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**THE APPLICATION OF THE DOCTRINE OF CORPORATE PERSONALITY TO POLITICAL PARTIES IN NIGERIA**

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**Abstract**

*The doctrine of corporate personality establishes that on incorporation, a company acquires corporate personality. It becomes a legal person (artificial rather than natural) quite separate and distinct from its members. Political parties in Nigeria are also legal persons recognized by law and enjoys all the privileges appurtenant to a legal person including capacity to sue and be sued, ownership of properties, among others. This paper applied the doctrine of corporate personality and its exceptions to Political Parties in Nigeria. A doctrinal approach of research is adopted by examining statutes, case laws, existing literature on the topic. The paper argued that legal personality in the context of political parties refers to the legal recognition granted to a political party, enabling it to operate as a distinct legal entity, conferring upon the party certain rights and responsibility within the legal framework with the advantage of distinguishing a political party from its individual members so that it can hold property, enter into contracts and be liable for legal obligations independently. The paper finds that purpose of establishment, funding patterns and governing laws etc. between a corporation and a political party differs. The paper recommends among others that Independent National Electoral Commission (INEC) should ensure the observance of internal democracy in conduct of primaries in the same way the Corporate Affairs Commission and other regulators promotes the code of corporate governance; the process of registration and de-registration of political party should be properly harnessed to prevent proliferation of political parties especially those without clear agenda among others.*

**Keywords:** Application, Corporate personality, Political Parties, Nigeria

**1.0 Introduction**

Political parties are a creation of the constitution. They are artificial legal personalities. The law draws a clear distinction between the company as an artificial person and individual members of the company. The doctrine of corporate personality ensures that a company is quite distinct from its members. Political parties in Nigeria are also clothed with legal personality with all the incidents of a legal person in law. This paper is an attempt to apply the doctrine of corporate personality to political parties in Nigeria

This paper is segmented. The first segment clarified concepts; the second segment provided theoretical framework on corporate personality and political parties; the third segment evaluated the Doctrine of Corporate Personality under Nigerian Law; the fourth segment discussed judicial attitude towards corporate personality in Nigeria; the fifth segment sought to know to what extent political parties are corporate personality; the sixth segment discussed judicial attitude towards corporate personality in political parties administration in Nigeria; the seventh segment reviewed available literature on the subject, the eight segment summarized findings; and finally the last segment concluded the work and made some recommendations.

**2.0 Conceptual Clarification**

This paper will explain some terms in the context of their usage. Some of the concepts are discussed below.

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## 2.1 Corporate Personality

Once a company is incorporated, it acquires corporate personality. It becomes a legal person (artificial rather than natural) quite separate and distinct from its members. This is the chief attribute of incorporation and it has far-reaching consequences.

The Supreme Court's recent ruling, relying on CAMA 2020<sup>3</sup> in the case of *A G Bayelsa State v Odok*,<sup>4</sup> establishes and provides the updated legal basis for corporate personality. The court affirmed that a business name represents the entity under which business is conducted, and that conducting business inherently involves entering into contract. The clarification by the learned Justice John Inyang Okoro provided the update that while business names are not equivalent to incorporated companies in legal status, they do possess the capacity to enter into and enforce agreements. Under the Act, a company is an artificial person with corporate personality status. The company acts through its members in general meeting, or its board of directors or through officers or agents duly appointed.<sup>5</sup>

The company's article of association provides who exercises which power<sup>6</sup>. Acts of members in general meeting and of the board of directors or a managing director done in the course of the usual business of the company are treated as acts of the company itself and the company and the company will be civilly and criminally liable as if it were a natural person even in respect of 'ultra vires' act<sup>7</sup>. However, there is no civil liability of a company if the third party is aware of the General Meeting of the Board or Managing Director.<sup>8</sup> Acts of officers or agents must be authorized by the general meeting or Board.<sup>9</sup> The company is liable even if there is fraud or forgery by an officer of the company provided there is no collusion with a third part.<sup>10</sup>

## 2.2 Political Parties

The Constitution<sup>11</sup> defined Political Party to include any association whose activities include canvassing for votes in support of a candidate for election to the office of President, vice-president, Governor, Deputy Governor or membership of a legislative house or of a local government council.

Political Party has also been defined as an organized Association, either of individuals or of groups of individuals, which endeavor to place its members in government offices for the purpose of bringing about the adoption of favored political policies or programs.<sup>12</sup> One feature that distinguishes political parties from all other associations is the substantial interest in public affairs and in their effort to secure the election or appointment of their own personnel to the public positions through which the policies of government are prescribed for implementation.<sup>13</sup>

Political Parties are required to have a constitution at the point of registration with the INEC. Other requirements include open membership to all Nigerians, provision of the names and addresses of national officers, national spread, non-affiliation with any ethnic group or religion and headquarters in Abuja<sup>14</sup>

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<sup>3</sup> CAMA 2020. s. 868 (1)

<sup>4</sup> (2024) LPELR -63035 (SC)

<sup>5</sup> CAMA 2020. s. 87

<sup>6</sup> *ibid.* s. 88

<sup>7</sup> CAMA 2020 s. 89

<sup>8</sup> *ibid.* s. 89 (a)3

<sup>9</sup> CAMA 2020 s.99

<sup>10</sup> *ibid.* s. 94

<sup>11</sup> Constitution of the Federal Republic of Nigeria 1999. s. 229

<sup>12</sup> E, Okwara, 'Proliferation as a Manifestation of Ideological Deficiency: An Assessment of Political Parties in Nigeria', *international Journal of Innovative Research in Education, Technology & Social Strategies*; p-ISSN: 2465-7298/e-ISSN: 2467-8163, Vol. 7, Number 1, and February, 2020.

