An Appraisal of the Effects of Court Injunctions on Company Meetings under the Companies and Allied Matters Act 2020

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Abstract

In recent times, the trend of obtaining court injunctions especially ex parte orders seems to be a threat to the smooth operations of corporate organisations in Nigeria. Are there effects these court injunctions may have on company meetings and by implication corporate governance? The paper adopts the doctrinal method of research by examining primary sources such as statutes, especially the newly enacted Company and Allied Matter Acts 2020 in Nigeria, case laws and opinions of authors such as scholarly articles, journals and newspapers. The paper found that CAMA makes provisions and guarantees the right of any aggrieved members or shareholders of the company to approach the court, either to restrain the company from holding any three major types of company meeting or approach the court for injunction to compel the company to hold the meeting. The paper appreciates the innovative provisions of CAMA 2020 in this respect but conclude that court and court injunction should not be the first weapon or arsenal of any aggrieved member but a means of last resort without recourse to an alternative dispute resolution mechanism which could assist in resolving any issues faster without animosity such as we experience after any Court proceedings or judgment. The paper makes further recommendations to tame this tide.

Keywords: Corporate Governance, Company meetings, Court injunctions, CAMA 2020

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1. Introduction

The Company and Allied Matters (Amendment) Degree of 1991 which later metamorphosed into an Act in 1999 when Nigeria as a country adopted democratic system of government is absolutely obsolete hence same is overdue for another amendment as business in twenty first century has transcended beyond what was in practice in the 90s.

Prior to 2020 no amendment was done to CAMA and this has made Nigerian Companies to rely on 30 years old law in regulating their activities. This overreliance on 30 years old law has consequently hindered investors from investing in the economy and slowed down the pace and ease of doing business in Nigeria. On Tuesday 15th May, 2018, the Senate of the Federal Republic of Nigeria passed the Companies and Allied Matters Act, 1990 (Repeal and Re-enactment) Bill 2018.[1]

The bill consolidated proposed amendments from two related bills.[2] The House of Representatives on the 4th of March 2020 again passed the bill which was later concurred by the Senate on 10th March 2020.[3] Consequently, on August 7, 2020, President Muhammadu Buhari signed into law the Companies and Allied Matters Act 2020.[4] The new CAMA is Nigeria's most significant business legislation in three decades and it introduced novel provisions which will promote ease of doing business in Nigeria.[5]

No company can exist or perform excellently without an adequate and regular organization of meeting of the shareholders and all the important figures of the Company. Every decision Company will make or is making is majorly based on the company's resolution which is for all purpose and intent the outcome of the meetings of all the

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1 W Obayomi, 'Keny Highlights of the CAMA Bill, 2018' <https://www.kpmg/ng/en/home,> accessed 7th April 2024

2 Companies and Allied Matters Act Cap C20 CAMA 2020 (Amendment) Bill, 2016 and the Companies and Allied Matters Act, Cap C20 CAMA 2020 (Amendment) Bill, 2017

3 Senate Passes the CAMA Bill 2020' <https://www.proshareng.com> assessed on 8 April 2024

4 Agbakwuru 'Buhari Signs Amended Companies and Allied Matters Bill CAMA 2020'<https://www.vanguardngr.com>accessed on 8 April 2024

5 King James Nkum & Julius Beida Onivehu "An Appraisal of the Impact of Companies and Allied Matters Act 2020 on the Nigerian Business Community" Nnamdi Azikwe Univeristy, Awka Journal of Commercial and Property Law

shareholders, directors and those that are referred to as the alter ego of the Company (principal officers). Virtually all the Company and Allied Matter Act that has ever been promulgated in Nigeria makes specific provision for the meeting of the Company. Chapter 10 of the Company and Allied Matter Act 2020 contains the various types of meeting that a Company must organize as a matter of duty and responsibility.

Injunction is an equitable remedy and its foundation is from principles of equity. Unlike countries such as India that promulgated a separate law for injunction, Nigeria as a country has no codified law or an Act which regulate the granting or refusal of injunction in Nigeria hence in most cases, the granting or refusal of injunction depends on the object and goal of the applicant and the discretion of the Court. The Court has an option to grant or refuse injunction, in the same vein the Court can either acceded to the request of any shareholder or principal members of a company to compel the organization of any company meeting or suspension of same.

