MPRI-JHLAR | INTERNATIONAL JOURNAL OF HUMANITIES, LITERATURE AND ART RESEARCH
VOL. 02 NO. 1 OCT-2023 ISSN: 1116 - 2619

APPRAISAL OF CORPORATE CRIMINAL LIABILITY UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015

DR. UMORU DICKSON YUNUSA
Faculty of Law, Nasarawa State University, Keffi, Nasarawa State.

Abstract

This paper focuses on criminal liabilities of corporations and the changes effected in the Nigerian Criminal Justice System through the Administration of Criminal Justice Act (ACJA) 2015. The objective of this work is to ascertain with clarity whether the alter ego doctrine approach adopted both in the United Kingdom (UK) and in Nigeria; whereby companies can be criminally liable for the crimes committed by an officer of such company satisfies the requirement of the law. This is due to the fact that some registered companies in their resolve to avoid criminal liability empower low level employees to take decisions or act in their behalf. The ACJA 2015 has opened new vistas whereby erring companies can be tried alone or jointly in Nigeria courts with natural persons as circumstances may dictate. The paper while highlighting on some key sections of ACJA 2015 relevant to this topic, advocates for a quick review of the Act with a view to widen the scope of the statute to cover corporate offences outside federal legislations that are applicable in the Federal Capital Territory, Abuja alone.

Keywords: Corporate, criminal, liability, respondent superior, guilty mind, Nigeria.

Introduction

This work dwells on criminal liability of corporate entities in conjunction with the procedures outlined in the Administration of Criminal Justice Act (ACJA) 2015 in respect to the prosecution of such entities in the law court.

It is known fact that Nigerian criminal justice system have recognized that companies even though are artificial persons, can be culpable in the same way as the natural persons. This is due to the fact that the criminal justice system of the country have fallen back on the common law reliance on the alter ego doctrine to attribute acts of natural persons to the company based on the status of such person in the company.[1]

Drawing from the above; the determining factor in corporate criminal liability in Nigeria is centred on the alter ego doctrine approach meant to determine the actual intentions and corporate mens rea in accordance with what is obtainable in the United Kingdom (UK) which was adopted in Nigeria due to the historical colonial connection between the Bristish Legal System and Nigeria Justice System[2]. In the United Kingdom case of Learnard's Carrying Company Vs Astatic Petroleum Company Limited[3]; the court set a parameter to look beyond the abstract qualities of the company and review the activities of its "directing minds" who are positioned enough to be referred to as its alter ego.

In adopting the same approach in Nigeria, the court of appeal in **Orji Uzor Kalu V FRN.**[4] It was held thus where the Appellate court was called upon to determine the criminal liability of the appellant, the court held thus:

[1] Mohammed Sule – Y; "Criminal Liability of Corporate Persons on Nigeria" (International Journal of Law) 2017 vol. 3 issued P. 32
[2] Mohammed Suleh – Yusuf, Op-cit at P.34.
[3] (1915) AC 705
[4] CA/A.229C/2009

EDITOR-IN-CHIEF
Prof. S. T. Addo [GHANA]

> the appellant who was the first accused in the case at the Federal High Court is the alter ego of the second accused Slok Nigeria Limited and remained its directing mind even while he was the governor of a state.

However in the United States of America (US), the approach is distinct from what is obtainable in United Kingdom (Uk) and Nigeria. Under the Us criminal law jurisdiction on corporate criminal liability, those that represents the corporations are isolated and their actions are ascribed to that of the company itself through the doctrine of "Respondent Superior". This principle was led credence to in the decided case of New York Central and Hudson River Railroad and Company V United States,[5] where the (US) apex court appreciating the impossibility of ascribing human act such as state of mind to a juristic person, came up with the above doctrine meant to isolate those that represents the company and ascribe their actions to the company itself by relying on human acts to determine criminal liability of companies[6].

