the Act,⁵³ the shareholder can obtain copies of the company's balance sheet, profit and loss account, director's report and auditors report. The court can order a company to produce documents on information if it considers it just and equitable to do so.⁵⁴

This access to information enables the shareholders to hold the directors accountable, helps the shareholders monitor the company's performance and other relevant documents. Through the availability of these documents, companies can enhance transparency and build trust.

4.2.3 Right to sue the Company

CAMA 2020 grants minority shareholders certain legal rights to protect their interests. Minority shareholders have the right to initiate derivative actions against directors who engage in misconduct

⁵⁰ *ibid*

⁵¹ Companies and Allied Matters Act 2020. S 305 (3)

⁵² *ibid.* s.234

⁵³ *ibid.* S. 235

⁵⁴ *ibid.* s. 236

or abuse of power. Additionally, minority shareholders can seek redress if they experience oppression or unfair treatment. These rights points to the need of corporate governance in providing mechanism for minority shareholders to hold directors accountable.⁵⁵

4.2.4 Board composition and Independent Directors

A fundamental principle of corporate governance is the establishment of a balanced and diverse board. The Act⁵⁶ mandates the inclusion of independent directors who act as neutral parties in safeguarding the interests of all shareholders. This mechanism protects the minority shareholders as the decisions taken will not solely be in the interest of majority shareholders in the face of a neutral party.

5.0 Literature Review

A lot of scholars have written on diverse aspect of protection of minority shareholders under the Nigerian law. Ogheneteme⁵⁷ discussed minority shareholders protection from the point of view of business efficiency. It was noted that protection of minority shareholders play an important role in strengthening corporate governance practices and improving investment efficiency. This is achieved by making sure that minority shareholders rights are upheld. Companies can foster an environment of trust and stability that encourages both domestic and foreign investments.

According to the writer:

The protection of minority shareholders plays a pivotal role in shaping the quality of corporate governance and improving investment efficiency in Nigeria. While Nigeria has made significant strides in this area, continued efforts are necessary to ensure that minority rights are upheld, corporate governance practices are transparent, and investment efficiency is maximized. Strengthening legal frameworks, improving enforcement mechanisms, and fostering a culture of accountability are essential to creating a more favorable investment climate in Nigeria”

Similarly, Atoyebi⁵⁸ examined the remedy for oppressive or unfairly Prejudicial Conduct under Nigeria’s Corporate regime and compares it with the Canadian Business Corporations Act (CBCA) position. Central to its finding is that the Nigerian law is restrictive in the sense that it did not include the subsidiaries of a company as one of the entities that such action can be brought against in contradistinction to what obtains in Canada.

According to the writer:

Under CAMA, an action for remedies for oppressive and unfairly prejudicial acts has a narrow scope, unlike in CBCA. Under CAMA, it may be used against the corporation, its directors or officials. Under CBCA, which has a broader scope,

⁵⁵ *ibid.* s 346 -348

⁵⁶ *ibid.* s.275

⁵⁷ <https://www.mondaq.com> “The Impact of Minority Shareholders Protection On Corporate Governance Practices and Investment Efficiency In Nigeria” Accessed 7th June, 2025

⁵⁸ <https://www.omaplex.com.ng> “Protecting Minority Shareholders in Nigeria: A Comparative Analysis of the Remedy for Oppressive or Unfairly prejudicial Conduct in Nigeria and Canada” Accessed on 7th June, 2025

remedies for oppressive and unfairly prejudicial acts can be brought against the corporation, its directors or officials, and its subsidiaries.

Additionally, still referring to the parties permitted to pursue the remedies of oppressive and unfairly prejudicial acts, section 241 of the CBCA gives a complainant the ability to focus on actions or inactions committed by the corporation's subsidiaries, unlike CAMA, which depends on prejudicial discretion to allow actions against subsidiaries, CAMA does not contain express provisions for such powers. This could restrict shareholders ability to pursue remedies for oppressive and unfairly prejudicial acts to resolve issues pertaining to subsidiaries. . Thus, the companies and Allied Matters Act 020 ought to be amended to include subsidiaries as part of the category of persons to sue, and the remedy for oppressive and unfairly prejudicial acts can be brought against them.

Also, Anaje⁵⁹ analyzed the efficacy of Minority shareholders protection regime under Cama 2020 and finds that lack of consistency in defining the “oppressive conduct and “unfairly prejudicial treatment” by the courts could be a challenge to securing the rights of the minority shareholder and remedy on infringement.