<sup>13</sup> *ibid.*

<sup>14</sup> Constitution of the Federal Republic of Nigeria 1999. s.222 (a) to (f)

Political parties are therefore the focal fulcrum in a democratic environment because it set the foundation or the platform for representation in government and politics of a people.<sup>15</sup> They are the main gatekeepers for candidates to participate in elections.

It is required that the Constitution and rules of a political party shall provide for periodic election on a democratic basis and ensure that appointment of the executives, reflect the federal character principle of Nigeria.<sup>16</sup> The aim of a political party shall conform to the fundamental objectives and directive principles of state policy.<sup>17</sup> In terms of oversight in the funding of political parties, the Act<sup>18</sup> provides that Independent National Electoral Commission shall yearly prepare for submission to the National Assembly, a report on the accounts and balance sheet of every political party.

Political parties are critical to democratic governance, linking citizens and government and acting as a platform to citizens to influence government. Important functions of political parties in democracy include promoting the interests of their members, gaining and maintaining power within the government and proposing policy options. Political parties are most effective when they bring together like-minded citizens with common political preferences and goals.<sup>19</sup>

### **3.0 Theoretical Framework**

#### **3.1 Corporate Personality**

The concept of corporate personality encompasses various theories that give several ideas on the legal recognition of corporations.

##### **3.1.1 The Fiction Theory**

The fiction theory posits that corporations do not possess inherent characteristics of personhood but are granted legal personhood by the state for practical and legal convenience. In other words, the law treats a corporation as if it were a natural person, capable of owning property, entering into contracts, and being held responsible for its actions. It emphasizes that corporate personality is a legal fiction than an inherent attribute.<sup>20</sup> The theory sees a corporation as an artificial being, invisible, intangible and existing only in the contemplation of the law. Being the mere creation of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its existence. It is purely a fiction of the law that has been formulated to facilitate business and protect stakeholder interest by the legal system.<sup>21</sup>

##### **3.1.2 The Realism Theory**

According to the theory, every organization has a genuine consciousness, a real will, and a real ability to act. That is the presence of a group is more than just the sum of the individuals who form the group.<sup>22</sup> The organization achieves a higher meaning than just the sum of the individuals who form the group. This challenges the fiction theory and proposes that corporations possess a distinct existence and should be recognized as genuine entities in their own right.

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<sup>15</sup> *ibid*

<sup>16</sup> *ibid*. s.223

<sup>17</sup> *ibid*. s 224

<sup>18</sup> *ibid* s. 226

<sup>19</sup> D. Madleby, *The Necessity of Political Parties and the Importance of Compromise* (2015) <https://scholarsachive.byu.edu>, assessed 14 October, 2025

<sup>20</sup> Amadike Nkem, *Jurisprudence of Corporate Personality: Rethinking the Paradox of Separate Personhood in Fiction Theory* (2018) Vol 2, *African Journal of Law and Human Rights*, pg 41-49

<sup>21</sup> *ibid*

<sup>22</sup> *ibid*

It argues that corporations have a tangible impact on society and the economy as they contribute to economic growth, provide employment opportunities and engage in various transactions and activities.<sup>23</sup> The realist theory recognizes that the legal framework surrounding corporate personality has been shaped by social and economic realities. It acknowledges that they have their own unique contribution to society and their recognition as separate necessities is necessary for accountability, governance and economic entity.<sup>24</sup>

### **3.1.3 The Concession Theory**

The context of this theory is the sovereign state ideology. This theory recognizes corporate personality as a concession or privilege granted by the state to corporations.<sup>25</sup> According to this theory, states in exchange for the contribution of corporations to society like economic development, employment generation and tax contributions, grants corporations special rights and privileges like limited liability to its individuals, the ability to own property and enter into contracts etc.<sup>26</sup>

This theory disputes the view that corporate personality is an inherent characteristic of corporations, but rather a grant or concession from the state which can be revoked if the corporations fail to fulfill their societal obligations.<sup>27</sup> This theory posits that a corporation should be recognized as a legal entity only if it serves a valid social or economic process. It proposes that a legal personality should not be granted to a corporation based on its ability to contribute to the public welfare, promote economic growth, and serve the interests of various stakeholders.<sup>28</sup>

### **3.1.4 The Purpose Theory**

Legal individuality enables corporations to perform more efficiently. The members of a corporation have specific rights that are delegated to the company for commercial purposes.

## **3.2 Political Parties**

There are several theories surrounding political parties that helps to properly understand the function of political parties, political reforms and the need for democratic consolidation. We shall review a few of them.