It is worthy of note that while corporate criminal liability is a substantive law with very wide scope, ACJA 2015 is a procedural law with whole section designated for "trial of corporations".[7] The ACJA 2015 has brought to bear novel ideas in the law that makes far reaching provisions for the prosecution of corporate entities and natural persons alike.

There is no gain saying the fact that corporate criminal liability as a concept and like any other crime rests on the twin pillars of mens rea and actus reus; and attempt at establishing criminal liability of any kind must pass through the above two tests before the prosecutor can succeed in his case in court. This has become practically difficult since a corporation has no physical existence of its own, let alone a mind of its own to so act.[8] This paper will dwell on the meaning of corporate crimes means and how a corporation could be made criminally liable for both (statutory) strict liability and non-strict liability offences; and the impact of the Administration of Criminal Justice Act 2015 on corporate criminal liability in Nigeria.

CORPORATE CRIMES

Corporate crimes are defined as, illegal acts, omissions or commissions by corporate entities themselves or by officials or employees of the corporations acting in accordance with the operative goals or standard, operating procedures and cultural norms of the organization, intended to benefit the corporations themselves.[9] The concept of corporate criminal liability imposes the burden on companies through act of agents, officers and manager due to the nature of personality of such creations and various differences with natural persons. In every company there are certain natural persons who control and directs the activities of the company based on their positions or powers that flow to them from the company's articles of association as espoused in the case of Trenco (Nigeria) Limited V Real Estate Nigeria Limited.[10]

Although it is an established fact that an incorporated company is a legal person in the eye of the law, there is some difficulty in drawing a direct analogy between a corporation (an artificial person) and a natural person who is alleged to have committed a crime. The problem has to do with men rea (mental element) which in almost all criminal offences is indispensable as was the case in Brend V Wood[11] where court held as follows:-

> It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless statute either clearly or by necessary implication rules out mens rea a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind. The

[5] (1909) 21 U.S 481

[6] Ved Nanda, "Corporate Criminal Liability in the United State": Is a New Approach warranted (The American Journal of Comparative Law) 58:63-89, 2011> https://www.researchgate.net.publication/2265080>accessed 24/6/2022

[7] Section 477 to 484 ACJA 2015

[8] Richard Card Cross and Jones "Introduction to criminal law (London, Butterwort 9th ed 1980) P.107

[9] R. Krame Corporate Criminality: The Development of An Idea. In E. Hochstedler, ed corporate as criminals (Beverly Hills' Sage Publication 1984).

[10] (1978) 1 LRN 146 at 153

[11] (1946) 175 L.T. 306

> same principle was enunciated in Abeke V State[12] , where the apex court held that "Mens rea means a guilty mind and it is a necessary pre-condition for attributing criminal acts to either natural person or a fictional personality.

Corporate criminal liability became very pronounced with the introduction of strict liability offences as was the case in National Rivers Authority V Alfred Mcaphine Homes East[13] where the court held:-

> "that the pollution legislation was a strict liability offence and further held that the only way of enforcing the pollution legislation was a strict liability offence and further held that the only way of enforcing such laws, where the pollution will often be caused by persons of low position in the corporation hierarchy, was by imposing vicarious liability on the company. It would seem from this decision that there can be no strict liability on a company except through omission or commissions by its employee".

These are offences for which mental state is not required for the commission of such offences and the penalty (a fine) was such that it could be imposed upon a corporation specially meant to promote the social and economic well being of the citizens and also to encourage investment into the country [14]. Some of such laws ranges from weight and measures Act[15], Standard Organization of Nigeria Act,[16] Food and Drug Act[17], the Consumer Protection Council Decree[18], the Federal Environmental Protection Agency Act[19], Economic and Financial Crime Commission (Established) Act[20], the Corruption Practices and Other related Offences Act[21], the failed bank (Recovery of Debt and Financial Mal Practices in Bank Act[22] etc. The only necessary proof by the prosecution against the defendant is the establishment of Actus reus which is the carrying out of the alleged act by the defendant and nothing more.