According to the writer, “The case of *Ogunade v Mobile Films (West Africa) Ltd*⁶⁰ reveal inconsistencies in applying CAMA's terminology. The court upheld the need for a continuous pattern of intentional harm for “oppression,” potentially neglecting singular acts of significant harm. It underscored the importance of upholding principles of corporate governance and fairness in the conduct of business affairs, even in closely held companies where majority shareholders may wield significant control. Conversely, in a case like *Aero Bell Nig. Ltd. V Fidelity Merchant Bank Ltd*,⁶¹ the court applied “unfair Prejudice” to the singular act of declaring lower dividends, highlighting its broader reach. This lack of consistent guidelines generates uncertainty for potential applicants and undermines the deterrent effect on dominant shareholders.

In the same vein, Aluko,⁶² considered the issue of minority protection critical in the face of the tyranny of the majority shareholders. It looked at the efficacy of the protection afforded minority shareholders from the point of view of enforcement under the Nigerian law and revealed that personal and representative action has been made more desirable as members can claim damages in addition to injunctive or declaratory reliefs. Derivative actions however should be more defined to allow the technical hurdles be lowered in the interest of justice.

Finally, Charles,⁶³ discussed fraudulent investment schemes in the capital market by majority shareholders. It noted that investor protection has become compelling in the face of the dangers of expropriation of investment of minority shareholders by controlling shareholders and corporate managers. It finds that fraudulent investment schemes at the expense of minority shareholders is rampant and requires robust and institutional and country-specific regulation for investor

⁵⁹ <https://ao2law.com> “An Analysis of the Efficacy of Minority Protection Under Nigerian Company Law” Accessed on 7th of June, 2025

⁶⁰ (1976) 2 FRCR 101

⁶¹ (2018) LPELR-45338 (CA)

⁶² <https://www.researchgate.net> “Enforcement of Minority Shareholders Right in Nigeria” Accessed on 7th June, 2025

⁶³ <https://bril.com> “Fraud Against Minority Shareholders in Nigeria: Constraints and Prospects” Accessed 7th June, 2025

protection. To remedy fraudulent investment and prejudicial conduct, optimal approach to track, limit and penalize fraudulent investment schemes in the capital market, especially through proactive regulation.

6.0 Judicial Attitude towards Minority Shareholders in Nigeria, South Africa and UK Nigeria

Generally, where a wrong has been done against the company in the course of the management of the affairs of the company, it is only the company that can ratify the irregular conduct or sue to remedy the wrong. This principle was recognized in the landmark case of *foss v Harbottle*⁶⁴

6.1 Exceptions to the Rule

- (a) A shareholder may by injunction or a declaration restrain the company from the following⁶⁵
- a. Illegality and ultra vires Act
 - b. Irregular procedure
 - c. Infringement of membership rights
 - d. Fraud on minority
 - e. Impracticability to call company meeting in time to redress wrong done to the company or to the minority
 - f. Where the directors are likely to derive a profit or benefit or have profited or benefited from the negligence or from the breach of duty.
 - g. Any other act or omission, where the interest of justice so demands.

6.2 Illegal and ultra vires Act

The Act⁶⁶ provides that a company shall not, carry on any business expressly prohibited by its memorandum and shall not exceed the power conferred upon it by its memorandum or the Act. In the event of such ultra vires acts, a shareholder may proceed to court on behalf of the company. In the case of *yalaju-Amaye v Association of Registered Engineers Commission*⁶⁷ a minority shareholder was allowed to sue where the purported appointment of new directors by the board was held ultra vires the board as there was no such power granted in the articles of Association.

6.3 Irregular Procedure

Where⁶⁸ a company purports to do by ordinary resolution any act the article of the company, or the Act requires to do by special resolution. Noncompliance would amount to irregular procedure that would give rise to an action by a shareholder

6.4 Infringement of Membership Rights

This refers to all acts or omission affecting the right of a shareholder as a member. The right of every member of a company are fundamental and is enforceable against the company on its infringement. These rights are numerous:

1. Failure to give meeting notice⁶⁹

⁶⁴ (1843) 2 HARE 461, 67 ER 189

⁶⁵ CAMA 30209 s. 343 (a) –(g)

⁶⁶ *ibid.* s. 44(1)

⁶⁷ (1990) 4 NWLR pt.145

⁶⁸ CAMA 2020 s. 343(b)

⁶⁹ *ibid.* s. 245

2. Right to inspect the company records⁷⁰
3. Refusal to vote in resolution either by self or proxy⁷¹
4. Failure to admit duly appointed proxy⁷²
5. Variation of class rights amongst other denials affecting the members in his personal relationship with the company⁷³

6.5 Fraud on the Minority⁷⁴

This refers to committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done.