This paper shall discuss an appraisal of the effects of Court injunctions on Company meetings under the Companies and Allied Matter Act 2020. The first part shall discuss the conceptual framework for company meetings, the second part shall discuss the types of meetings, part c the third part shall discuss essence of court meetings, the fourth part shall discuss conceptual framework for court injunctions, the fifth part shall discuss essence of court injunctions in Corporate Governance, the sixth part shall discuss effect of Court ordered injunctions under the Companies and Allied matter Act and then the last part shall be conclusion and recommendations.

2. Conceptual Framework for Company Meetings

It is only recently that the international corporate governance discussion has turned to general meetings of shareholders.[6] Initially this corporate governance discussion has started from the observation of rationally

6 Theodor Baums, 'Shareholder Representation and Proxy Voting in the European Union: A Comparative Study,' in K.J Hopt and Others (eds.), *Comparative Corporate Governance; The State of the Art and Emerging Research*, (Oxford 1998) 545 – 564; T Baums and E Wymeersch (eds.), *Shareholder Voting Rights and Practices in Europe and the United States*, (The Hague-London-Boston 1999), (with 20 comparative contributions)

apathetic investors in companies with widely distributed shareholders.[7] Where protection of (minority) shareholders` interests has been thought to be in need of strengthening, the mechanisms discussed and adopted have consisted of developing other means and remedies which work around and outside the general meeting like individual and derivative suits, the threat of takeover bids, strengthening the board´s and the auditor´s role and the like. The concept meeting in the company law parlance has been subject of various definition in the time past as its definition mostly depends on the focus and objectives of a particular meeting hence the brief introduction stated above.

However, though no universal acceptable definition of the concept of Company meetings but it has been defined to mean the gathering, assembly or coming together of two or more persons for transacting any lawful business.[8] Meeting has also been defined as the forum where members can express their concerns about the business and management of the company; they can discuss, debate and vote on any resolution that has been duly notified before.[9] Similarly, in the case of Sharp v. Dawes[10] it was held thus, a meeting means coming together of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest.

Also, in *Re James Prain & Sons Ltd*[11] the court held that unless the word meeting bears a special meaning under the constitution of the company, a meeting cannot be composed of one individual, even if he holds proxies of other members. On the contrary, *East v Benneth Bros. Ltd*[12] Warrington J. held that one member who held all the shares of a class constituted a valid class meeting. It has always been presumes prior to the introduction of technology that there is need for physical appearance of all the members of the meeting in an already agreed

7 A Adolf and Others, 'The Modern Corporation and Private Property,' (1968 rev. edition 1968) 932

8 Black's Law Dictionary The Law Book Company Ltd. 10th Edition. Allahabad India page 87

9 Md. Khurshid Alam, 'Company Members' Meetings in Bangladesh and the United Kingdom: Convergence and Diversity' (2013) 24 Dhaka Univ Stud Part F 1

10 (1876) 2 QBD 26

11 (1947) S.C 325

12 (1911) 1 CH. 163

organized or pre-arranged location before the meeting, however, with the advent of technology, it will be more cost effective to allow the introduction of technology in the organization of company meetings.

As far back in 90s, the Court in United Kingdom had given their opinion about holding an Annual General Meeting online in the case of *Byng v London Life Association Ltd*[13] it was held as such in that case that: Given modem technological advances, the same result can now be achieved without all the members coming face to face; without being physically in the same room they can be electronically in each other's presence so as to hear and be heard and to see and be seen.

It has also been held that a valid company meeting can be held even on a conference telephone call.[14] However, in a further decision of the Court, Perry J in *Residues Treatment & Trading Co Ltd v Southern Resources Ltd* suggested that provision must be made in the articles of association for companies to hold meetings on the telephone, whether separately or by use of a conference telephone.[15]

It should be noted that here is a substantial difference between the small proprietary company and the large listed public company. Whilst it may be appropriate to permit proprietary companies to hold meetings utilizing audio links only, whilst public companies should be required to have audio-visual links. The additional requirement of the visual link gives greater protection to members desirous of participating, permits the chair to "see" who wishes to participate, and allows a counting of votes by hand.[16]

One should give kudos to the draftsmen of the Amended Company and Allied Matter Acts 2020 for the wisdom they displayed in given room for the meeting of the Company to be conducted electronically this really has proved they are technologically inclined and following global trend of conducting company business in twenty first century.[17]

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13 [1990] Ch 170

14 *Magnecrete Ltd v Robert Douglas* (1988) 48 SASR 465 at 603.

