RETHINKING THE DOCTRINE OF LIFTING THE VEIL OF INCORPORATION IN NIGERIA: MAKING A CASE FOR A STREAMLINED JUDICIAL APPROACH*

Abstract

Once a company is incorporated, it enjoys a legal personality that is distinct from that of its members. This invariably implies that those running the affairs of the company do not incur personal liability while doing so. The cloak of corporate personality bestowed on companies upon incorporation is one of the antecedents of registration. The doctrine of lifting the veil is an exception to the general rule of corporate personality. It is a creation of the English courts and came to fore in the old case of Salomon v. Salomon & Co. Ltd where the House of lords held the corporate legal personality of a company to be sacrosanct and the corporate veil not easily pierced. Prior to the case of Adams v. Cape Industries Plc, the English courts will readily lift the veil of incorporation at the slightest prompt. However, from Adams v. Cape Industries Plc, the English courts started devising well thought out rules that allow for the lifting of the corporate veil. In the case of Prest v. Petrodel Resources Ltd it became settled that the veil of incorporation will not be lifted for flimsy reasons, even if it is in the interest of justice, but for impropriety and evasion of legal obligation. The principle of corporate legal personality is well entrenched in the Nigerian legal system as same is provided for in section 42 of the Companies and Allied Matters Act 2020. Also, the doctrine of lifting the veil is well recognised in Nigeria as the courts will lift the veil in instances stated by the Legislature. However, the Nigerian courts' approach in lifting the veil is not streamlined, unlike its English counterparts. This paper examines the doctrine of lifting the veil by the English and Nigerian courts. It traces the movement in the English courts to the present position and reveals the inconsistencies of the Nigerian courts in exercising the equitable power of the court to lift the veil by considering few cases particularly the case of Mariner Nominee Ltd v. Federal Board of Inland Revenue and Mezu v. Cooperative & Commerce Bank (Nig.) Ltd. This paper argues that the Nigerian courts, in most cases, fail to avert their minds to the trend in the English courts and the position in the locus classicus case of Salomon v. Salomon & Co. Ltd, and suggests that the clear rule in Prest v. Petrodel Resources Ltd or better still the earlier position by the Nigerian court in Mariner Nominee Ltd v. Federal Board of Inland Revenue be adopted in lifting the veil of incorporation in Nigeria.

Keywords: Companies and Allied matters Act 2020, Corporate Personality, English and Nigerian Courts, Lifting the Veil.

1. Introduction

The fundamental attribute of corporate personality, from which indeed all other consequences flow, is that the company is a legal entity distinct from its members. This is one benefit that accrues to an entity upon incorporation – that such an entity is vested with corporate personality. In other words, it has 'legal personality' and is often described as an *artificial person* in contrast with a human being, a *natural person.*[1] The doctrine of corporate personality is fundamental and by and large, it is meant to be adhered to strictly and rigidly, especially when there is no compelling reason to the contrary. However, just as the concept of corporate personality can be (and is being) used to achieve lofty and great purpose, it can also be used for various nefarious and unwholesome reasons, which can be to evade the law, to avoid legal obligations or to defraud. In a bid to guard against negative practices that may allow the concept of corporate personality being used as an instrument of fraud or to avoid legal obligations, the courts and the legislature have risen to the occasion by providing instances where the veil of incorporation will be lifted to determine the natural persons behind the corporate veil. The English courts over the years have adopted a more conservative posture in lifting or piercing the corporate veil by doing so in limited instances by adopting a more narrow and strict sense when it comes to the principle of corporate personality and the doctrine of lifting the veil, thereby strengthening the decision of the court in the *locus classicus* case of *Salomon v A. Salomon & Co Ltd*[2]. Interestingly, the Companies Act 2006 of the United Kingdom (UK) has no provision on lifting the veil; rather it shifts attention on directors by making them liable for company wrongs.[3] In Nigeria, the principle of corporate personality, as explained by the House of Lords in *Salomon v A Salomon &Co Ltd*[4] is well recognised[5] as same has been codified in Section 42 of the Companies and Allied Matters Act 2020 (CAMA 2020). However, unlike the recent trends and the disposition of the English courts which now conservatively allow the lifting of corporate veil in a narrow sense, the Nigerian courts are yet to catch up and latch onto this trend due to various misconceptions and proper understanding of the sacrosanct nature of the principle of corporate personality. To the English courts, the doctrine of corporate personality is so sacrosanct that it will not be easily derogated from as held by the House of Lords in *Salomon v. A Salomon &Co Ltd*[6]. Some schools of thoughts are of the opinion that the doctrine of lifting the veil by the courts, asides specific provisions in the statute, is fleeting and nothing but a shadow since the starting point for the argument that the principle does not exist is rooted in the well-known decision in *Salomon v A Salomon & Co. Ltd.* Therefore, for a proper understanding of the evolvement of the general principle in relation to lifting or piercing of the veil, which originated out of the English courts, and its proper application there is the need to trace the application of the doctrine in cases by the English courts.

This paper is divided into five sections. After introduction, section two examines the principle of corporate personality as established in the English case of *Salomon v. A. Salomon & Co Ltd*[7] and provided for in 42 CAMA 2020. Section three considers the doctrine of lifting the veil and the various instances where the veil will be lifted under the statute. Section four

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[1] Paul L. Davies and D.D. Prentice, (2001) *Gower's Principles of Modern Company Law*, 6th Edition, Sweet and Maxwell Australia. 77

[2] (1877) AC 22

[3] See Sections 213-217, Insolvency Act 1986; Section 15 Companies Directors Disqualification Act 1986.

[4] Ibid.

[5] In *Royal Petroleum Company Ltd v. First Bank of Nigeria* (1997) 6 NWLP (pt. 510) page 599, paragraph E, it was held that it is a well-known principle of law that a limited liability company is an entirely different and distinct entity from its Managing Director or other human agents who act for it. See also *Ogbodu v. Quality Finance Ltd & 6 Others* (2003) 6 NWLR (pt. 815) page 168, paragraphs B-F.

[6] Ibid.

[7] (1877) AC 22

considers streamlining lifting of veil by courts in Nigeria by analysing the English and Nigerian courts' approach to lifting the veil through a thorough review of cases. Section five concludes and makes recommendations.