However, there are some exceptions in respect to such offences not captured by the statute such as murder, rape, kidnapping, manslaughter, conspiracy etc, which a corporation is incapable of committing and may not be subjected to the requisite penal sanctions. For instance, the penalty for murder is death sentence and since a corporation has no physical human existence, it might be difficult to convict and sentence it to years of imprisonment or impose a death penalty as the case may be.[23]

Situations may arise where proof of mens rea is necessary, it then becomes impossible to state the mind of a corporation since it does not have one, like a natural person; and even when the state of mind of the corporation is ascribed to that of any of its employees, another challenge is who among the employees of the corporation is to be regarded as acting on behalf of the corporation that his act can be deemed or regarded as the act of the corporation since some of the employees are of low status.

To find a way out of this by ascribe the state of mind, intention, knowledge of an agent to the company must depend on the nature of the charge, the relative position of the officer or agent and the relevant facts and circumstances of the case as was held in R V ICR Haulage Company Ltd[24] where a sound legal principle was laid that the company may not be liable for some offences that actually require physical actions such as rape and battery.

[12] (2007) 3 S.C (Pt11), 106
[13] (1944) CLR 760
[14] David Folurusho Tom, "Corporate Crimes and Liabilities under Nigeria Laws; P.4
[15] Cap W3 Vol. 5 LFN 2004
[16] S.O.N. Act (Amendment Decree) No. 18 of 1990, Now Cap C20 Vol. 3 LFN 2004.
[17] Cap C 32 Vol. 7 LFN 2004
[18] Cap C 25 Vol. 4 LFN 2004
[19] F.E.P.A Act Cap.131 L.F.N, 1990
[20] Cap D 10 Vol 6 LFN 2004 EFCC Act 2004
[21] ICPC Act, 2000
[22] Failed Bank (Recovery of Debt) and Financial Malpractices in Bank Decree.
[23] David Folorunsho Tom, Ibid
[24] (1944) K.B 551

Instances may arise where both the employee and corporation may be held liable jointly as was in the decided case of IGP V Mandilas and Karaberis & Anor,[25] where the court relied on the general principle that:-

> "a corporation acts through its agents and that once such agent act within the scope of their employment, the principal, which is the corporation would be vicariously and criminally liable"

It is the concern of this writer that a blanket adoption of vicarious liability principles to corporate criminal liability, renders a corporation guilty as charged not minding the fact that it does not possess the mens rea to commit the act constituting the alleged offence or even the fact that the alleged offence was committed in the first place. This concern got judicial backing in the decided case of Akpa V State[26] where the supreme court per Hon. Justice Niki Tobi JSC (as he then was), made a pronouncement on nature of criminal liability thus:-.

> "i know of no law that because other persons who committed an offence are not charged to court, the accused person charged to court, must on that ground be discharged and acquitted, criminal liability is personal and it cannot be transformed. This is because the mens rea or actus reus is on the accused in court and cannot be transferred to any other person other than the person charged"

The above decision of the apex court has dealt a devastating blow to both the "alter-ego/attributive" doctrine applicable in the UK and in Nigeria, and the "Superior Respondent" doctrine in the US as basis for corporate criminal liability. Reason being whether an alleged offence falls within the realm of strict liability as provided by the statute or not, the underlining factor is the level of culpability of the defendant and not necessarily the position of such defendant in the corporation that determines corporate criminal liability. In the nut shell, there is urgent need for an amendment of the entire section 477 to 481 of ACJA 2015 in consonance with the laid down principles in State V Akpa Supra, to the extent that a corporation do not under whatever guise required a preventative to stand trial on its behalf.

Impact of the Administration of Criminal Justice act (ACJA) 2015 on Corporate Criminal Liability in Nigeria.