15 (1989) 7 ACLC 1130 at 1155-1156

12 A Davidson, 'Comments on the Corporations Law Simplification Program on Company Meetings,' (1995) (8) *Corp & Bus LJ* 93

17 Company and Allied Matters Act 2020, s 240 (2)

3. Types of Company Meetings

There are three major types of Company meetings, though there are some other types which we shall also make reference to under this heading.

3.1. Statutory Meetings: This is the first meeting of the shareholders of a public company and is held once in the lifetime of any public company. The Act provides that: "*Every public company shall, within a period of six months from the date of its incorporation hold a general meeting of the members of the company (in this Act referred to as the statutory meeting)."*[18]. This section requires a public company to have a statutory meeting within a period of 6 months from the date of its incorporation.

At least 21 days before the statutory meeting, the Directors must send out a copy of the statutory report to every member.[19] The Statutory report certified by not less than 2 Directors should state details listed in subsection 3(a)-(g).[20] What makes the Statutory Meeting important is the Statutory Report. One major issue that is expected to be contained in the statutory report is the true and accurate report of the state of affairs of the company, until the date of the meeting to the members.

The report shall also contain an abstract of the receipts of the company and of the payments made from them up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.[21]

In a statutory meeting, the members of the company that are present shall have the opportunity to discuss any matter relating to the formation of the company and its commencement of business or arising out of statutory report.[22] The statutory report shall, as far as it relates to the shares allotted by the company, and to the cash received in respect

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[18] *Ibid*., s 235
[19] *Ibid*., s 235 (2)
[20] *Ibid*., s 235 (3) (a-g)
[21] *Ibid*., a 235 (4)
[22] Company and Allied Matters Act 2020, s 235 (8)

of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors of the company.[23] A copy of the report must be delivered to the Commission for registration by the Directors.[24]

The directors shall also cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the statutory meeting.[25] It must however be noted, that the notice for conveying the meeting must be cleared enough and same must state specifically that it is the statutory meeting that is being conveying.[26] However, any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further twenty-one days (21 days) notice from the date on which the statutory report was received to the company of his intention to propose such a resolution.[27]

The statutory meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting may be passed, and the adjourned meeting shall have the same powers as an original meeting.[28] The private companies are not bound by the provision of section 235 of CAMA 2020 as same solely applies to the Public Company. However, if a private company becomes a public company alters its articles, thus throws open to the public, subscription towards its capital, it will have to comply with the provisions of section 235 of the Act regarding holding of a statutory meeting.[29]

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23 *Ibid*., s 235 (5)
24 *Ibid*., s 235 (6)
25 *Ibid*., s 235 (7)
26 *Gardner v lredele* (1912) 1 Ch. 700
27 Company and Allied Matters Act 2020, s 235 (9)
28 *Ibid*., s 235 (10)
29 OI Aderibigbe, 'The Mechanisms of Corporate Meetings under the Companies and Allied Matters Act (CAMA) 1990,' (2011) (2) *Int'l J Advanced Legal Stud & Governance* 163

In the case of *Mussini v Balogun*[30] Kazeem, J noted that where a private company converts into a public company, it should comply with the provision of CAMA. By the provision of section 236 of CAMA 2020 it becomes an offence that attracts fines that is specified in the regulation of the Commission if any Company fails or default in organizing the statutory meetings. It should also be noted that the Statutory General meeting is usually a welcome and familiarity meeting with the intendment of discussing serious business as it affects the company.[31] In comparing Nigeria with other countries on the requirement of statutory meetings, it has been observed that in England and South Africa there is no requirement for statutory meetings.

3.2 Annual General Meetings: The annual general meeting of the company is an important means through which the shareholders get the opportunity to exercise their power of control. It is at this meeting that the 'directors retire 'and seek re - election. In Nigeria, annual general meetings represents the source of ultimate authority within the company structure.[32] Every company whether public or private must hold an annual general meeting within eighteen months of its incorporation and thereafter in each year, with the addition requirement that not more than fifteen months must lapse between the annual meeting and the next. Section 237 (1)[33] provides thus:

> Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: (a) if a company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in that year or in the following year (b) except for the first annual general meeting, the Commission shall have the power to extend

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30 (1968) 2 ALR Comm. 197
31 *Ibid*., (n 29)
32 MO Sofowora, *Modern Nigerian Company Law*, (2002,) page 161
33 CAMA 2020

> the time within which any annual general meeting shall be held by a period not exceeding three month.

In this meeting the shareholders get an opportunity of reviewing and evaluating the overall performance of the company during a year. The shareholders can place their views before the management and can seek clarifications on matters about which they are not satisfied. It is to be noted that annual general meeting is very important. Unlike statutory meeting which is held once in a life time of a Company, it is mandatory to hold an annual general meeting every year.