2. The Principle of Corporate Personality

Once a company is incorporated, it means among other things that it is an abstraction, invisible and immortal[8] that rests only on the intendment and consideration of law and a legal person that has a separate character or existence from its members[9]. The legal personality being bestowed on a company upon incorporation is a fiction introduced by law. Thus, a company, being an artificial person must function through human beings.[10] In such instances, the law generally attributes the acts of such individuals to the company. [11] It should however be noted that it is not the act of every officer that binds the company, as those whose acts bind the company are the alter egos of the company i.e., those whose positions are the directing mind and will of the company.[12] This fiction created by law is necessary for the convenience of making contracts, holding property, suing, and being sued, for management of affairs of the company and to preserve the limited liability of its shareholders as provided for in Section 42 CAMA 2020. It is chiefly for the purpose of clothing association of natural persons with characteristic of a distinct entity at law that companies were invented and are in use.[13] Historically, corporate personality was conferred on religious groups in England which came by as a solution to the problem of succession. Then in England, the head of a religious group was the custodian of all properties of the group, and after whose death the property of the group passes to the successor. In a bid to surmount succession issues, religious groups had to be regarded as corporate persons, and that their properties belong to them. This made the current headship not to have any personal right to the property of the group. This was the beginning of corporation and the application of the principle corporate legal personality.[14]

The general rule of corporate personality was laid down in the celebrated English case of *Salomon v. A. Salomon & Co Ltd*[15]. In the case, Mr. Salomon carried on business as a leather merchant. In 1892 he formed the company: Salomon and Co. Ltd, with his wife and five children holding one share each in the company. Mr. Salomon was also the managing director. The members of the family did not intend taking an active role in the business but rather only held the shares because the Companies Act requires at that time that there be seven shareholders. Mr. Salomon thereafter transferred his original business to the company. He did this by valuing the original leather business at £39,000. The company paid for this by £10,000 worth of debentures giving charge over all the company assets, £20,000 in shares and £9,000 in cash. Mr. Salomon paid off all the creditors of the business in full. Mr. Salomon now owns 20,001 shares and his family owns the six shares. He was also the owner of the secured debenture. Almost immediately after the incorporation, the company had some difficulties, its customers did not buy its products and therefore the company ran into debts. Owing its creditors, Mr. Salomon had to sell his debenture to raise money for the company. After another year, the problem persisted, and the debenture holder now forced the company to go into liquidation to realize his money. There were however not enough assets to pay off the debenture holder and so the debenture holder Mr. Broderip, sought to challenge the validity of the transaction to convert the legal status of the business into a company and sought to make Mr. Salomon personally liable for the debts of the company. Mr. Broderip alleged that the company was a sham and is mere 'alias' or agent for Mr. Salomon. The Court of Appeal in England upheld his claim and held Mr. Salomon personally liable. Mr. Salomon appealed to the House of Lords and the liquidator took over the matter on behalf of all the creditors against Mr. Salomon. The House of Lords held that once incorporated, a company assumes a separate legal personality from its members, and it is immaterial that it is the same person that formed it that is managing it and at the helm of its affairs. It was also held that the company can contract with its members, and that since the company was validly formed according to the Joint Stock Companies Act of 1844, which required that there be seven (7) members holding one share each, there was nothing in the Act about good faith of the members and that the motives of the shareholders were irrelevant unless there is fraud.

Thus, in reliance on the principles set out in *Salomon v. A. Salomon & Co Ltd*[16], the most important factor to consider is whether the company has complied with the Act in its incorporation and if so, whether such company was properly registered with a certificate of registration as evidence (as a certificate of incorporation is prima facie evidence that a company is duly registered[17]). Once this is the case, it then does not matter whether the same person who acted as promoter is the subscriber to the memorandum of the company, as the company – having its own separate legal entity – is deemed to be clearly distinct from its subscribers. Therefore, a person being a creator and controller of a company cannot be held to be the principal of the company as agency will not be inferred unless it is established substantially. Consequently, neither party – the company and

[8] Lord Handale in *Lennard's Carrying Company Ltd v. Asiatic Petroleum Co. Ltd* (1975) AC 705 at 713 -714). See also *Standard Trust Bank Ltd v. Interdrill Nigeria Ltd & Anor* (2007) All FWLR (Pt. 366) 756 at 771 Para. C-F.

[9] See the following for the theoretical basis of this idea - Laski H.J. 1916. The Personality of Associations. 29. *Harvard Law Review* 404; Radin M. 1932. The Endless Problem of Corporate Personality 32 *Columbia Law Review* 43; Wolff M. 1938. On the Nature of Legal Persons. 54 *Law Quarterly Review* 494.

[10] See Section 87(1) Companies and Allied Matters Act, 2020 which provides: 'A company shall act through its members in General meeting or its board of directors or through officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of Directors'.

[11] In *Okolo v. Union Bank of Nigeria Plc* (2004) 3 NWLR (Pt. 859) SC 87, the Supreme Court held that a director of the company is in the eye of the law an agent of the company, such that when a director enters into a contract for a company, it is the company, the principal which is liable on it and not the director(s)

[12] See Lord Denning, L.J in *Bolton (Engineering) Co ltd v. Graham & Sons* (1959) 1 QB 159 and the decision in *Orji v. Anyanso* (2002) 2NWLR (Pt. 643)

[13] See Kiser D. Barnes, (1992) *Cases and Materials on Nigerian Company Law*, O.A.U Press Ltd, Ile-Ife, Nigeria. 62.

[14]See Kunle Aina. Company Law. Available at http://nou.edu.ng/uploads/NOUN_OCL/pdf/Laws/Law533%20CompanyLawandBusinessAssociation%201.pdf. Accessed 12 December 2022.

[15] (1877) AC 22

[16] Supra

[17] See *Witt and Busch Ltd v. Goodwill and Trust Investment Ltd & Anor* (2004) 8 NWLR (Pt. 874). See also Section 41(6) of the Companies and Allied Matters Act, 2020.

its members – are liable for the debts or acts of each other.[18] This principle enunciated in *Salomon v. A. Salomon & Co Ltd*[19] which states that once a company is incorporated, corporate personality is conferred on it and such incorporated entity becomes a legal but artificial person capable of performing several activities – having been given life to by law – and thereby enjoys incidences of incorporation, is codified in Section 42 of CAMA 2020:

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

3. The Doctrine of Lifting the Veil of Incorporation under Statute

The doctrine of lifting the veil is an exception to the general rule of corporate personality of an incorporated company as laid down in the English case of *Salomon v. Salomon & Co Ltd*[20] and codified by Section 42 CAMA 2020. Generally, there are instances where the courts and the legislature have allowed the veil to be lifted in order to determine the natural persons behind the corporate veil, not to allow the principle of corporate personality to be used to defeat some important value in law, etc. Despite the concept being used to achieve lofty and great purpose, corporate personality has been used for nefarious and unwholesome reasons which are basically to evade the law, to defraud, or to avoid legal obligation, such that if it is impossible to lift the corporate veil to see the very persons behind such acts and to ascribe liability, it then becomes impossible to check these negative practices. The legislature has always made it an essential aspect of corporate existence that a company should be accompanied by wide publicity, although third parties may not be allowed to proceed against the members of the company they are entitled to know the members of the company and their interests in it, who the officers of the company are, the constitution of the company, the capital of the company the accounts of the company, and generally all the registered documents of the company. Apart from the information that the law permits must be revealed to the public third parties may not be entitled to know beyond this, and it is as if a curtain is drawn over the affairs of the company that blocks access of outsiders to its internal affairs.