6.6 Where the Directors are Likely to Derive a Profit or Benefit or Have Profited or Benefited from Their Negligence.

The Act provides for an action by a minority shareholder where the directors unconscionably benefited or is likely to benefit from their breach of duties⁷⁵

6.7 Derivative Action

A derivative action⁷⁶ also known as a shareholder derivative suit is a lawsuit brought by a shareholder on behalf of a company against a third party. Often, the third party is an insider of the company such as the directors or executive officers. Per O. Adekeye, J.S.C. in *Agip (Nig) Ltd v Agip Petroleum International & 7 Ors.*⁷⁷ In reality, this type of action is done by the company but since it will not sue as plaintiff, the law makes provision for a minority to sue on behalf of the company and not on behalf of the shareholders⁷⁸

6.8 Relief on Grounds on Unfairly Prejudicial and Oppressive conduct⁷⁹

Although the Act did not define what amounts to oppressive or unfairly prejudice or discriminatory conduct, the courts have over the years construed the expression of the term. In *Ogunade v Mobile Films (WA) Ltd*⁸⁰ Karibi Whyte J (as he then was) explaining the nature of the oppression or fraudulent conduct contemplated by section 201 of the Companies Act 1968 said *inter alia*-

The oppression or fraudulent conduct of the majority must be harsh, burdensome and wrongful and must represent a consistent pattern of conduct intentionally directed at the oppressed minority over a period of time. Thus, negligence in conducting the affairs of a company, or lack of business ability or inefficiency will not be sufficient. Concisely stated, a petitioner under section 201 of the Companies Act 1968 must, in order to obtain relief, show that the oppressive conduct against him falls within the scope of one or more of the circumstances herein indicated.

⁷⁰ *ibid.* s.375

⁷¹ *ibid.* s.251

⁷² *ibid.* s.254(3)

⁷³ *ibid.* s.166

⁷⁴ CAMA 2020 s. 343(d)

⁷⁵ *ibid.* s.343(f)

⁷⁶ *ibid.* s.346(1)

⁷⁷ (2010) LCN/3794 (SC), (2010) 5 NWLR (Pt 1187, 348

⁷⁸ J.O Orojo, *Company Law and Practice in Nigeria* (5th edn. Cape Town Lexis Nexis Butterworths, 2008) 212

⁷⁹ CAMA.2020 S..354

⁸⁰ (1976) 2 FRCR 10

In *Re R.A Noble and sons (clothing) Ltd*,⁸¹ it was held that a case falls within the scope of unfairly prejudicial conduct if:

- a. It would suffice for a member to show that the value of his shareholding had been seriously diminished or, at least seriously jeopardized by a course of conduct by those who had de-facto control of the company, and
- b. The test of unfairness is objective and there is no need to show any conscious knowledge on the part of the controller that it was unfair, or any other evidence of bad faith. The question would be whether a reasonable bystander would regard it as unfairly prejudicial.

To merely allege that a conduct is unfairly prejudicial or illegal is not enough. The circumstances of the oppression or illegality must be shown.

6.9 Investigation of the Company

Another way to protect minority shareholder is by investigation of the company by the commission. It is one of the new and unique interventions provided by CAMA to protect the rights of the minority shareholders and generally to ensure proper administration and management of the company.

6.10 Winding Up of the Company on Just and Equitable Ground

Another protection afforded minority shareholders by CAMA is the right to petition the court on just and equitable ground⁸² this is the most drastic form of shareholders relief. Winding up is the process whereby a company's life is brought to an end and its assets are administered by an official called a liquidator for the benefit of the creditors or members of the company. The liquidator assumes control of the affairs of the company, collects its assets, pays its debts where necessary and distributes any surplus among the members. In *Anakwenze v Tapp Industries*⁸³ this term was defined by Oguntade JSC as including the gathering in the assets of the company, disposing of such assets, meeting of the liabilities of the company and sharing of the balance between contributories. Where the court orders that a company be wound up, the relevant provisions of CAMA relating to winding up of companies applies.⁸⁴ In *General Aviation Services Ltd v Thahal*,⁸⁵ the court emphasized that:

The words "just and equitable" in a winding up proceeding are a recognition of the fact that a limited liability company is more than a mere judicial entity, with a personality in a law of its own, that there is a room in company law for recognition of the fact that behind it or against it, there are individuals with rights, expectations and obligations inter se which are not necessarily submerged into the company's structure.