By the provision of section 237 of CAMA 2020, it is amount to an offence, if the annual general meeting is held at all within a year, and similarly it is also an offence if it is held within fifteen months after the last one. For a proper understanding of when a new company is incorporated on the 1st of May 2024, such company is expected to hold her first annual general meeting on the 1st of November 2025.

It should however be noted that, the period of holding such a meeting, may be extended by the Corporate Affairs Commission. In case there is a delay for any specific reason for holding the annual general meeting, an application for extension can be made to the Commission.[34] Such extension cannot exceed three months.

If default is made in holding a meeting of a company in accordance with sub-section 1 of this section, the Commission may on the application of any member of the company call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles. And it is hereby declared that the directions that may be given under this subsection shall include a direction that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall bind all the members.[35]

By the provision of sub-section 2 of section 237, a general meeting held in pursuance of that subsection which is subject to any

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[34] CAMA 2020, s237 (1)
[35] CAMA 2020, s237 (2)

directions of the Commission shall be deemed to be an annual general meeting of the company; but where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.[36] Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall within fifteen days after the passing thereof, be filed with the Commission.[37]

Where default is made in holding a meeting of the company in accordance with subsection 1 of section 237 of the Act, or in complying with any directions of the Commission under subsection 2 direction of commission that meeting be held, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine or penalty which shall be prescribed by the regulation of the commission.

There are two major types of businesses that are conducted at the Annual General Meeting. These are Ordinary and Special Businesses. There is a presumption that all businesses transacted at Annual General Meetings are special businesses, but the exceptions have been stated in the Act. Section 238 provides thus: all businesses transacted at annual general meetings shall be deemed special business, except: declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the election of directors in the place of those retiring, the appointment, and the fixing of the remuneration of the auditors and the appointment of the members of the audit committee.

An Annual General Meeting can be convened by the following: Board of Directors, Members, Corporate Affairs Commission and the court.[38] In *Okeowo v Migliore*[39] he members and directors split into warring factions and the machinery of management had broken down, the court ordered for a meeting to be held and the decision taken will bind the members. Nothing prevents an officer of the company other

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36 CAMA 2020, s237 (3)
37 CAMA 2020, s237(4)
38 CAMA 2020, s237 (2)
39 (1979) 11 SC 138

than the director from calling a meeting but unless the Board has given authority or ratifies the act afterwards; the meeting will be invalid. In *Re Haycraft Gold Reduction and Mining Company Ltd*[40] the secretary called a meeting and it was held to be invalid. In *Ige-Edaba v West African Glass Industries Ltd*[41] where the applicant applied by originating summons for an order convening an extraordinary general meeting of the respondent Company.

The fact that the two directors whose their presence were necessary to hold a meeting were inaccessible made the court order that meeting, holding that it was impracticable to hold the meeting. Aniagolu J.S.C in *Okeowo's* case[42] in considering when it is impracticable to hold a meeting adopted the statement of *Wynn-Parry J. In Re El Sombrero Ltd*[43] where he said inter alia: "the question then arises, what is the scope of the word impracticable? It is conceded that the word impracticable is not synonymous with the word impossible."

However, it should be noted that the ancillary and consequential directions to be given by the court are, however, confined to those that will enable the meeting to be held, and should not cover matters which are properly for the meeting. However, it should be noted that the ancillary and consequential directions to be given by the court are, however, confined to those that will enable the meeting to be held, and should not cover matters which are properly for the meeting.

In *Paul Iro v Robert Park & Ors*[44] it was held that although section 128 of the 1968 Companies Act empowers the court to make an order for the holding of a meeting, the consequential order made was *ultra vires* the court and invalid in that they are matters for the meeting to consider.

3.3 Extra Ordinary Meetings: All general meetings of a company other than the statutory and annual general meeting are called 'extraordinary meetings'. Extraordinary general meeting is a meeting which 'is held between two annual general meetings. These meetings

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40 (1900) 2 CH 230
41 (1978) NCLR 250
42 above, (n 39)
43 (1958) CH D 900, 904
44 (1972) 1 ANLR (Pt. 2) 474

are called in emergencies or on special occasions: This meeting is called to discuss some urgent special business which cannot be postponed till the next annual general meeting, for example, alteration in the memorandum or articles of association, reduction of capital, issue of debentures etc. All business transacted at such meeting is deemed to be special business.[45] The provision of section 239[46]provides that:

> The Board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.