### **3.2.1 Elite Theory**

This theory posits that power in larger societies is concentrated at the top in relatively small elites; that power flows predominantly in a top down direction from elites to non-elites, and that the characteristics and actions of the elites are crucial determinants of major political and social outcomes.<sup>29</sup> The basic characteristics of this theory are that power is concentrated, the elites are unified, the non-elites are diverse and powerless, elites interests are unified due to common backgrounds and positions, and the defining characteristics of power is institutional position.<sup>30</sup>

### **3.2.2 Institutional Theory**

This theory posits that Political parties are molded by rules, law and institutions. The institutions could be the Independent Electoral Commission and the Laws are Electoral laws and the Constitution. These laws guide party registration and their regulations.<sup>31</sup> Institutional arguments rely not on aggregations of individual

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<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> *ibid*

<sup>29</sup> G. Damele, *Introduction: Elite Theory: Philosophical Challenges* (2022). Available at <https://pmc.ncbi.nlm.nih.gov>, assessed on 14<sup>th</sup> October, 2025

<sup>30</sup> *ibid*

<sup>31</sup> Elgar, *Party (System) Institutionalization and the Institutions of Democratic Politics* (2024.). Available at <https://www.elgaronline.com>. Assessed on 14<sup>th</sup> October, 2025.

action, or on patterned interaction games between individuals but on ‘institutions that structure action’. Institutions are higher order, factors above the individual level, constraining or constituting the interests and political participation of actors without requiring repeated collective mobilization or authoritative intervention to achieve regularities.<sup>32</sup>

### **3.2.3 Ethno-Regional Theory**

This theory views political parties as stemming from ethnic and regional angle and so the parties are the product of the interest of the predominant ethnic group.<sup>33</sup> Ethnic group has been defined as categories of people characterized by cultural criteria of symbols including language, value systems and normative behavior whose members are anchored in a particular part of the state territory.<sup>34</sup>

### **3.2.4 Rational Choice Theory**

This theory sees parties as organizations seeking to maximize benefits based on individual and collective decision-making process. Its essence is that politicians and the voters seek in the voting conduct to enhance their interest.<sup>35</sup> The rational choice theorist argue that history and culture are irrelevant to understanding political behavior, instead, it is sufficient to know actors’ interests and to assume that they pursue them rationally. They claimed that significant elements of political life could be explained in terms of voter interest.<sup>36</sup>

### **3.2.5 Patron -Client Theory**

The Patron-client in the Nigerian politics denotes godfatherism, which is conceived as a personalized relationship between actors or group of actors wielding affluence, status or power based on qualified loyalties and concerning political dealings.<sup>37</sup> This theory posits that political parties operate through networks of patronage and client. The political patron exerts power and influence not for personal but group interest.<sup>38</sup>

## **4.0 The Doctrine of Corporate Personality under the Nigerian Law**

The doctrine that a company is a legal entity, existing separate and distinct from its shareholders is a legal theory established upon an expedient theory. The fiction has been introduced for the convenience of the company in making contracts, in holding property, in suing and being sued, in management of its affairs and to preserve the limited liability of its shareholders. It is chiefly for the purpose of clothing association of natural person with characteristics of a distinct entity at law that corporations were invented and are in use.<sup>39</sup>

By the provision of section 42 of CAMA which provides thus:<sup>40</sup>

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

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<sup>32</sup> *ibid*

<sup>33</sup> Fauzan, Ethnic and Religious Orientation towards People's choice of Political Parties in Medan City (2025) *Available at* <https://malque.pub>. Assessed on 14<sup>th</sup> October, 2025

<sup>34</sup> *ibid*

<sup>35</sup> Ibrahim Aliyu, The Concept of a Company: A Legal and Commercial Perspective on Nogerian Corporate Framework under CAMA 2020, (2025) Vol 11, Issue 8, *International Journal of Law*, 47-53

<sup>36</sup> *ibid*

<sup>37</sup> *Available at* <https://www.ajol.info>. Patron-Client Politics, Democracy and Governance in Nigeria, 1999-2007. Accessed on 27<sup>th</sup> September, 2025

<sup>38</sup> *ibid*

<sup>39</sup>D Kiser, ‘*Cases and Materials on Nigerian Company Law*’, (Ile -Ife: OAU Press Ltd, Nigeria, 1992) 62

<sup>40</sup> Companies and Allied Matters Act, 2020. s. 42

The company therefore can have rights and duties quite distinct from that of its members. It can sue and be sued and it can enter into contracts. Its property belongs to it and not to the individual shareholders. Accordingly, if the company is unable to pay its debts, it may be wound up while the shareholders are liable only to the number of shares subscribed. Even if the shareholders remain but one, that person is a distinct legal person from the company. The case of *Salomon vs. Salomon*<sup>41</sup> aptly expressed the concept of legal personality.

A universal benefit of incorporation is the separate entity doctrine which protects the shareholders, directors and other operators from liability for corporate omissions. By virtue of the doctrine, the company's debts are limited to the amount shareholders have paid or have agreed to pay to the company for its shares, in case of insolvency.<sup>42</sup> The Supreme Court of Nigeria in the case of *Ayodele James v Midmotors Ltd*,<sup>43</sup> held that since corporation has attained the status of a person in the eyes of the law, it follows that it could be sued accordingly for the tortuous act of its human organ perpetrated in the course of employment.

In the case of *Union Bank PLC v Orharruge*,<sup>44</sup> the court held that once a company had been incorporated, it becomes a separate entity different from those who incorporated it and as such, there is no personal liability for any debts incurred by a company. On the issue of liability for the debt incurred by a contract entered into by a director on behalf of a company, the court, in the case of *Hyacinth Orji v Ezeani Anyaso*,<sup>45</sup> stated that where a director of a company enters into a contract in the name of the company, the director is not personally liable because the liability should be attributed to the company who is the principal.

The law created corporate entities and bestowed on them certain powers and privileges that natural persons could have. Though the corporate entities inevitably depend on their human organs for the discharge of their functions, the functions once discharged under normal circumstances would be deemed as if they were performed by the corporations themselves. These include entering into valid contracts, holding land or property, suing and being sued etc.