Also, the Securities and Exchange Commission Code of Corporate Governance in Nigeria provides that board is to ensure that all shareholders are given equal treatment and minority shareholders are adequately protected from the abusive actions and controlling shareholders. In addition, there

⁸¹ (1983) BCLC 273

⁸² S. 571(f) of CAMA 2020

⁸³ (1992) 7 NWLR (pt 252) at 265

⁸⁴ S. 355(3) of CAMA 2020

⁸⁵ (2004) 10 NWLR (Pt. 880) 50 SC

should be adequate shareholder representation on the board proportionate to the size of shareholding⁸⁶

7.0 Insight into Other Jurisdiction

7.1 United Kingdom

Judicial attitude towards the protection of minority shareholders in UK is in a lot of ways similar to what obtains in Nigeria but they are not entirely the same. Companies in UK often face challenges when those in control act in ways that undermine their interests. UK law offers several remedies that allow minority shareholders to protect their rights and seek redress.

Three legal remedies for minority shareholders in UK⁸⁷

7.1.1 Unfair Prejudice Petitions⁸⁸

Unfair prejudice petitions are the most used remedy for minority shareholders. In this kind of application, a shareholder can apply to court if the company's affairs are being conducted in a way that is unfairly prejudicial to their interests. The situation that can warrant this kind of application are as follows:

- i. Exclusion from management or decision-making especially in Quasi-partnerships;
- ii. Misuse of company assets by directors;
- iii. Unjustified withholding of dividends;
- iv. Breaches of legitimate expectations such as the right to participate in running the business.⁸⁹

The court has the discretion in the grant of remedies once satisfied that unfair prejudice has occurred. The court may order the majority shareholder to buy out the minority's shares at a fair value often with an added premium to reflect the mistreatment.⁹⁰

7.1.2 Derivative claims section⁹¹

This kind of claim allows a shareholder to take legal action on behalf of the company when wrongs have been done to it by directors and those in control who may be the directors are unwilling to act. Characteristics of the claim

- i. The claim is made in the company's name, not the shareholder's
- ii. It usually involves allegations such as director misconduct or misappropriation of assets
- iii. The court's permission is required early on ensuring that the claim benefits the company overall
- iv. The remedy is particularly valuable when internal governance has broken down or conflicts of interest prevent the company from addressing wrongdoing

8 Just and Equitable Winding up⁹²

This remedy brings the company's existence to an end. It is used only in extreme cases. The situation that can warrant this kind of application are as follows:

⁸⁶<https://sskohn.com> "Corporate Governance 2021! SSKOHN" Assessed on 17th April 2025

⁸⁷<https://mooresgdlaw.com> "Key Legal Remedies for Minority Shareholders in the UK" Accessed on 6th of June, 2020

⁸⁸ Companies Act 2006. S.994

⁸⁹ <https://mooresgdlaw.com> "Key Legal Remedies for Minority Shareholders in the UK" Accessed on 6th of June, 2020

⁹⁰ *ibid*

⁹¹ Companies Act 2006. S.260

⁹² Insolvency Act 1986. S.122 (1) (g)

- i. Complete breakdown of trust in a quasi-partnership
- ii. Management deadlock
- iii. Failure of the companies fundamental purpose
- iv. Exclusion from management contrary to initial agreements of expectations

Court usually resorts to this kind of remedy when no other remedy would be fair.

7.2 South Africa

Despite lack of control, minority shareholders are still entitled to certain rights and protections under South African company laws

7.2.1 Participation Rights⁹³

Minority shareholders remain entitled to attend and vote at shareholder meetings, and through this, participate in the decision –making processes of the company and have a say in important matters such as the election of directors, the approval of financial statements, and the distribution of dividend. Minority shareholders also have the right to receive notice of shareholder meetings and to receive copies of all relevant documents, such as meeting minutes, as well as have access to the company's financial statements and other relevant information about the company's operations and performance.

7.2.2 Protection Rights

The Act⁹⁴ provides minority shareholders with the right to take legal action against the company if their rights are being infringed.

7.2.3 Application for Determination and Protection of Rights⁹⁵

A shareholder may approach the court for an order for a determination or protection of on any of their rights in terms of the Act, the company in question's Memorandum of Incorporation, the rules of the company or any debt instrument such as bonds, debentures; loan, lines of credit etcetera, by way of, for example, a declaratory order or an interdict.