The Act[27] has brought about changes in the criminal justice system in Nigeria as it has introduced far-reaching innovations that has impacted positively on corporate criminal litigation in Nigerian courts. This is a shown in the "preliminary" to the Act as follows:[28]

> The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institution, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victim.

However, the Act has a limited scope and application as a procedural law due to the fact that its provisions are "only relevant to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja[29].

The Act laid grounds for arraignment of co-operations as corporate entities either alone or jointly with natural persons, and this is why the entire part of the law was slated for "Trial of Corporation" where the law defined a corporation to mean in this part as anybody corporate, incorporated in Nigeria or elsewhere".[30]

This clearly distinguished an incorporated company from a natural person for purposes of criminal liability. In the same vein, the Act in its bit to buttress the alter ego principles, acknowledged the place of a

[25] (1958) W.R. N.L. R 147
[26] (2008) 7 M.J.S.C (P.91) Para E
[27] Precious Igbonwelendu, "Wanted a robut justice section in Nigeria" The Nations Newspaper (6/10/2013)P.22
[28] Part 1 and section 1(1) ACJA 2015
[29] Section 1(1) ACJA
[30] Section 477(1) ACJA 2015

representative in corporate criminal liability through the definition of the concept, the mode of appointment and what is expected of a representative of a corporation in a criminal trial. The Act vide section 477(2) states thus:

> In this part, "representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this part authorized to do, but a person so appointed shall not by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose. The important of this provision of the is to show that it is not in all cases that a representative of a corporation is so appointed that automatically qualified such a preventative to have a wide latitude in such capacity.

The mode of appointment of such a repetitive as provided under the same law is as follows:

> A representative for the purposes of this part need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of the part, shall be admissible without further proof as prima facie evidence that the person has been so appointed.

This subsection (3) clearly depicts the alter ego principle to the effect that if a representative of company is armed with any statement in writing duly signed by an officer so authorized, that statement suffices to enable the appointed representative carry out several acts including standing in for the company in criminal trial. It is worth commenting that such appointment in this sub-section has nothing to do with the status of the representative in the company rather, the determining factor is a valid statement in writing and nothing else. It is also of interest to highlight how the Act has provided for procedures of taking pleas by a representative of a corporation that "where a corporation is called upon to plead to any charge or information including a new charge or information framed under the provisions of this Act or charge or information added to or altered under the provisions of this Act, it may enter in writing by its representative or plea of guilty or not guilty or any pleas which may be entered under this Act and if either the corporation does not appear by a representative or though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall preceded as though the corporation has entered a plea of not guilty" [31]

In the face of the above submission, there is seems to be conflicts between cited case laws and relevant sections of ACJA 2015 that relevant to the topic of this research. While a case law AKPA V STATE (supra) as stated that criminal liability cannot be delegated in any form, sections 477(1) (2) (3) and 478 ACJA 2015 are stating the contrary.

Also in Mandilas and Kara Beris Ltd V IGP (Supra), Ademola C.J.F, held thus:

> Whatever the position of a manager in cases of absolute liability, he cannot be convicted of an offence of his act or omissions, and even if in this case, it had been a reasonable inference that the lorries had been stolen by someone, there was no evidence whatsoever to implicate the second appellant personally.

The principle stated above is also in accord with the Act[32] to the effect that "A person shall not be arrested in place of a suspect". The implication here is that even in offences covered by the statutes as strict liability in nature where mens rea is not required before conviction, "there is an inevitable presumption against strict liability that a man cannot generally be liable for an offence which is committed by somebody else in his control, unless he can be said to have a guilty mind in respect of that offence and has to some extent

[31] Section 478 ACJA 2015
[32] Section 7 ACJA 2015

participated in it. Criminal responsibility is generally regarded as being essentially personal in character, and it is with considerable diffidence that the principle is accepted whereby a man may be found guilty and punished for an offence which is actually committed by another".[33]