Extra-ordinary General Meeting can be convened by the Board of Directors/a Director Resigning Auditor, the court and Requisition of members holding 1/10 of the paid-up share capital and 1/10 of the total voting rights of all the members. The subject matter of discussion in the meeting must be covered by the requisition, otherwise, any matter deliberated outside the requisition is not valid. In the case of *Ball v Metal Industries Ltd*[47] the shareholders requisitioned an extraordinary meeting for the appointment of three new directors, subsequently, the chairman of the company gave notice of intention to move at the meeting a resolution for the removal from office of one of the existing directors.

The court granted an injunction restraining the company from proceeding with the resolution. In *McGuiness v Bremner Plc*[48] the court has held that the word ‘convene’ in section 239 (2) CAMA means 'summon' or 'call' as distinct from hold.

The court under its wide powers stated that section 247 of CAMA could order that such a meeting be convened if for any reason it is impracticable to call a meeting of the company or the Board. In *Ige-Edaba v West African Glass Industries Ltd*[49] it was held that the court

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45 Sofowora (n 32)
46 CAMA 2020
47 (1972) 1 ANLR (Pt. 2) 474
48 (1983) BCLC 673
49 (1978) NCLR 250

has discretion to convene an Extra-ordinary meeting where it is impracticable to call a meeting in the way prescribed by the article of association of the company. Similarly, in the case of *Okeowo & Ors. v Miglore & Ors*[50] the Supreme Court held that it can in the interest of justice, order a meeting of the company instead of the meeting of the Board asked by a party. It has been established from the facts in the trial court and Court of Appeal that it has become impracticable to summon a meeting of the company in the way prescribed by the article of association of the company.

The procedure is that the court shall direct a meeting to be convened by notice given in the ordinary way to all members whose name and addresses are known and by advertisement to those whose names and addresses are not known. Note where one member of a two member of a two Member Company has died, the section would empower the court to order a meeting.[51]

As we round off on the types of meetings, it should be noted that there are other types of meeting which includes, board and class meeting. Having discussed elaborately on the major types of meeting, it is believed that we have covered the entire grounds on the discussion on the types of meetings under CAMA 2020.

4. Essence of Company Meetings

The essence of Company meetings can be seen in the activities or what transpires in each type of meeting that has been discussed above and to discuss the essence of Company meetings we shall therefore look at the business that is been conducted in each of the type meetings. Two major things that are done in the meeting is voting and passing or making of resolution, these two activities can be concluded to be the essence of company meetings we shall then discuss them extensively under this heading.

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[50] (1979) 12 NSCC 210

[51] *Jarvis Motors (harrow) Ltd. v Carabott & Anor* (1964) 1 WLR 1101 and D Sasegbon, *Nigerian Companies and Allied Matters Law and Practice*, (Lagos: DSc Publication Limited, 1991) 347

4.1 Voting

In most of the public companies, shareholders are empowered to vote on number of issues given to them by the company's legislation. According to section 107:[52]

> Every member shall notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting.

At the meeting a shareholder can be elected a member of the board. At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, where he is a shareholder or a proxy; by at least three members present in person or by proxy; by any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares conferring that right.[53]

The exercise of voting right at the general meeting is one way to check the board of director's excesses which equally implies that the shareholders are the principal.[54] There is evidence that the law requires the boards to "act on the shareholder's behalf," no matter how it is.[55] It has been argued that shareholder vote is one way that the company

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52 CAMA 2020

53 CAMA 2020, ss 248 and 254

55 MM Blair, 'Corporate Governance,' (2000). *International Encyclopedia of Social and Behavioral Sciences,* <SSRN: https://ssrn.com/abstract=205231> accessed 23 November 2024

56 MC Jensen and WH Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure,' (1976) (3) *Journal of Financial Economics* 305-360

lowers the cost of capital by providing some assurance to the shareholders that their investment will not be misappropriated.[56]

It should however be noted further that show of hands is the basic common law method of taking any vote unless a poll was demanded. On the show of hands vote, each member enjoys one vote without regard to the number of votes that a member holding the hand possesses, and if the chairman erroneously counts any individual more than once, the court will not only set aside the decision but will also make a declaration of the correct result.