Both in Nigeria[21] and in the United Kingdom[22], the legislatures permit the corporate veil to be lifted. These Statues recognise certain circumstances in which the veil of incorporation can be removed, and the separate legal personality denied without naming it 'lifting of veil'. In fact, there is no section in both statues that is tagged 'lifting the veil'. Section 16(2) of the English Companies Act 2006 and Section 42 of CAMA 2020 grant corporate personality to companies. However, the corporate personality will be ignored and the veil lifted with liability being imposed on those behind the veil where some of the provisions of the Acts[23] are contravened, for instance; where there is reduction in the number of members[24]; where there has been fraudulent or wrongful trading by the company[25]; abuse of company names or employment of disqualified directors[26]; premature trading[27]; and where promoters contract on behalf of a company not yet incorporated by executing a pre-incorporation contract[28]; where the number of directors is less than two[29]; misappropriation of third party fund or loan to the company[30]; where investigation is been carried out by the Corporate Affairs Commission (C.A.C.) into the affairs of the company or companies related to the company[31] and in cases of holding and subsidiaries company, particularly for the purpose of preparing their account statements, as they will be treated as a whole entity and not a distinct legal entities[32]. Also, a breach of the Insolvency Act 1986 and the Company Directors Disqualification Act 1986 can result in lifting the corporate veil[33] under the English law.

4. Streamlining Lifting of Veil by Courts in Nigeria

The circumstances which the judiciary will lift the veil of incorporation has over the years been discussed and explained elaborately by the courts[34] and academicians[35]. It is no longer news that Nigeria shares a lot in common with England, including its laws. For instance, the Nigerian Companies and Allied Matters Act was promulgated in 1990 to replace the old Companies Act of 1968 which was replica of the English Companies Act of 1948.[36] It was the 1990 Act that has now been replaced by the current Companies and Allied Matters Act 2020 – an Act fashioned after the current English Companies Act of 2006, the

[18] Nelson C.S Ogbuanya, (2013) *Essentials of Corporate Law Practice in Nigeria,* Novena Publishers Limited. 191
[19] (1877) AC 22
[20] (1877) AC 22
[21] Under the Companies and Allied Matters Act, 2020
[22] Under the Companies Act 2006
[23] Both the Companies and Allied Matters Act, 2020 and the English Companies Act 2006
[24] Section 24 Companies Act, 2006 and Sections 18 and 118 of Companies and Allied Matters Act, 2020
[25] Sections 213 and 214 Insolvency Act, 1986 and Sections 671 and 672 of Companies and Allied Matters Act, 2020. See Re Patrick Lyon Ltd (1933) Ch. 786 at 790, 791; R v. Grantham (1984) Q.B 675, C.A
[26] Sections 216 and 217 Insolvency Act, 1986.
[27] Section 117 (8) Companies Act, 2006.
[28] Section 51 Companies Act, 2006.
[29] Section 271 of Companies and Allied Matters Act, 2020
[30] Section 316 of Companies and Allied Matters Act, 2020
[31] Section 778 of Companies and Allied Matters Act, 2020
[32] Section 379(1) of Companies and Allied Matters Act, 2020
[33] Chrispas Nyombi, *Lifting the Veil of Incorporation under Common Law and Statute,* School of Law, University of Essex, Colchester, UK, Page 8, *www.ssrn.com*, retrieved 18th July, 2022
[34] The Tjaskemohen (1997) 2 Lloyds Rep. 465 at 471 where Clarke J said that 'the cases have not worked out what is meant by piercing the corporate veil; in South Africa Smalberger J. observed that the law is far from settled with regard to the circumstances in which it would' be permissible to pierce the veil'. See Cape Pacific Ltd v. Lubner Controlling Investments (Pty) Ltd (1995) (4) SA 790 (A) 802-803.
[35] Farrar J. (1990). *Fraud, Fairness and Piercing the Corporate Veil*. 16 Can Bus. L.J. 474 at 478.
[36] See Orojo J.O (2008) *Company Law and Practice in Nigeria*, 5th ed. Lexis Nexis, Butterworth p.17.

Insolvency Act 1986 and the Enterprise Act of 2002. However, unlike the approach taken by the Nigerian courts, which is quite confusing; the English courts approach is more streamlined and until the 1970s the courts in England were very much ready to intervene and lift the veil of incorporation by simply devising various circumstances when the veil of incorporation may be lifted.

The English Courts' Approach

The English Courts loathe applying the doctrine of lifting the veil[37] as the courts in recent years have reluctantly devised means of piercing the corporate veil in ensuring that it is not used to evade the law. The doctrine is in fact only applied in exceptional circumstances. The doctrine has received limited application, and it gives no room for predictability.[38] Thus, there is no general theory indicating when the court will ignore the rule in *Salomon v Salomon & Co Ltd*[39] and lift the veil of incorporation and ascribe liability to the directors or promoters of the company. However, some broad classifications may have arisen over the years.[40] The English courts, over the years, have devised means of lifting the corporate veil and this was done under the following broad circumstances:

a. Agency: the court will apply the agency rule when the principle of corporate personality is being used to avoid legal obligation.[41]
b. Evasion of Legal Obligation / Fraud: Similarly, a court will not allow members of a company to evade their legal obligation or to perpetuate fraud under the cloak of *Salomon v Salomon & Co Ltd*[42]. If such happens, it will be regarded as a 'sham' that is, the company is not real but formed to perpetrate fraud.[43]
c. Group Enterprise Theory: A large company may own a chain of other companies known as subsidiaries; if the doctrine of *Salomon v Salomon & Co Ltd*[44] were to be applied, these other companies would be treated separately. But for economic convenience and justice both are allowed to be treated as an entity. In the case of *DHN Food Distributors Ltd v Tower Hamlets*[45], Lord Denning had argued that a group of companies was, in reality, a single economic entity and should be treated as one.
However, this position will seem to avoid the doctrine laid down in S*alomon v. Salomon & Co Ltd*[46] and therefore two years later the House of Lords was able to specially disapprove Lord Denning's position and ruled in the case of *Woolfson v. Strathclyde Regional Council*[47], that the veil of incorporation would be upheld in cases of group of companies structures unless the group structures was being used as a facade. The Court of Appeal in England had the opportunity of setting the record straight and declared the position of the law in the case of *Adams v Cape Industries Plc.*[48]. The court examined all the possibilities, and after examining all the old cases, the court held that Cape group cannot be treated as one. The court stated: 'save in cases which turn on the wording of particular statutes or contracts, the court is not free to disregard the principle of Salomon v Salomon & Co. Ltd (1897) All 22 because it considers that justice so required.