### **5.0 Judicial Attitude towards Corporate Personality in Nigeria**

The Apex Court in the case of *Bureau of Public Enterprises (B.P.E) v B.F.I Group*, his lordship per Abubakar commenting on judicial attitude towards corporate personality stated as follows:

“Indeed, the concept of corporate personality, which in law recognizes a company upon incorporation or a statutory body upon establishment as an artificial body separate and distinct from its members or officers is not absolute. The corporate personality concept therefore under expressed statutory provisions and as well as under the common law does not in all cases shield the person who seek to use, most especially for fraudulent purposes or as in this case, to be used as an instrument to perpetrate acts of disobedience to lawful Court orders.<sup>46</sup>

#### **Statutes**

1. Where the number of directors is less than two and the company is not a small company, a director who knows that a company carries on business after the number of directors has fallen below two for more than 60 days shall be liable for all liabilities and debts incurred by the company during that period when the company carried on business.<sup>47</sup>

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<sup>41</sup> (1897) AC 22

<sup>42</sup> Companies and Allied Matters Act, 2020. ss. 117 and 21

<sup>43</sup> (1978) 11 -12, 31 SC

<sup>44</sup> (2000) 2 NWLR (Pt. 645) 495 at 510 and 517

<sup>45</sup> (2000) 2 NWLR (Pt. 643) 18 NWLR

<sup>46</sup> (2025) 2 NWLR (PT1976) 371 at 400 -401 PARA- B-E

<sup>47</sup> Companies and Allied Matters Act, s. 271(3)

2. In the course of winding up of the company and it appears that any business of the company has been carried on in a reckless manner or with intent to defraud creditors of the company or creditors of any other person for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or the liabilities of the company as the court may direct.<sup>48</sup>
3. Every company after incorporation, shall paint or affix, and keep painted and affixed, its name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible, have its name engraved in legible characters on its seal, where the company has a seal; and have its name and registration number mentioned in legible characters in all business letters of the company and in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills or parcels, invoices, receipts, and letters of credit of the company.<sup>49</sup>
4. Companies are supposed to have their accounts, in which case, financial statement should be prepared every financial year/accounting period. Therefore, where there are subsidiary and holding company as the case may be, the veil of the subsidiaries will be pierced to make the holding company prepare their financial account in order to present more perfect picture of its events.<sup>50</sup>
5. Where an inspector appointed by CAC to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, he shall report on the affairs of the other body corporate so far as he thinks that the results of his investigation of its affairs are relevant to the investigation of the affairs of the company first mentioned.<sup>51</sup>
6. A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose, and if any company, in breach makes any donation or gift of its property to a political party or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, every such officer or member commits an offence and is liable to a fine equal to the amount or value of the donation or gift.<sup>52</sup>

### **Case Law**

- 1 In the interest of justice or public policy. In the case of *International Offshore Construction Ltd v Shoreline Lifeboats Nigeria Ltd*,<sup>53</sup> the Court of Appeal held that the corporate shell of an incorporated company can be lifted where the interest of justice demands.
- 2 To prevent fraud, especially tax evasion. The court may also lift the corporate veil where it is used for tax evasion. The determining factor was whether or not the particular act results into one of illegally paying less than what was actually payable or escape the payment of tax altogether. In *Seven Up Bottling Co Ltd v Lagos State Board of Internal Revenue*,<sup>54</sup> the Court of Appeal held that failure to remit tax deducted from salaries and emoluments of the employees was a debt which was enforceable

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<sup>48</sup> *ibid.* s. 672(1)

<sup>49</sup> *ibid.* s. 729

<sup>50</sup> *ibid.* s 379 -388

<sup>51</sup> *ibid.* s. 359

<sup>52</sup> *ibid.* s. 42 (2)

<sup>53</sup> (2010) LLJR SC

<sup>54</sup> (2003) 2 NWLR (Pt. 650) 565

by the court of law. The tax law empowers the court to lift the veil of incorporation on the allegation of tax evasion.<sup>55</sup>

- 3 When the Company is acting as agents of the shareholders in furtherance of a fraudulent objective.

In the case of *FDB Financial Services Ltd v Adesola*,<sup>56</sup> the Court of Appeal held as follows:

‘I wish to state that in company law, the consequence of recognizing the separate personality of a company is to draw a veil of incorporation over the company. One is therefore generally not entitled to go behind or lift this veil, however, since a statute will not be allowed to be used as an excuse to justify illegality or fraud, it is in the quest to avoid the normal consequences of the statute which may result in grave injustice that the courts, as occasion demands have to look behind, or pierce the corporate veil. Where therefore the law is employed as an instrument of fraud, the court will not hesitate to lift the corporate veil’.

- 4 Where the company is a sham. Façade, Bubble.

In *Adeyemi v Lan Baker (Nigeria) Ltd*,<sup>57</sup> the court made it clear without ambiguity that if it discovered from evidence before a court that a company is the creature of a biological person be he a managing director or a director and that the company is a device or mask which he holds before his face in an attempt to avoid recognition by the eyes of equity, the court of law must be ready and willing to open the veil of incorporation to see the characters behind the company.

In all these situations mentioned above, the veil of incorporation will be lifted and individual will be held liable for their wrong. The same principle applies to the exceptions to the rule in *Foss v Harbottle*. In the same spirit of corporate sovereignty, 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*<sup>58</sup>

### **Exceptions to the Rule**

- a. A shareholder may by injunction or a declaration restrain the company from the following<sup>59</sup>

#### **Illegal and ultra vires Act**

The Act<sup>60</sup> 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 Contractors*<sup>61</sup> 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.