Conclusion

From the discussion so far in this work and the relevant sections of ACJA 2015 reviewed, it is clear that a corporation being an artificial person in law is capable of standing criminal trial alone or jointly with any of the employees or agent. As it stands today, the law is not in favour of delegation of criminal liability to anyone under whatever guise. This is clearly shown in the decided case in Akpa V State (Supra) and section 7 ACJA 2015 respectively. It is also important to note that even if a corporation is convicted and sentenced to years of imprisonment depending on the nature of the offence, it has no body and soul of its own to be confined to prison custody and this is another challenge. As a way out of this and other challenges militating against the application of corporate criminal liability in Nigeria, it is suggested among others that the Attorney General of the Federation make policy guidelines to be gazette, meant to be used by courts in meting out punishments to convicted and sentenced corporations particularly in capital related offences where payment of fines may not be desirable.

For employees hiding under the corporate veil to commit frauds in the cause of official duties, it is advocated that the courts are enjoined to lift the veil of incorporation[34] through which, the natural person behind the mask is identified and prosecuted. This was held in the Nigeria case of FRN V. DR. Nwochie Odogwu & Ors,[35] where the promoter of the bank who also doubled as its managing director was accused of granting unsecured loans that he later diverted for his personal use. The court sentenced the managing director to 18 years in prison and discharged bank since it could not attribute the action of managing director to the bank. In a sister case of Public Finance Securities Ltd V Jefia[36] the same principle was adopted where the court stated inter lia thus:-

> the court will lift the veil of incorporation of any company to find out who was behind the fraudulent and improper conduct of the company. This will be necessary where the canopy of legal entity is used to defeat public commence, justify wrong, perpetuate and protect fraud and crime. Also where a company was involved in reckless and fraudulent trading activity tainted with fraud, the court can pears the veil of incorporation.

In line with the foregoing submission, it is established beyond doubt that the entire section 477 to 484 ACJA 2015 contradicts the case law in Akpa V State (supra) and should be amended to reflect the present reality. The principle of stare decisis presupposes that a decision of the Apex Court that is not set aside by the same court is binding and must be followed to the later. By this, the writer is submitting that a representative cannot represent a corporation by standing in place of such a corporation. Through the principle of lifting the veil of incorporation, registered companies who are legal personalities are capable and competent to have their days in court with appropriate penal sanctions imposed by court with or without a representative.

Reference

Ola C.S. and Ola A. O, Mens Rea in the Statutory Offences in Nigeria" Mathhouse Press Limited (1990) P.20
Mohammed Sule – Y; "Criminal Liability of Corporate Persons on Nigeria" (International Journal of Law) 2017 vol. 3 issued P. 32
David Folurusho T, "Corporate Crimes and Liabilities under Nigeria Laws; P.4
Precious Igbonwelendu, "Wanted, a robut justice sector in Nigeria" The Nations Newspaper (6/10/2013)P.22
Richard Card Cross and Jones "Introduction to criminal law (London, Butterwort 9th ed 1980) P.107
Krame. R, Corporate Criminality Liability: The Development of an Idea. In E. Hochstedler, corporate as criminals (Beverly Hills' Sage Publication 1984).
Samson Erhaze & Daud Momodu, Corporate Criminal Liability: Call for a New Legal Regime in
Nigeria, Journal of Law and Criminal Justice (2015) Vol.3 No. 2 Pp 63-72
Ved Nanda, "Corporate Criminal Liability in the United State": Is a New Approach warranted (The American Journal of Comparative Law) 58:63-89, 2011> https://www.researchgate.net.publication/2265080>accessed 24/6/2022
Yellim Suleiman Bogoro, "Corporate Criminal Liability" (2005) Post Graduate Thesis University of Jos.

[33] C.S.Ola and A. O. Ola, Mens Rea in the Statutory Offences in Nigeria" Mathhouse Press Limited (1990)P.20
[34] Salomon V Salomon (1897) A.C 22
[35] (1997) 1 F.B. T LR, 179
[36] (1998) 3 NWLR Pt. 59