The court therefore left only three options for lifting of veil of incorporation to be: i) Where the court is construing a statute, contract, or other document; ii) When the court is satisfied that a company is a 'mere facade' concealing true facts; and iii) When it can be established that the company is an authorized agent of its controllers or its members, corporate or human. The English courts have obviously become extremely reluctant to lift the veil of incorporation or to depart from the principle laid down in *Salomon v Salomon & Co Ltd*[49]. Since the Cape's case[50], the occasions for lifting the veil seem to have been limited to only three. However, one thing was certain, and it was that although the English Courts had no general approach or doctrine in lifting the veil of incorporation the court will not be deterred in lifting the veil when dishonesty or fraud is found[51], and as time went on, the court made pronouncements that such impropriety (dishonesty or fraud) must be relevant[52]. Some school of thoughts are of the opinion that the doctrine of lifting the veil by the courts, asides the provision of the statute is fleeting and nothing but a shadow, as noted by Lord Neuberger in *VTB Capital Plc. v. Nutritek International Corporation and others*[53] that the starting point for the argument that the principle does not exist is the well-known decision in *Salomon v. A Salomon & Co. ltd*.[54] Therefore, for a proper understanding of the evolvement of the general principle in England in relation to judicial lifting or piercing of the veil, there is the need to trace the application of the doctrine in cases by the English courts. In *Gilford Motor Co Ltd v. Horne*[55], Mr. E.B. Horne has been the managing director of the Gilford Motor Co. His contract of employment precluded him from being engaged in any competing business in a specified geographical area for five years after the end of his employment 'either solely or jointly with or as agent for any other person, firm or company'. He left Gilford and carried on a competing business in the specified area, initially in his own name. He then formed a company, J.M. Horne & Co Ltd,

[37] Thomas K. Cheng. The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines.' *Boston College International and Comparative Law Review*. [2011] Retrieved from: https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1660&context=iclr on 15th October 2022.
[38] K.W. Wedderburn, (1958) Company Law- Member's Rights- Oppression of Minority. *CAMBRIDGE L.J*. 152, 155.
[39] (1877) AC 22
[40] See Lord Neuberger in VTB Capital Plc. v. Nutritek International Corporation and others (2013) UKSC 5 at Paragraph 123
[41] See *Smith, Stone and Knight Ltd v Birmingham Corporation* (1939) 4 All E.R. 116. *Re FG films Ltd* (1933) 1 W.L.R. 483.
[42] (1877) AC 22
[43] See Jones v Lipman (1962) 1 All E.R 442
[44] (1877) AC 22
[45] (1976) 1 WLR 852
[46] (1877) AC 22.
[47] (1976) SLT 159.
[48] (1990)1 Ch 433.
[49] (1877) AC 22.
[50] *Adams v. Cape Industries Plc* (1990)1 Ch 433
[51] For example, Lord Denning in *Lazarus Estates Ltd v. Beasley* (1956) 1 QB 702, 712
[52] See Lord Neuberger in *VTB Capital Plc. v. Nutritek International Corporation and Others* (2013) UKSC 5 at Paragraph 145
[53] (2013) UKSC 5
[54] Supra at paragraph 122
[55] (1933) Ch. 935

named after his wife, in which she and a business associate were shareholders. The trial judge, Farwell J, found that the company had been set up in this way to enable the business to be carried on under his own control but without incurring liability for the breach of the covenant. An injunction was granted against both him and his company which the court described as 'a device, a stratagem…a mere cloak or sham'. Almost all modern analysis of the doctrine of lifting the veil have taken as their starting point the brief and obiter but influential statement of Lord Keith of Kinkel in *Woolfson v. Strathclyde Regional Council.*[56] It was an appeal from Scotland in which the House of Lords declined to allow the principal shareholder of a company to recover compensation for the compulsory purchase of a property which he occupied. The case was decided on its facts, but Lord Keith, delivering the leading speech, observed that: 'It is appropriate to pierce the corporate veil only where special circumstances exist indicating that it is a mere façade concealing the true facts.'[57] Lord Keith further stated that corporate veil could be disregarded only in cases where it was being used for a deliberately dishonest purpose.[58]