#### **Irregular Procedure**

Where<sup>62</sup> a company purports to do by ordinary resolution any act the article of the company, or the Act requires to do by special resolution. Non-compliance would amount to irregular procedure that would give rise to an action by a shareholder

#### **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:

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<sup>55</sup> Companies Income Tax Act, C 21, LFN 2004 (as amended) ss. 92 and 94

<sup>56</sup> (2000) 8 NWLR (Pt 608)

<sup>57</sup> (2007) NWLR (Pt. 663) 33

<sup>58</sup> (1843) 2 HARE 461, 67 ER 189

<sup>59</sup> CAMA 30209 s. 343 (a) –(g)

<sup>60</sup> *ibid.* s. 44(1)

<sup>61</sup> (1990) 4 NWLR Pt. 145

<sup>62</sup> CAMA 2020 s. 343(b)

1. Failure to give meeting notice<sup>63</sup>
2. Right to inspect the company records<sup>64</sup>
3. Refusal to vote in resolution either by self or proxy<sup>65</sup>
4. Failure to admit duly appointed proxy<sup>66</sup>
5. Variation of class rights amongst other denials affecting the members in his personal relationship with the company<sup>67</sup>

### **Fraud on the Minority<sup>68</sup>**

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.

### **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 duties<sup>69</sup>

### **b. Derivative Action**

A derivative action<sup>70</sup> 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.*<sup>71</sup> 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 shareholders<sup>72</sup>

### **c. Relief on Grounds on Unfairly Prejudicial and Oppressive conduct<sup>73</sup>**

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*<sup>74</sup> 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 1968n 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.

In *Re R.A Noble and sons (clothing) Ltd*,<sup>75</sup> 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

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<sup>63</sup> *ibid.* s. 245

<sup>64</sup> *ibid.* s. 375

<sup>65</sup> *ibid.* s. 251

<sup>66</sup> *ibid.* s. 254 (3)

<sup>67</sup> *ibid.* s. 166

<sup>68</sup> CAMA 2020 s. 343(d)

<sup>69</sup> *ibid.* s. 3439(f)

<sup>70</sup> *ibid.* s. 346 (1)

<sup>71</sup> (2010) LCN/3794 (SC); (2010) 5 NWLR (Pt 1187, 348

<sup>72</sup> Olakunle Orojo, *Company Law and Practice in Nigeria. 5<sup>th</sup> edn.* (Cape Town: Lexis Nexis Butterworths 2008) 212

<sup>73</sup> CAMA.2020 s. 354

<sup>74</sup> (1976) 2 FRCR 10

<sup>75</sup> (1983) BCLC 273

- 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.

**(d) 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.

**(e) 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 ground<sup>76</sup> this is the most drastic form of shareholders relief. Winding up is the process whereby a company's life is ended 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*<sup>77</sup> 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.<sup>78</sup> In *General Aviation Services Ltd v Thahal*,<sup>79</sup> 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.*

The corporate veil and the sovereignty of a corporate body are not sacrosanct. In some cases, as we have seen, the law will disregard it and hold individuals responsible.

**6.0 To what extent are Political Parties Corporate Personality?**

The Electoral Act<sup>80</sup> provides that a registered Political Party shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. Every registered political party shall maintain a register of its members in both hard and soft copy. Each registered political party shall make sure such register available to the Commission not later than 30 days before the date fixed for the party primaries, congresses or convention.

It must be noted that having perpetual succession and common seal, capacity to sue and be sued, maintenance of register of members etc. are all incidents of corporate personality. It all points to the fact that just as a corporation, a political party has been fully imbued by the law with the rights of a legal person.

*Also, in Apeh & Others v Peoples Democratic Party*,<sup>81</sup> PDP was recognized as a legal entity with corporate personality.

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<sup>76</sup> CAMA 2020. s. 571(f)

<sup>77</sup> (1992) 7 NWLR (Pt. 252) at 265

<sup>78</sup> CAMA 2020. s. 355(3)

<sup>79</sup> (2004) 10 NWLR (Pt. 880) 50 SC

<sup>80</sup> Electoral Act, 2022. s. 77

<sup>81</sup> (2016) NGSC 73

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In *Iyke Medical Merchandise v Pfizer Inc.*<sup>82</sup> The doctrine of Juristic personality was appraised. Juristic person was recognized to include:

- A. Natural persons.
- B. Corporations aggregate and corporations sole with perpetual succession.
- C. Companies incorporated under the Companies Act,
- D. Certain Unincorporated Associations granted the status of legal personae by law such:
  - a. Registered Trade Union
  - b. Partnership and
  - c. Friendly societies or sole proprietorships.

There is therefore no doubt that a political party is a corporate person with all the incidents appurtenant to legal personality. It is however important to highlight that political parties are different from corporate bodies in some areas that has been highlighted below.

### **a. Principal Governing Legislation and Registration Authority**

The preamble to the Companies and Allied Matters Act<sup>83</sup> set out the purpose of enacting the law among which is for the incorporation of Companies. The Act<sup>84</sup> established the Corporate Affairs Commission and imbued it with the role of administering the Act, including the registration of companies.<sup>85</sup> The Constitution of the Federal Republic of Nigeria,<sup>86</sup> provided for guidelines for political parties in Nigeria and defined political party.<sup>87</sup> It provided for the establishment of Independent National Electoral Commission (INEC), for the Federation and the registration of political parties with INEC.<sup>88 89</sup> The Electoral Act also established the Independent National Electoral Commission (INEC).<sup>90</sup> Among the responsibility of INEC is to conduct voter and civic education. The principal governing legislation of both a corporation and a political party are different.