This remedy seeks the court to make a declaration by interpreting the above legislations. On contravention, to hold any director liable for such harm where such director has breached their fiduciary duties.

7.2.4 Application to Declare a Director Delinquent or under probation⁹⁶

The Companies Act contains detailed provisions on approaching the court to declare a director delinquent or to have them placed under as order of probation.

The effect of an order of delinquency is that a person is disqualified from being a director of any companies. The order may under certain circumstances be unconditional and subsist for the lifetime of the person declared a delinquent director.

⁹³ <https://www.adams.africa> "Rights of Minority Shareholder in Terms of The South African Company Laws" Accessed on 5th of June, 2025

⁹⁴ The Companies Act 71 of 2008

⁹⁵ *ibid.* s.61

⁹⁶ *ibid.*s.162

Similarly, a person who has been placed under probation may not serve as a director of a company, except to the extent permitted by the order of the court. The probation order may be subject to any conditions the court deems appropriate and for a period of up to five years. A court may also order that the director be supervised by a mentor in any future participation as a director while the probation order remains in force.

A court may also order the director concerned to pay compensation to any person adversely affected by their conduct.

7.2.5 Remedy against Oppressive or prejudicial conduct⁹⁷

A minority shareholder may apply to the court for relief if;

- i. any act or omission by the company or a person related to the company, has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of the shareholders; and
- ii. The business of the company, or a person related to the company, is being conducted in a manner that is unfairly prejudicial to, or that unfairly disregards the interests of the shareholder;
- iii. 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 shareholder

The test here is not lawfulness but fairness.

7.2.6 Dissenting Shareholders Appraisal Rights⁹⁸

A dissenting shareholder, in certain prescribed circumstances, can compel the company to buy back its shares at a fair market value.

This provision entitles a minority shareholder the opportunity to exit the company where they are unable to prevent a transaction which they disagree with.

This provision is triggered when certain fundamental transactions occur, which includes the disposal of all or a greater part of the company's assets⁹⁹, amalgamations¹⁰⁰ or mergers¹⁰¹ and schemes of arrangement.¹⁰²

The provision is also triggered if the company gives notice of a meeting to pass a resolution to amend its memorandum of incorporation by altering the preferences, rights, limitations or any other terms of any class of shares in a manner materially adverse to the rights or interests of holders of that class of shares.¹⁰³

⁹⁷ *ibid.* s.163

⁹⁸ *ibid.* s. 164

⁹⁹ *ibid.* S 112

¹⁰⁰ *ibid.* s 113

¹⁰¹ *ibid.* s.114

¹⁰² *ibid.* s.115

¹⁰³ <https://www.adams.africa> "Rights of Minority Shareholders in Terms of the South African Company Law" Accessed on July, 2025

7.2.7 Derivative Action¹⁰⁴

This action entitles a minority shareholder (among others) to institute legal proceedings on behalf of the company. A minority shareholder would be entitled to institute proceedings on behalf of the company without being stifled by the principle of separate legal personality or the rule of the majority shareholders.

These rights and protections help to ensure that minority shareholders are treated fairly and that their interests are protected fairly and that their interests are protected. As such, it is important to minority shareholders be aware of their rights and to assert them, when necessary, to ensure that they are not unfairly prejudiced by the actions of the majority shareholders or the company's directors

8.0 Conclusion

This paper concluded that existing laws have adequately protected Minority Shareholders in Corporate Governance. The minority shareholder protection under CAMA 2020 has addressed in great detail the challenges faced by the minority shareholders. However, the efficacy of the legal regime will only be manifest when minority shareholders are aware of these protection and rights accorded them under the law. Majority of the minority shareholders are not only unaware of these legal benefits but are also indifferent about its existence. The UK and South African models are already part of Nigeria's legal regime in a lot of ways.

9.0 Recommendations

This Paper recommended that there should be improvement of regulatory oversight by the Corporate Affairs Commission (CAC) through insistence on massive advertisement of the rights of minority shareholders. The Commission should advise that companies should device ways of making the minority shareholders to be constantly aware or abreast of their rights as part of corporate governance strategy.

This paper also recommends consistent review through case laws on the effectiveness and efficacy of the minority protection laws as provided in CAMA 2020 in protecting the rights of minorities against the activities of majority shareholders.

¹⁰⁴ The Companies Act 71 of 2008 s. 165