However, the English Courts began to approach the doctrine of lifting the corporate veil with specificity starting with the Court of Appeal in the case of *Adams v. Cape Industries Plc*[59] where the first systematic analysis of the large and disparate body of English case law was undertaken by the Court of Appeal. In this case, Cape Industries Plc. was a UK company, head of a group. Its subsidiaries mined asbestos in South Africa, and they shipped it to Texas, where a marketing subsidiary, NAAC, supplied the asbestos to another company in Texas. The employees of the Texas Company, NAAC, became ill, with asbestosis. They sued Cape and its subsidiaries in a Texas court. Despite Cape's argument that there was no jurisdiction to hear the case, judgment was still entered against Cape for breach of a duty of care in negligence to the employees. The tort victims tried to enforce the judgment in the UK courts. The requirement, under conflict of laws rule, was either that Cape had consented to be subject to Texas jurisdiction (which was clearly not the case) or that it was present in the US. The question was whether, through the Texas subsidiary, NAAC, Cape Industries Plc. was 'present'. For that purpose, the claimants had to show in the UK courts that the veil of incorporation could be lifted, treating the group as a single entity, or finding the subsidiaries as mere façade or that the subsidiaries were agents of Cape. Scott J held that the parent, Cape Industries Plc., could not be held to be present in the United States. The employees appealed and at the Court of Appeal, the court only left three (3) options for piercing the veil of incorporation. It was also clearly stated that the court will not lift the corporate veil of incorporation merely to achieve justice[60]. Following the decision in *Adams v. Cape Industries Plc.*[61] is *Trustor AB v Smallbone*[62], where Sir Andrew Morritt V-C reviewed many of the same authorities. Mr. Smallbone, the former managing director of Trustor, had improperly procured large amounts of its money to be paid out of its account to a company called Introcom Ltd, which was owned and controlled by a Liechtenstein trust of which Mr. Smallbone was a beneficiary. At an earlier stage of the litigation, Trustor had obtained summary judgment on some of its claims against Introcom, on the footing that the payments were unauthorized and a breach of Mr Smallbone's duty as managing director. That the company was simply a vehicle Mr. Smallbone used for receiving money from Trustor, and that his knowledge could be imputed to the company. In summary, it was held that the court was entitled to 'pierce the corporate veil' and recognise the receipt of the company as that of the individual(s) in control of it as if the company was used as a device or façade to conceal the true facts, thereby avoiding, or concealing any liability of those individual(s)[63]. Interestingly, Sir Andrew Morritt stated further that for the corporate veil to be pierced on the ground of impropriety, the impropriety in question must, be linked to the use of the company structure to avoid or conceal liability. Thus, in this case, instances where the veil will be lifted were narrowed into two which were: i) Where the company was a 'façade or sham'; ii) Where the company was involved in some form of impropriety. Following is the case of *Ben Hashem v. Al Shayif,*[64] a case which proceeded simultaneously at both the Family Division and the Chancery Division. At the Family Division, the wife was seeking an order transferring to her a property which she was occupying but which was owned by a company controlled by the husband, while in the Chancery proceedings the company was seeking a possession order in respect of the same property. Munby J held that the court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is taught to be necessary in the interests of justice, and that the corporate veil can be pierced only if there is some impropriety which must be 'linked to the use of the company structure to avoid or conceal liability'.[65] Following is *VTB Capital Plc. v. Nutritek International Corporation*[66]. Here the appellant, VTB Capital Plc. (VTB) was a registered and authorised bank in England. It was majority-owned by a state-owned bank in Moscow. The first, second and fourth respondents were, respectively, Nutritek International Corp, Marshall Capital Holdings Ltd, both British Virgin Island Companies, and Mr. Konstantin Malofeev, a Russian businessman resident in Moscow (said to be the ultimate owner and controller of both) as well as of the third respondent, Marshall Capital LLC, a Russian Company which was not served. The case arose from a Facility agreement dated 23 November 2007 entered between VTB Capital Plc. and a Russian company, Russagroprom LLC (RAP), under which VTB advanced some US$225,050,000 to RAP. The advance was primarily to enable RAP buy six Russian diary companies and three associated companies (the diary companies) from Nutritek. After making three interest payments (and no payments of capital), RAP defaulted on the loan in November 2008.VTB's case was that it was induced in London to enter into the Facility Agreement, and an accompanying interest rate swap agreement, by misrepresentations made by Nutritek, for which the other respondents were jointly and severally liable. In other to bring proceedings in tort in England against any of the respondents, VTB required permission to effect service on them out of the jurisdiction. Permission was obtained. The first, second and fourth respondents were served, and applied to set aside the service. In response, VTB applied for leave to amend its particulars of claim to add a contractual claim, seeking to hold the respondents liable for breach of the Facility Agreement and interest rate swap, on the basis that RAP's corporate veil could in

[56] (1987) SC (HL) 90
[57] Supra at p. 96
[58] Supra at pp. 539, 536
[59] (1990) Ch. 433
[60] At p. 536
[61] Supra
[62] (No. 2) (2001) 1 WLR 1177
[63] *Trustor v. AB Smallbone* (Supra) at paragraph 23
[64] (2009) 1 FLR 115
[65] Supra at paragraphs 159 to 164
[66] (2012) 2 Lloyd's Rep. 313

the circumstances be pierced and the respondents held liable as persons behind the borrowing. The respondents' application to set aside succeeded and VTB's application to amend failed before Arnold J. The attempt also failed at the Court of Appeal because the court was not satisfied that that would be the consequences of piercing the corporate veil even if it were legitimate to do so. A further appeal was made to the Supreme Court and the Supreme Court took its time to review all previous cases on the doctrine of lifting or piercing the corporate veil. Lord Neuberger in delivering the lead judgment noted the broad consensus among judges and text-books writers that there were circumstances in which separate legal personality of a company might be disregarded and the company identified with those who owned and controlled it. He adopted both the general reasoning of the Court of Appeal and the view of Munby J[67] that any doctrine permitting the court to pierce the corporate veil must be limited to cases where there was a relevant impropriety.[68]

It thus became settled by the English Courts that the corporate veil can only be pierced in limited cases, and these are the cases where the corporate veil is being used to perpetrate impropriety or wrongdoing. Also, such impropriety or wrongdoing must be such that it shows control of the company by the wrongdoer(s). That is, it must show the misuse of the company by them as a device or façade to conceal their wrongdoing at the time of the relevant transactions. Also, that such relevant impropriety or wrongdoing must be in the nature of an independent wrong that involves fraudulent or dishonest misuse and that there need not be any other remedy available before the doctrine of lifting the veil can be used by the courts. However, the case of *Prest v Petrodel Resources Ltd and Others*[69] puts matters to rest as it represents the current position of the law on lifting the veil in the United Kingdom. In this case, Mrs. Yasmin Prest claimed under Sections 23 and 24 of the Matrimonial Causes Act 1973 for ancillary relief against the offshore companies solely owned by Mr. Michael Prest. At the High Court, Moylan J, in the Family Division of the High Court, held that Mr. Prest had the ability to transfer the properties in practice, as he was 'entitled' to them under Section 24(1) (a) of Matrimonial Causes Act 1973. The court held that Part II of the Matrimonial Causes Act of 1973 confers powers on the court to order ancillary relief in matrimonial proceedings. The court found that the husband's conduct of the proceedings has been characterised by persistent obstruction, obfuscation, and deceit with refusal to comply with the rules of the court. The distinctive feature of the Judge's approach was that he concluded that there was no general principle of law which entitled him to reach the company's assets by piercing the corporate veil. This was because the authorities showed that the separate legal personality of the company cannot be disregarded unless it was being abused for a purpose that was in some relevant respect improper. He held that there was no relevant impropriety but nevertheless concluded that in application for financial relief, ancillary to a divorce, a wider jurisdiction to pierce the corporate veil was available under section 24 of the matrimonial Causes Act of 1973. In that regard, he found that piercing was justified, not under the general principles, but by virtue of the Act. At the Court of Appeal, the three (3) respondent companies challenged the orders against them on the ground that there was no jurisdiction to order their property to be conveyed to the wife in satisfaction of the husband's judgment debt (and this was the same contention at the Supreme Court). At the Court of Appeal, with Rimer LJ and Patten LJ in the majority, allowed an appeal by the companies. At the Supreme Court, Lord Sumption noted that there were three (3) possible legal basis on which the assets of the Petrodel companies might be available to satisfy the lump sum order against the husband, which are:

a. It might be said that this is a case, which is exceptional; thus, a court is at liberty to disregard the corporate veil in order to give effective relief.
b. Section 24 of the Matrimonial Causes Act of 1973 might be regarded as conferring a distinct power to disregard the corporate veil in matrimonial cases.
c. The companies might be regarded as holding the properties on trust for the husband, not by virtue of his status as their sole shareholder and controller but in the circumstances of this case.[70]