### **Purpose of formation and Nature of business**

Companies are formed as a conduit for business which ultimately makes profit or returns for shareholders by way of dividend.<sup>91</sup> The primary goal of a company is to make profit and share the money to shareholders.<sup>92</sup> Political parties are not profit oriented. They are formed to promote political ideology, contest election and control government which often leads to dividend of democracy in terms of better living condition.

### **Sources of Funding**

Companies are traditionally funded from the profits made in the trade or business<sup>93</sup> whereas Political parties are funded through subventions from the National Assembly through the Independent National Electoral Commission to the political parties,<sup>94</sup> donations by party members,<sup>95</sup> and dues.

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<sup>82</sup> (2001) FWLR (Pt. 53) 62

<sup>83</sup> Companies and Allied Matters Act 2020

<sup>84</sup> *ibid.* s. 1(1)

<sup>85</sup> *ibid.* s. 8(1) (a)

<sup>86</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 221 to 229

<sup>87</sup> *ibid.* s. 229

<sup>88</sup> *ibid.* s.222

<sup>89</sup> *ibid.* s.153 (f)

<sup>90</sup> Electoral Act 2022. s. 1 (1)

<sup>91</sup> Companies and Allied Matters Act, 2020. s. 427

<sup>92</sup> *ibid.*

<sup>93</sup> *ibid.*

<sup>94</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 228 (c)

<sup>95</sup> Electoral Act 2022. s.87

### **Limitation of liability**

The company's debts are limited to the amount shareholders have paid or have agreed to pay to the company for its shares, in case of insolvency.<sup>96</sup> Members are not personally liable but where there are misconducts by the party, the party leadership may be held accountable.<sup>97</sup>

### **Ownership structure**

The shareholders are the owners of a company but the directors are the ones that run the business of the company.<sup>98</sup> Political parties are owned by no one in particular but are run by elected officials, governed by the party Constitution under the supervision of INEC.<sup>99</sup>

### **Winding up**

Companies can be wound up through a robust procedure provided under CAMA. It could be done voluntarily or by order of the court.<sup>100</sup> A political party on the other hand shall be de-registered by INEC for breach of any of the requirements for registration; failure to win at least twenty –five percent of votes cast in one state of the federation in a presidential election; or one local government of the state in a Governorship election; failure to win at least one ward in the Chairmanship election; one seat in the National or state House of Assembly election or one seat in the councillorship election.<sup>101</sup>

## **7.0 Judicial Attitude towards Corporate Personality in Political Parties Administration in Nigeria**

It must be noted that Nigerian legal framework recognizes internal democracy. By virtue of the Constitution of Nigeria,<sup>102</sup> the National Assembly has a supervisory role to play over INEC in respect of political parties. The National Assembly makes rules to ensure internal democracy within political parties and the conduct of primaries, they also confer power to INEC for such purpose.

In exercise of the powers conferred on the National Assembly, Electoral Act, 2022 came into being and made ample provisions for internal democracy in the conduct of primaries by political parties. The Act<sup>103</sup> provides that a political party seeking to nominate candidates for elective positions shall conduct primaries for aspirants and the procedure for nomination shall be by direct, indirect primaries or consensus.<sup>104</sup>

Political Parties are required to have a constitution at the point of registration with the INEC.<sup>105</sup> The constitution usually contains the guideline or procedure for the nomination of candidates and voting at congresses and the party conventions.<sup>106</sup> The constitution therefore ensures that party primaries are conducted in such a way that enthrones internal democracy. The judicial powers of the Federation are vested in the courts,<sup>107</sup> which has the responsibility of administration of justice, interpretation of laws and resolving conflicts.

As we have noted above, political parties are the bedrock of democracy. They are the creation of the constitution. Their Registration is governed by the Constitution of the Federal Republic of Nigeria. This position was aptly captured in the case of *LP & Ors v Oyatoro*.<sup>108</sup> Political parties are deemed to be capable

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<sup>96</sup> Companies and Allied Matters Act, 2020. s. 117 and 21

<sup>97</sup> Electoral Act 2022. S. 89 (7)

<sup>98</sup> Companies and Allied Matters Act. s. 87 (3)

<sup>99</sup> Electoral Act 2022. s. 228 (b)

<sup>100</sup> Companies and Allied Matters Act. s. 620 -658

<sup>101</sup> *ibid.* s. 225A

<sup>102</sup> *ibid.* s. 228

<sup>103</sup> Electoral Act, 2022. s.64

<sup>104</sup> *ibid.* 84 (1) (2)

<sup>105</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 222 (a) to (f)

<sup>106</sup> *ibid.*

<sup>107</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 6

<sup>108</sup> (2016) LPELR -CA/AK/32/2012

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of conducting their internal affairs and as such every undue interference from any organ of the society including the judiciary is viewed with suspicion. The courts have in a number of cases held that the court has no jurisdiction to intervene in the internal affairs of a political party. In the case of *Ardo & Anor v Nyako & Ors*,<sup>109</sup> the court held that “it is a notorious principle of law that courts have no right whatsoever to descend into the internal affairs of political parties as to choose their candidates for them’

The decision in the case of *AGI v PDP & Ors*<sup>110</sup> clearly expressed this stance. The Supreme Court held that: ‘...a party is supreme over its own affairs. A party is like a club. A voluntary association. It has its rules, regulations, guidelines and Constitution. Members join the party on their own free will. By joining they have freely given their consent to be bound by the rules, regulations, guidelines and Constitution of the party. These rules of the party must be obeyed by all members of the party, as the party’s decision is final over its own affairs. Members of a party would do well to understand and appreciate the finality of a party’s decision over its domestic or internal affairs. The Court would only interfere where the party has violated its own rules...’