The right to demand a poll should be exercised immediately after a declaration by the result of the show of hands or where it is required to be taken immediately at the meeting, it must be taken as soon as practicable in the circumstance.[57] The demand could also be made privately to the chairman and by him communicated for the meeting; unless the article of association states specifically the time and place of taking the poll the chairman may direct the method and manner of taking it.[58]

A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy.[59] It should also be noted that in some cases the court would treat the unanimous acquiescence by the members to a course of conduct as equivalent to the approval of the members in a properly convened general meeting. If it can be shown that all the shareholders with the right to attend and vote at a general meeting had assented to some matter, which a general meeting of the

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57 O Williamson, 'Transaction Cost Economics,' in R Schmalensee and RD Willig, (eds.), *Handbook of Industrial Organization, vol. I* < https://link.springer.com/chapter/10.1007/978-3-540-69305-5_4> accessed 23 November 2024

57 CAMA 20202, s 249; *Campell v Maund* (1836) 5 Ad & El 865

58 *Re Chillington Iron Co.* (1885) 29 Ch. D. 159

59 CAMA 2020, s 251 (3)

company could carry into effect, the assent is as binding as a resolution in the general meeting.[60]

This position was exemplified in *Re Express Engineering Works, Ltd.*, five persons formed a private company of which they were the only directors and shareholders. They sold property to the company and at a directors' meeting issued debentures to themselves in payment. The articles of the company if no director should vote in respect of any contract in which he might be interested. It was held that it could be ratified by the unanimous agreement of the members.[61]

Another means of casting vote in the meeting of the company is by proxy. Proxy refers to both the agent appointed by a member to vote on his behalf at a meeting of the company and to the document appointing that agent.[62] The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing or; if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorized.[63] It should be noted that proxies are in fact normally solicited, either for or on behalf of management, which wishes the meeting to affirm its policies, or on behalf of dissentient members seeking to oppose the management.

In Peel v London and North Western Rail Co[64] the court held that management was not only entitled, but was bound, to send out circulars explaining their policy, was entitled to solicit votes in support of that policy and could pay the necessary expenses from company funds. This power must be exercised bona fide, but it may well be difficult to prove lack of good faith.

The second most important essence of meeting is resolution, in every meeting a resolution is reached from the discussion of the members invited for the meeting.

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60 Northey and Others, *Introduction to Company Law*, (Britain: Lexis Law Publishing, 1987) 230

61 (1920) 1 Ch. 466

62 Tolley's Company Law, (Tolley Publishing Co. Ltd., 1990) G.2021

63 CAMA 2020, s 254 (6)

64 (1907) 1 Ch. 5

Resolution: resolution is defined as a formal expression of an opinion, intention, or decision by an official body or assembly.[65] A motion is a proposal put forward for consideration by the meeting, once the motion has been put to the members and they have voted in favour of it, it becomes a Company Resolution. The most important types of resolution are ordinary resolution[66] and special resolution[67] other types resolution includes written resolution, seconding resolution[68] and elective resolution.

5. Conceptual Framework for Court Injunctions

An injunction is defined as "a prohibitory writ, specially prayed for by a bill in which the plaintiff's title is set forth, restraining a person from committing or doing an act (other than criminal acts) (a) which appears to be against equity and conscience."[69] It is also a judicial order operating *in personam*, requiring a party to do or to abstain from doing some particular act.[70] It has been further defined as a writ remedial, issuing by order of a court of equity, and now in some cases by a court of law, acting as a court of equity, in those cases where the plaintiff is entitled to equitable relief, by restraining the commission or continuance of some act of the defendant.[71] It is also a judicial process whereby a party is required to do a particular thing, or to refrain from doing a particular thing.[72]

Injunction at the present day can either be provisional or interlocutory, there is another that it is known as interim which is usually granted and lasted for seven days before the interlocutory will be granted by the Court after the interlocutory is perpetual. Interlocutory injunction is granted in the course of the proceedings until the hearing

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65 BA Garner, *Black's Law Dictionary* (7th edition, 1999)
66 CAMA 2020, s 258
67 *Ibid*
68 *Re Horbury Bridge Coal, Iron & Wagon Co.*
69 F Hilliard, *Law of Injunctions* (Philadelphia, Kay & Brother 1865)
70 JW Eaton, *Handbook of Equity Jurisprudence*. (St. Paul, Minn: West Pub. Co, 1901)
71 EHT Snell, *Principles of Equity*, (London: Sweet and Maxwell, 1982)
72 T Brett, *Commentaries on the Present Laws of England*, (London: William Clowes and Sons.)

of the action or until further order, or final or perpetual injunctions concluding rights of the parties which form part of the judgment made at the hearing of the action.[73]Another division of injunctions to which allusion has been previously made is that they are either prohibitive, i.e. prevent a particular thing from being done, or mandatory.[74]