In defining the principle of piercing the corporate veil, Lord Sumption pointed to the fact that it is to be understood in a limited sense as against the indiscriminate use of the principle to describe a number of different things.[71] He noted further that although the English law has no general doctrine of piercing the corporate veil, it however has a variety of specific principles which achieve the same result, and that one of the basis is dishonesty or fraud[72] and that the court will readily not pierce the corporate veil so as not to water down the whole effect of the principle of corporate personality as stated in *Salomon's case.* He agreed with the fact that it is also true that most of the cases in which the corporate veil was pierced could have been decided on other grounds; however, he believed the recognition of a limited power to pierce the corporate veil in carefully defined circumstances is necessary if the law is not to be disarmed in the face of abuse. He noted that references to a 'façade' or 'sham' beg too many questions to provide a satisfactory answer. To him, much confusion has been caused by failing to distinguish between them. He classified them as the concealment principle and the evasion principle. He noted that these considerations reflect the broader principle that the corporate veil may be pierced only to prevent the abuse of corporate legal personality. Lord Neuberger, in agreeing with Lord Sumption emphasised that piercing the corporate veil should be the last resort and should only be invoked where a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control.[73] Thus, it was held that from all analysis, the only basis on which the companies can be ordered to convey the seven disputed properties to the wife is that they belong beneficially to the husband, by virtue of the circumstances in which the properties came to be vested in them. Only then will they constitute property to which the husband is entitled, either in possession or reversion. He thus ordered that the seven disputed properties vested in the companies are held on trust for the husband and that the companies should transfer

[67] *Ben Hashem v. Al Shayif* (2009) 1 FLR 115 at paras 163-164, where Munby J held: 'it is necessary to show both control of the company by the wrongdoer(s) and impropriety, that is, (mis)use of the company by them as a device or façade to conceal their wrongdoing… at the time of the relevant transaction(s)'
[68] Ibid at Paragraph 145
[69] (2013) UKSC 34, (2013) 3 WLR 1
[70] Supra at paragraph 9
[71] Supra at paragraph 16
[72] Supra at paragraph 18
[73] Paragraphs 81 and 83

them to the wife. From this case of *Prest*, the following can be said to be the principle which now guides the judicial piercing of corporate veil under the English law:

1. The doctrine of lifting or piercing the corporate veil is to be applied in a limited sense as the only exception to the rule in *Salomon's case.* Thus, there are situations in which the law attributes the acts or property of a company to those who control it without disregarding the separate personality of a company and this can be done for example, by applying the agency principle, or by considering the provisions or clauses in a contract binding between parties, or as provided by specific provisions of a Statute or Act e.g. the provisions of the Companies Act governing group accounts[74]. Thus, there are other grounds on which a case can be decided, which will achieve the same effect as piercing the corporate veil without lifting the corporate veil.
2. There is now a consensus as to the circumstance when the judicial lifting or piercing of the corporate veil and it is only in respect of impropriety or wrongdoing.
3. That in identifying the relevant impropriety or wrongdoing, it is better if arrived at based on the evasion principle and not the concealment principle. That is, the principle should only be invoked where a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control.

The Nigerian Courts' Approach

Although the more substantial legal framework guiding the doctrine of lifting the corporate veil lie within the sections of the Company and Allied Matters Act 2020, the Nigerian courts have had their fair share of judicial deliberations on the application of the principle. It is noteworthy that the Nigerian jurisprudence draws a considerable amount of its general position on company law from English common law developments and this doctrine is no exception. That notwithstanding, there are several instances where the Nigerian position differ, though not substantially, from the United Kingdom courts. The Nigerian law clearly recognises the clear distinction between the company as a separate legal entity distinct and separate from its members and directors.[75] The law also recognises that there are occasions when the corporate veil will be lifted but the circumstances and how this may be done is left to the facts of each case and not streamlined. There is no clear-cut policy or direction in this area of lifting the veil by the Nigerian courts and these can be seen in the few cases reviewed below. In *African Continental Bank (A.C.B.) Ltd, Imo Newspaper Ltd and C.C Mojekwu v. B.B. Apugo*[76], the respondent was the Managing Director of 'B.B. Apugo and Sons Ltd'. The Company was a customer of the 1st appellant, a bank. The 1st appellant had granted to the company overdraft facility in the sum of N300, 000. Although, the respondent disputed making use of the facility, nevertheless the amount was secured by a legal mortgage over the respondent's personal landed properties. A dispute had arisen between the 1st appellant and the company over the non-repayment of the loan as a result of which the 1st appellant sued the company in Umuahia High Court. The 1st appellant obtained judgment against the company. The company then appealed, and the decision was reversed by the Court Appeal, Enugu which ordered a retrial. Meanwhile, before the appeal was heard, the 1st appellant engaged the service of an auctioneer, (the 3rd appellant) to advertise for sale and to sell the mortgaged properties. The respondent's case was that he was defamed in that the words in their ordinary and natural meaning meant that the respondent was indebted to the 1st appellant and could not meet up his financial obligation to it in that the respondent was insolvent. The respondent maintained that he had no personal account with the 1st appellant, as it was the company who had an account and transacted with the 1st appellant. The appellants relied on the defence of justification and contended further that the company was not a limited liability company and that if the company were registered it was in reality one and the same as respondent who with his family owned it and it was a proper case for the lifting of the veil of incorporation. At the high court, the trial judge granted the prayers of the respondent. The learned trial judge rejected the submission of the appellants (defendants) that the company was in reality one and the same as the respondent (plaintiff) who with his family owned it and that this was a proper case for the lifting of the veil of incorporation. Dissatisfied with the decision of the trial Judge, the defendants appealed to the Court of Appeal. At the Court of Appeal, one of the grounds of appeal of the appellants was that the learned trial Judge erred in not lifting the veil of incorporation of the company B.B. Apugo and Sons Limited. Learned counsel to the appellant contended that the trial court ought to have pill aside the corporate veil of the company and treated the loan transactions between the 1st appellant and the company as if it were between the bank and respondent in order to meet the end of justice. The Court of appeal rejected the above submission made by the appellants' counsel. The Court of Appeal, per Edozie JCA (who delivered the lead judgment) held:

> The contention is misconceived and not well founded. Firstly, the circumstances under which the court lift the veil of incorporation for the purpose of paying regard to the economic realities behind what Professor Gower called 'the legal façade' of incorporation are well defined. They include where the numbers of members fall below the statutory minimum; where the company has carried on in a reckless manner or with intent to defraud creditors, where the company is a sham etc. Though the foregoing is not exhaustive of the circumstances under which the courts lift the veil of incorporation, the common trend of the circumstances is that the company involved must have been guilty of some improper conduct to warrant the lifting of the veil to see who was behind the improper conduct. In the case under consideration, the conduct of the company was not in issue. The appellant had not instituted any action against the company for the investigation of its affairs. There was therefore no basis for the request by the appellant that the corporate veil of the company should be lifted. Secondly, the request by the appellant that the corporate veil of the company should be lifted is inconsistent with the defences put up by them to the effect that the company was non-existent and not a registered company. If, indeed as claimed by the appellant that the company was non-existent, then there was nothing to lift. In the light of the foregoing, there is no substance in the appellants' contention under this issue[77].