In *Ufomba v INEC & Ors*,<sup>111</sup> An inter party Affair was defined to mean; a dispute between a member of the party inter se, or between a member on the one hand and the part on the other.<sup>112</sup> The court, emphasizing on the non-justiciability of the internal affairs of a political party stated as follows:

I have said times without number that as rightly submitted by the respondents, the appellant’s case in this appeal is predicated on non-compliance on the order of court, party leadership and -membership of a political party the suit in other words, was not predicated on non-compliance with the Electoral Act or the guidelines of a party. The suit in the circumstance cannot come under section 87 (9) of the Electoral Act (as amended). It is therefore not competent... the claims being issues on party leadership and membership. No court has jurisdiction to consider them as they are not justiciable being issues that fall within the internal affairs of the party.”<sup>113</sup>

The Supreme Court however has always raised the importance of internal democracy and the need for political parties to obey their own constitution and the jurisdiction of the court to intervene where there are disputes on those matters. In the case of *Shinkafi v Yari*,<sup>114</sup>the Supreme Court held as follows:

‘...it is now trite that where a political party conducts its primary and a dissatisfied contestant at the primary election complains about its conduct of the primaries, the Courts have jurisdiction by virtue of the provision of section 87 (9) of the Electoral Act, 2010 (as amended) to examine if the conduct of the primary was in accordance with the party’s Constitution and Guidelines. The reason is that in the conduct of its primaries, the Courts will never allow a political Party to act arbitrarily or as it likes. A political party must obey its Constitution.’

The same principle was expressed in the case of *Tarzoor v Loraer*.<sup>115</sup> The Supreme Court in that case stated that:

*“Where the political party conducts its primary and a dissatisfied `contestant at the primary complains about the conduct of the primaries the courts have jurisdiction by virtue of the provisions of section 87 (9) of the Electoral Act (as amended) to examine if the*

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<sup>109</sup> (2013) LPELR-CA/YL/15/2012 (Consolidated)

<sup>110</sup> (2016) LPELR-SC.256/2016

<sup>111</sup> (2017) LPELR-42079 (SC)

<sup>112</sup> *ibid.* 32 -33 para-G-E

<sup>113</sup> *ibid.* 41 para. A - B

<sup>114</sup> (2016) 1SC (Part 11) 1 AT 31, Line 13 to 23

<sup>115</sup> (2016) 3 NWLR (Pt. 1500) 463 at 529 para. G.

*conduct of the primary elections was conducted in accordance with the party's Constitution and Guidelines. This is so because in the conduct of its primaries the courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its own constitution.'*

In the same vein, in the case of *Mato v Hembe & 2 Ors*,<sup>116</sup> the court, in asserting the importance of upholding internal democracy stated as follows:

*'Holding a primary election in a manner contrary to the Electoral Act, 2010 (as amended) and the constitution of the political party will render such primary election null and void. The facts deposed to in paragraphs 2 and 4 of the affidavits in support of the Originating Summons show that the said primary election was held at HAF HAVEN HOTEL MAKURDI quite outside the headquarters of the Federal Constituency. So apart from the irregularities catalogued in exhibits 4 and 2 reproduced above, the holding of the primary was contrary to the Electoral Act 2010 (as amended) and the constitution of the 2<sup>nd</sup> defendant...'*

It was further held:<sup>117</sup>

*'This case in my view is a clear example of the mischief sought to be tackled by section 87 (0) of the Electoral Act, 2010 (as amended). while it is true that the courts will not interfere in the internal affairs of a political party nor its choice of candidate. Section 87 (9) of the Electoral Act ensures that in making their choice of candidates for elective office, political parties do not stray beyond the confines of the Electoral Act or their own electoral guidelines. The section seeks to curb the impunity with which political parties hitherto acted without regard to the democratic norms they profess to practice. As stated by my learned brother in the lead judgment, this court in a plethora of cases has asserted the fact that political parties must obey their own constitutions and guidelines and where necessary (as provided by law) the courts will intervene and wield the big stick to prevent arbitrariness. The only way our democratic dispensation can work effectively is where every aspirant for political office, who is qualified to contest on election, is given an even playing field. The failure of internal democracy within our political party's right from the grassroots level eventually leads to instability in the entire political system. The failure of internal democracy is one of the reasons why the courts' dockets are congested with pre-election disputes'*

Similarly, in the case of *Hakeem Abalaji Saka v All Progressives Congress & Anor.*,<sup>118</sup> the court nullified the nomination of a candidate without the conduct of primary election in accordance with the stipulation of the Lagos State Independent Electoral Commission Law and the Constitution of All Progressives Congress. Consequently, the Court, *inter alia*, made an order restraining the Lagos State Independent Electoral Commission from recognizing, relying on or using any list of Chairmanship candidates submitted by All Progressives Congress for the forthcoming Local Government elections in Odi-Olowo Local Council Development Area. The judiciary now disregards the corporate clothing of political parties and delves into their internal affairs especially when they fail to enthrone internal democracy by obeying their own guidelines or constitution. The implication of this legal position is that the doctrine of lifting the veil of incorporation and the exceptions to the rule in *Foss v Harbottle* also applies to political parties.