The principle upon which the Court proceeds in granting a mandatory injunction is not to order the performance of a positive act, but to direct that things should be restored to their former condition. As a general rule the jurisdiction is exercised with caution, comparative convenience and inconvenience are taken into account, and if pecuniary compensation be sufficient, while the inconvenience to the other party would be serious, the Court will not grant a mandatory injunction.[75] Several cases had been decided where the injunction was granted,

In Cure v. Crawford[76] it was held that the powers of the court under the code, in relation to the granting of injunctions, are asserted in the strongest and widest terms: They now extend, it was held, to the restraining any act which may produce injury to the plaintiff. In the new Jersey's case of *Stockton v Railroad Co.,*[77] the injunction was in the following language: "That the defendants do desist and refrain from further performing and carrying into effect the laws," etc., "and that the P. Company," etc., "do desist and refrain from continuing to control the right of the C. Company, and that the C. Company do desist and refrain from permitting the P. Company,"" etc., "to operate its road, and that the C. Company do again resume control of all its property and franchises and performance of all its corporate duties."

In granting the application for injunction, the Court often times consider whether the applicant has no plain, adequate and complete remedy at law, and that the irreparable damage will result unless the relief is granted. [78] Technically, injunction is often used to restrain proceeding at law, breach of contract, commission of torts, breach of

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73 Bret, (n 7)
74 *Ibid* (n 72)
75 *Smith v Day*, 13 Cli. D. 652.
76 293, 1 CR (N. S.) 18,
77 50 N. J. Eq. 52, 24 AtI. 9G4, 17 L. R. A.
78 (n 71)

trust and violation of equitable rights, collection of illegal taxes and violation of laws by public officers and municipal corporation.[79]

From the conceptual clarification of the term injunction, and in connecting same with the concept of meeting, then we can conclude that an injunction can be secured in Court by a member or anyone entitle to get the notice of meeting to either compel the organization of company meeting or suspension of same.

6. **Essence of Court Injunctions in Corporate Governance**

In our previous discussion above, we defined the concept of injunction and we thereafter understood the different types of injunction which may include interim, interlocutory and as well as perpetual. The essence of court injunction in corporate governance can then be to put an end to the doing of a thing temporarily or permanently, it can also simply mean to order the doing of particular act, for instance an injunction can be granted to order the doing of an act (e.g. order the holding of a company meeting) where the company or the alter ego of the company has refused to hold the meeting, in the same vein, the court can order the company to maintain the status quo which can simply mean the meeting or any other process such as election of the company's board or chairman should not be held yet.

In the unreported case of *The Registered Trustees of Lagos Country Club v Seyi Adewumi & 18 Ors*[80] in this case a fight broke out in the Annual General Meeting of the club when they were about electing the leaders of the club.

The trustees then instituted an action against all the warring parties wherein both interim and interlocutory applications were filed, the court in its ruling on the interim injunction held that "Pending the ruling of and determination of this application, I ordered that the status quo be maintained. Meaning that no step should be taken by any party."

Similarly, in *Re: Olusegun Onagoruwa*[81] the first bank holding who was the defendant in the case agreed not to hold or organize the extra ordinary meeting scheduled to hold on the 30th day of April 2024

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79 (n 71)

80 FHC/L/CS/321/2024

81 Unreported case of Federal High Court 2024

after the Plaintiff/Applicant herein filed a case to restrain the defendant from holding it and sought for an application to set aside the decision reached at the 10th Annual General Meetings of the defendant.

From the above decision or agreement between the parties pending the hearing of the substantive suit it is clear that another essence of court injunction in corporate governance is to also set aside any wrong decision that had been made and restore back to status quo.

However, in the case of *Okeowo & Ors. v Miglore & Ors*[82] the Supreme Court held that it can be in the interest of justice, to order a meeting of the company instead of the meeting of the Board asked by a party. It has been established from the facts in the trial court and Court of Appeal that it has become impracticable to summon a meeting of the company in the way prescribed by the article of association of the company.