[74] There is such relevant provision in section 379 Companies and Allied Matters Act 2020

[75] *Co-operative Bank Ltd v Obokhare* (1996) 8 NWLR (Pt. 468) 244, *Soyinka v Inaolaji Builders Ltd* (1991) 3 NWLR (Pt. 177) 21, *Kumbo v Zach - Mottison (Nig) Ltd* (1992) 5 NWLR (Pt. 239) 102.

[76] (1995) 6 NWLR

[77] Supra at page 85, paragraphs G-H and page 86, paragraph A

However, the Court of Appeal unanimously allowed the appeal in part in respect of quantum damages. It should be noted that once a company is incorporated (which is evidenced by the issuance of certificate of incorporation issued by the Registrar, the company becomes a corporate entity as provided for in section 37 of CAMA. Thus, a corporate veil has been drawn over it even if it is a one-man business, as this is the essence of the rule in *Salomon's case.* Although the learned Justice of the Court of Appeal did not state what he meant by 'improper conduct', under what circumstance it would be said to be relevant and the scope of such 'improper conduct'; the Courts were right in not lifting the veil. Thus, if it was to be found whether or not the company was in existence, all that is to be done is to look at the certificate of incorporation, as this has nothing to do with lifting the corporate veil. In the case of *Mezu v. Co-operative & Commerce Bank Plc*,[78] the Supreme Court, was ready to lift the veil of incorporation, and explained the reason for doing so when in the words of Chukwuma - Eneh JSC states that 'there can be no doubt that the court in light of the apparent fraud being practiced on the court in the circumstances is obliged even then to lift the veil of incorporation to ascertain the true facts of the plaintiff's position/status as in the instant matter.' The learned Supreme Court Justice further claimed that there are occasions set out in CAMA (without mentioning any of them) when the court will lift the veil of incorporation and contended that one of such occasions is where the 'founders of the company are hiding under the cloak of separate corporate entity of a company in perpetuating frauds as in this matter'[79], Peter Odili JSC who read the lead Judgement also advanced his reasons for lifting the veil of incorporation of the company when he said, 'this has been spoken as it is, which is that, the veil of incorporation had been lifted by no less than the appellant himself who clever by half had fallen into a trap he set against his opponent'. In order words, it is possible for the parties to lift the veil by themselves. It is quite a disappointment that the Supreme Court failed to advert its mind to the *Prest v. Petrodel Resource Ltd*[80] decided a month earlier in England and to use the opportunity to declare the position on lifting the veil of incorporation in Nigeria. The court ought to have at least referred to the very important decision in Nigeria in the case of *Marina Nominee Ltd v Federal Board of Inland Revenue*[81] where the Court seemed to have laid down a guiding principle in this area of the law. In this case Peat Marwick incorporated Marina Nominees Ltd to perform amongst other things, secretarial duties for other companies etc. Marina Nominee Ltd do not have its own office, it was using the staff of Peat Marwick, and most times acts as the agent of Peat Marwick Ltd. A dispute on whether it should pay its tax to the Federal Government under the section 17 (a) of the Companies Income Tax Act, it argues that it is an agent of Peat Marwick Ltd and ought not pay any tax. The court refused to lift the veil of incorporation even though the company argues that its veil should be lifted. The court clearly distinguished between an agency relationship arising between a company and its controllers and lifting of the corporate veil. It held in that case that merely treating a company as the agent of its controllers will not amount to lifting the veil but is merely an action necessary to determine an agency relation. Relying on Stephen Mayson and Dereck French,[82] the court held that such instances further add credence to the principle of distinct corporate personality. Kazeem JSC after reviewing some English decisions[83], (a judgement where Nnamani and Aniagolu JJSC also concurred) declared as follows,

> It has been shown that the appellant is a separate legal entity even though it may be fully owned by Peat Marwick. It was not incorporated as a sham, front, or stratagem, or as an instrument of fraud; but as a legal person to perform the services as secretaries to select clients of Peat Marwick. For preferring such services which entailed the provisions of skilled labour, fees were paid to it. Whatever therefore might have been the arrangement between the appellant and Peat Marwick for the use of its staff for performing those services it does not affect the fact that it has earned its income. Hence in performing those services I am of the opinion that the appellant was carrying on a trade or business within the meaning of section 17(a) of the Companies Income Tax Act 1961 and has earned an income on which corporate tax was payable under the Act.

This judgement has been described as 'a significant advance in our company law.[84] Osunbor after thorough review of the case regrets that the agency - company phenomenon raised by the case upon which depended its proper determination, was missed by the lower courts that heard the case'.[85] In *Public Finance Securities Ltd. v. Jefia*,[86] the court held that it may lift the veil of incorporation to discover who is behind fraud and impropriety undertaken by the company. Thus, unlike most United Kingdom cases that centred on preventing the use of corporate entity to fraudulently escape legal liability, a vast majority of Nigerian cases sought to apply the principle to identify individual actors of fraud under the guise of a corporate entity. In *NDIC v. Vibelko Nigeria Ltd*,[87] the court held that the Nigerian judiciary will readily uncover the cloak of incorporation where the company is used as a sham by its controllers to avoid recognition in the eyes of the law. Similarly, in *Pan African Int. Inc. v. Shoreline Lifeboats Ltd*.[88] the court differed from the new position in the UK on whether mere interests of justice could warrant lifting the veil. The court was unequivocal about the interests of justice being a primary consideration in lifting the veil of incorporation. However, the English court in *Ben Hashim v. Al Shayif*,[89] did not believe such condition is sufficient reason in lifting the corporate veil. The courts have also extended the doctrine to criminal cases as in *Oyebanji v. State*.[90] In this case, the appellant was convicted of stealing the sum of 1,273,093.75 by the trial court. The Appellant was the Managing Director of Baminco Nig. Limited, a company which entered into a contract with Associated Commodities and Foodstuff (Nig) Ltd. The appellant was issued a letter of credit by the latter company, but this was never renewed, leading to the arraignment. The