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<sup>116</sup> SC.733/2016 (Delivered on June, 2017)

<sup>117</sup> *Mato v Hembe* SC.733/2016 (Delivered on June, 2017) at page 2-3 by Kekere Ekun JSC.

<sup>118</sup> Suit No. ID/1838/GCM/2017, <https://mabandassociates.com> 'The Courts and Internal Democracy in Political Parties'. Accessed on 24<sup>th</sup> of September, 2025

## **8.0 Literature Review**

A lot of scholars have discussed the doctrine of corporate personality but none of them has directly applied the concept to political parties.

Igwe,<sup>119</sup> tracing the history of legal personality of a political party, noted as follows:

*Party politics in Nigeria began in 1922 after the introduction of elective principle. Once a political association was formed, it transformed itself into a political party and engaged into political activities. There was no legal requirement for registration. However, the Electoral Decree of 1977 as amended introduced the requirement of registration before a political association could be recognized as a political party and thereby qualified to canvass votes and sponsor candidates into elective political offices. The Decree established the Federal Electoral Commission with the power Commission with ther power to register political associations as political parties via sections 77 and 78 of the Electoral Decree of 1977.*

Commenting further, he stated that

‘In the legal parlance, a political association, upon registration with the Independent National Electoral Commission (INEC) becomes political party and acquires the attributes of legal personality with the powers to sue and be sued. However, it lacks limbs, brain etc. it therefore discharges its statutory functions through her alter ego embedded in the national leadership of the patty. And a part system could be one-, two- or multi-party system...’

Also, Ahmed<sup>120</sup> while discussing the functions or powers of corporate entities noted that the law created corporate entities and bestowed on them certain powers and privileges that natural persons could have. These powers and privileges are encapsulated by the functions of the corporations in accordance with the law. Though, the corporate entities inevitably depend on their human organs for the discharge of their function, the functions once discharged under normal circumstances would be deemed as if they were performed by the corporations themselves. Some of the functions are entering into a valid contract, land holding, legal capacity to sue and be sued, existence. Having bank accounts acceptance of gifts and donations, principal/Agency relationship.

Ufuoma,<sup>121</sup> emphasizing on the role of law in ensuring internal democracy in Nigerian political parties, stated as follows:

‘Party affairs in Nigeria are controlled by the Constitution of the Federal Republic of Nigeria and the respective constitutions of the various political parties. The constitution<sup>122</sup> stipulates that the constitution and rules of political parties shall provide for periodic elections on a democratic basis for the principal officers and members of the executive committee or other governing bodies. Under section 223 of the Constitution of Nigeria, political parties are also to ensure that members of the executive committee or other governing bodies of the party reflect the federal character of Nigeria.’

## **9.0 Summary of Findings**

It is clear that though a political party is a legal person recognized by law. It cannot strictly be said to have corporate personality with the incidents of incorporation as envisaged under the principal legislation governing Companies in Nigeria. As has been highlighted above, the governing legislation and registration

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<sup>119</sup> Igwe C, Legal Provisions and Party Politics in Nigeria: Selected Empirical cases, (2019) *African Journal of Politics and Administrative Studies*, Vol. 12 (1) 138 -144

<sup>120</sup> Onyeka Aduma, Revisiting the Concept of Lifting the Corporate Veil under Nigerian Company Law (2013) Vol 7, Issue No 1, *African Journal of Law and Human Rights*.

<sup>121</sup> Ufoma V. (2003) Legal Regulation of Internal Party Democracy in Nigeria. *Journal of Liberty and International Affairs*, Vol. 9, No2 369 -360

<sup>122</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended)

authority for a company and a political party are not the same. There are differences in the purpose of formation and nature of business, sources of funding, ownership structure, limitation of liability and winding up or de-registration procedure.

It is also clear that the legal personality in the context of political parties refers to the legal recognition granted to a political organization, enabling it to operate as a distinct legal entity. This recognition confers upon the party certain rights and responsibility within the legal framework. It has the advantage of distinguishing a political party from its individual members so that it can hold property, enter into contracts and be liable for legal obligations independently. This legal recognition provides legitimacy, transparency and accountability in political activities and funding.

Without legal personality a political party may function informally but cannot enjoy full legal protection and capacities necessary for effective political participation such as participating in elections or managing assets legally. The literature review reveals dearth of opinions on the extent of application of the doctrine of corporate personality on political parties in Nigeria. This therefore makes this research necessary in order to deepen the discourse on the application of the doctrine of corporate personality to political parties in Nigeria.

#### **10.0 Conclusion and Recommendations**

It is apposite to conclude that a political party is also a person in law but varies in terms of application of the incidents of incorporation to it due to certain variables such as the aim and objectives for forming a political party, funding, ownership structure and code of corporate governance. The paper therefore suggests that there are instances where the corporate veil should be lifted to do justice to the activities of the alter ego of each political especially where they have brought their conflict before a court of law. INEC should also put structures in place including constant updating of its guidelines to ensure that internal democracy and justice is maintained in the conduct of party primaries. The process of registration and de-registration of political party should be properly harnessed to prevent proliferation of political parties especially those without clear agenda. In the same vein, the limit of individual donations to a party should be revised and a guideline or code of corporate governance articulated on the funding capacity to prevent an individual being too powerful and above the party, and to also prevent imposition of candidates on others. This paper posits analysed the need for the application of the doctrine of corporate personality and its exceptions to political parties in Nigeria. The paper also notes the distinguishing legal regimes of political party and companies in Nigeria as well as their *modus operandi*.