The procedure is that the court shall direct a meeting to be convened by notice given in the ordinary way to all members whose name and addresses are known and by advertisement to those whose names and addresses are not known. Note where one member of a two member of a two Member Company has died, the section would empower the court to order a meeting.[83]

7. Effects of Court Ordered Injunctions on Corporate Governance under Companies and Allied Matter Act

The effect of the court ordered injunction on corporate governance in most time is for restraining the company or its officer from doing a wrong thing, commit crime or engages in acts that negate the Memorandum and Article of Association of the Company. Section 343 of CAMA[84] provides thus:

> Without prejudice to the rights of members under section 346-351 and sections 353-355 of this Act or any other provisions of this Act, the Court, on the application of any member, may by injunctions or declaration restrain the company or its officers from –

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82 (1979) 12 NSCC 210

83 *Supra*

84 (2020)

(a) entering into any transaction which is illegal or ultra vires

(b) purporting to do with ordinary resolution any act which its articles or this Act required to be done by special resolution

(c) any acts or omission affecting the applicant's individual rights or members

(d) committing fraud on either the company or minority shareholders where the directors fail to appropriate action to redress the wrong done

(e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or the minority shareholders

(f) where directors are likely to derive a profit or benefit or have profited or benefited from their negligence or from their breach of duty; and

(g) any other act or omission where interest of justice so demands.

To buttress the above-mentioned points, we shall make reference to few decided cases. In the case of *Avop Plc v The Attorney General of Enugu State*[85] the issue before the Appellate Court for determination was whether the trial court was right in finding that the Respondent did not interfere with the running and management of the Appellant's company. The facts of this case were that the Appellant was a limited liability company operating under the Companies and Allied Matters Act (CAMA) with its factory in Enugu State. The Respondent held 18.2% of the shares while the East India Produce Company (technical experts) held 37.49% of the shares.

The Respondent appointed a Judicial Commission of Inquiry into the activities of the Appellant, and the recommendations were given to the Managing Director which contained among other things the

[85] (2000) 7 NWLR (Pt. 664) 260

appointment of Mr Amadi, an indigenous senior management staff of the Appellant to take over the management team of the company, this appointment was made by the Respondent, and there was also an advertisement by the Respondent informing the public of the 13 take-over of the management of the Appellant Company by indigenous management. The Respondent went further to appoint its Auditor-General to audit the books and account of the Appellant.

The Appellants after holding an extraordinary meeting where it condemned the acts of the Respondent and resolved to seek redress in Court filed an action at the Federal High Court against the Respondent seeking among other things a declaration that the Respondent had no powers to suspend the management of the Appellant and set up in its place an indigenous management team and to order the auditing of the Appellant's account. The trial court dismissed the claims holding that there was no interference with the Appellant's management and the Appellant appealed to the Court of Appeal, which held that: Under section 63(1) and (3) of the Companies and Allied Matters Act, it was held that the management of a limited liability company is usually a function of the directors of the company be it Private or Public. Such function is spelt out in the Articles of Association.

The acts of the Respondent were contrary to the articles and therefore, null and void. Even though one of the essences of corporate governance is to ensure maximisation of shareholders' interest, the Courts will not fold its hand in cases of undue and unlawful interference by the minority shareholders with the affairs of the companies. One crucial point that can be taken from the case of *Avop Plc v the Attorney General of Enugu State*[86]is that the shareholder is seeking to protect their interest and enhance their value and return on investment must do so within the ambit of the law.

8. Conclusion and Recommendations

In this article we have examined an appraisal of the effects of Court injunctions on Company meetings under the Companies and Allied Matter Act 2020. Several subtopics have been discussed, and it is our conclusion that though court is the final hope of common men, dialogue,

[86] (2000) 7 NWLR (Pt. 664) 260

application of any form of mechanisms of Alternative Dispute Resolution can still serves as a useful tool for resolving some issues especially where the Plaintiff is seeking for perpetual injunction against the Company. In view of the above statement, we are hereby making these further recommendation as follows:

1. That the members or shareholders of the Company should device another way of venting their anger instead of approaching the court for injunction as it may affect the public image of the company.

2. It will be of great advantage if the mechanism of Alternative Dispute Resolution can be enshrined in Company and Allied Matter Acts and same should be first option for settlement of any Company disputes, whether meeting or any other disputes before approaching the Court for injunction

3. There should be a provision on awarding of cost or penalties for the shareholder or group of shareholders that proceed to court to secure an injunction against the Company without a just cause or apply to Court for injunction because of selfish interest

4. Court should be weary of granting any injunction that will affect the growth of the Company or further deteriorate the image and smooth running of the Company and as such Court can decide to play advisory role and, in some circumstances, refer the case to ADR section of the Court.

5. Court and court injunction should be the last option for any aggrieved member or shareholder of the Company.

6. The shareholder or member can make recourse to Court as a final option after all other dispute resolution has been explored.