[78] Supra
[79] Ibid at page 218.
[80] (2013) UKSC 34, (2013) 3 WLR 1
[81] (1986) 2 NWLR (pt 20) 40
[82] Dereck French, Stephen Mayson & Christopher Ryan. *The Practical Approach to Company Law* (4th ed.) (1987).
[83] *Smith, Stone & Knight Ltd v Birmingham Corporation* (1939) 4 All ER116, *Firestone Tyre and Rubber Co. Ltd v Llewellin* (1957) 1 WLR 464, *Cliford Motor Company Ltd v Horne* (1933) Ch. 935, *Re F.G (Films) Ltd* (1953) 1 WLR 483, *Salomon v Salomon & Co Ltd* (1897) A.C. 22.
[84] Barnes K.D. 1992. *Cases and Material on Nigerian Company Law*. Ile-Ife: Obafemi Awolowo University Press Ltd. Page 92.
[85] Osunbor, O. 1989. *The Agent only subsidiary company and the control of multinational groups*. 38.1.C.L. 377 at 384.
[86] (1998) 3 NWLR (PT 543) 602
[87] (2006) All FWLR (Pt 336) 386
[88] (2003) 16 NWLR (Pt. 845)
[89] (2009) 1 FLR 115
[90] (2015) 14 NWLR (PT. 1479) 270

appellant contested the rationale of the lower court in lifting the veil of Baminco (Nig.) Ltd to convict the Appellant. The court held that it was right to disregard the corporate entity in the interest of justice. According to the court, Nigerian law will not allow a party to defraud or cheat others while relying on a company's corporate entity as a defence against liability. In contradistinction, the UK courts in *R v. Seager*[91] were more comprehensive with the requirements necessitating the lifting of the corporate veil in criminal cases. According to the Court of Appeal, three requirements ought to be satisfied: firstly, the accused intends to hide under the corporate veil to escape liability, secondly, the accused acts under a company's nomenclature and has the necessary *mens rea* in the action leading up to such crime, and lastly, the business structure constitutes a mere sham which disguises the true nature of the transactions and deceives third parties.

From the foregoing, it can clearly be deduced that the UK courts will rarely lift the corporate veil unless the circumstances are of such critical nature that portends fraud and only where all other possible legal remedies have been exhausted. However, the Nigerian courts do not have such restraints towards the application of the principle. In *Adeyemi v. Lan & Baker Nig. Ltd*[92] the court held the view that the veil of incorporation is not exceptionally special. In the words of Aderemi JCA:

> …there is nothing sacrosanct about the veil of incorporation. The courts in this country have always shown themselves willing, in the interpretation of statutes and contracts, to give effect to the commercial intentions of the parties and the Acts of the National Assembly. The decision in Salomon v. Salomon must not blind one to the essential facts of dependency and neither must it compel a court to engage in an exercise of finding of fact which is contrary to the true intentions or positions voluntarily created by the parties as distinct from an artificial or fictitious one.

The Nigerian position is not as streamlined as that of the United Kingdom where a finding of fraud is usually connected to an individual's attempt to escape liability for a personal legal obligation. In Nigerian cases, like in *Pan Asian African Co. Ltd v. National Insurance Corp (Nig) Ltd*,[93] the court readily lifted the corporate veil to enforce a company's duty to pay government revenue. Thus, one pivotal difference in both jurisdictions is that while the British courts focus on preventing the use of the corporate cloak to avoid legal obligations, the Nigerian courts recognize an adoption of the principle to make individual members of a company responsible for the company's legal liability. On the surface, this seems to contradict the very position of Salomon v. Salomon which out to clearly delineate the distinct personalities of a company and its shareholders. Nevertheless, both jurisdictions have similar positions on fraud and impropriety. There is a scarcity of judicial decisions on the nexus between lifting the veil of incorporation and the trust principle in Nigeria[94] unlike the English courts, but it is expected that if such matter comes before the Nigerian courts, it is expected that they may adopt persuasively the existing jurisprudence of the United Kingdom.

5. Conclusion and Recommendations

The company upon incorporation enjoys numerous advantages incidental to incorporation as it is now perceived, in the eyes of the law, to be an entity distinct and from its members, and capable of exercising all the powers of a natural person. An important reality is that although the separate nature of an incorporated entity is artificial, the company is not subject to disability like humans as it becomes an adult immediately upon incorporation – despite acting through humans as its agents and officers. The corporate personality bestowed on a company as laid down in the case of *Salomon v. Salomon* is quite sacrosanct and the courts, particularly the English courts, have been extremely reluctant to lift the veil. Although the doctrine of lifting the veil is a creation of the English courts, the English courts have always been reluctant to lift the corporate veil but will always do so to determine agency, trust, residence, fraud or illegality, and public policy in time of war. However, there came a shift and a more streamlined position from the case of *Adams v. Cape* such that it was held that the court will not lift the veil of incorporation in the interest of justice. However, the case of *Prest v. Petrodel Resources Ltd* put matters to rest as the court stated the doctrine of lifting veil is to be applied in a limited sense as the only exception to the rule in *Salomon's case*. It became a rule that the principle will be applied only in respect of impropriety or wrongdoing, and that such must have been identified or arrived at based on the evasion principle and not the concealment principle. The approach of the Nigerian courts, however, still lives much to be desired as the court is yet to take a streamlined approach in applying the principle of lifting the veil. It is hereby recommended that the Nigerian courts should be strongly persuaded by the streamlined position adopted by the English courts by adopting the position in *Prest v. Petrodel Resources Ltd*. Better still, the Nigerian courts can revert to an earlier position in *Mariner Nominees* since this position is very close to the position stated by Lords Sumption and Neuberger in *Prest v Petrodel Resources Ltd*. The statement and the rationale given by Kazeem JSC and supported by Aniagolu and Nnamani JSC in the case of *Mariner Nominees* should be a very strong guideline and framework for lifting the veil of incorporation by courts in Nigeria. Though the Kazeem JSC was not handing down any general rule and has not stated that he was doing so, the Nigerian courts ought to be by this decision. However, until the Supreme Court gives a proper guide or direction on the appropriate guide and formulate the rule or criteria to be followed by the courts, it is submitted that the clear rule as laid down in the case of *Prest v Petrodel Resources Ltd* be adopted Nigerian courts.

[91] [2009] EWCA Crim 1303
[92] (2000) 7 NWLR (Pt. 663) 33
[93] (1982) All NLR 229
[94] Ayobayo Babade. 'Nigeria: Using Trust to Thrust the Veil of Incorporation: A Review of Prest v. Petrodel Resources Ltd. & Others [2013] UKSC 34.' 2014. Available at https://www.mondaq.com/nigeria/corporate-and-company-law/294410/using-trust-to-thrust-the-veil-of-incorporation-a-review-of-prest-v-petrodel-resources-ltd-others-2013-uksc-34 . Accessed 12/06/2023.