APPLICATION OF CORPORATE PERSONALITY DOCTRINE UNDER THE NIGERIAN CORPORATE LAW AND SHARI'AH

Ahmed A. Muhammed-Mikaaeel*

Abstract

Corporate personality doctrine has come to protect business enterprises from associated risks in the course of business transactions. The beneficiaries of the corporate personality doctrine are the corporate managers because of the statutory protection they enjoy under the Nigerian corporate law. The statutory protection is being used as catalyst to perpetuate corporate governance failure. With the recognition of artificial personality (*shakhsiyyah 'itibaariyyah*) in Islamic jurisprudence *vide* the position of certain schools of jurisprudence, there is need to examine whether such statutory protection is affirmed as well. This article therefore examines the application of corporate personality doctrine under the Nigerian corporate law and *shari'ah*. This article adopts doctrinal method of legal research *vide* reliance on the primary and secondary sources like *Qur'an* and *hadith*, *qiyas*, the Nigerian Constitution, Company and Allied Matters Act, text books, journals and internet facilities. The article reveals that the implications of corporate personality doctrine under the Nigerian corporate law and *shari'ah* are not on all fours. It further reveals that the existing legal framework in the country favours the application of the corporate personality doctrine under the Nigerian corporate law but hinders the actual practicability of *shari'ah* rules to corporate personality doctrine. The article concludes that to fully activate the provision of section 38 of the Constitution in

* LL.M; LL.B (Unilorin, Nigeria); Lecturer, Department of Islamic Law, Faculty of Law, Kwara State University (KWASU), Malete, Nigeria.

favour of *shari'ah*, there is need for amendment of the existing framework to make way for *shari'ah* modification in dealing with the corporate activities by muslim corporate managers as a form of contribution to fight against corporate governance failure in the country.

***Keywords*:** Corporate Personality, Nigerian Corporate Law, *Shari'ah*, Corporate Activities, *Shari'ah* Modification

I Introduction

THE DOCTRINE of corporate personality enjoys universal recognition in the corporate legal framework across the universe.[1] This universal recognition does not exempt the prominent legal systems of Common Law[2] and *Shari'ah*[3] in Nigerian legal systems. The common law which gives birth to the Nigerian corporate law recognises the application of corporate personality being a concept springing from human ingenuity to protect business ventures.[4] *Shari'ah* presents different dimension to the recognition of the doctrine of corporate personality from divine perspective.[5] It is on the basis of this backdrop that this article examines the application of the corporate personality doctrine in Nigeria from the perspectives of the corporate law and *Shari'ah*.

II Understanding corporate personality

Corporations are companies registered in compliance with the requirement of law.[6] Once a corporation is registered in accordance with the law, it becomes

1 C. Nyombi, *et. al.*, "Corporate Personality, Human Rights and Multinational Corporations" *International Company and Commercial Law Review* 1-26 (2016).

2 A.A. Muhammed-Mikaaeel, and F.F. Abdulrazaq, "Lifting the Corporate Veil by the Court: Nigerian and England in Focus" 6 *Joseph Ayo Babalola University Law Journal* 101-105 (2018).

3 H. Hassan, *et. al.*, "The Myth of Corporate Personality: A Comparative Legal Analysis of the Doctrine of Corporate Personality of Malaysian and Islamic Laws" 6 *Australian Journal of Basic and Applied Sciences* 191-192 (2012).

4 *Salomon* v. *Salomon & Co. Ltd.,* 1897 AC 22.

5 *Supra* note 3 at 191-192.

6 K. Iwai, *What is Corporation? – The Corporate Personality Controversy and Comparative Corporate Governance,* 1-2 (Legal Orderings and Economic Institutions, London: Routledge, 2001).

a body corporate or corporate entity or legal entity as the case may be.[7] Thus, corporate personality is the consequence of incorporation of a company after complying with the due process and procedures laid down by law.[8] The process of registering or floating a company is referred to as incorporation.[9] That is why duly registered companies are referred to as incorporated companies.

Corporate personality is therefore a status acquired by a company after its incorporation.[10] The concept of corporate personality depicts that an incorporated company becomes an artificial person in eyes of the law which shares certain features with natural persons.[11] As a matter of law, a corporation is an artificial person different from the natural persons who are its members, directors and employees. By the doctrine of corporate personality, the law created an artificial person which has possessory right, existence right and legal capacity right, among others like natural persons.[12] The essence of this is to enable the corporation function maximally without interference in its corporate existence.[13] It also provides a safe avenue for sincere business tycoons for the protection of investment from unforeseen risks associated with business.[14] Corporate personality doctrine thus implies that a corporation is an artificial person that exists in abstraction but solely depends on its human agents[15] for its rights, duties and obligations under the law.[16] The fact that the corporation inevitably depends on its human agents does not mean that it is not different from them. In law, a duly registered corporation is separate and distinct from its human agents that

7 The Companies and Allied Matters Act, 2020, s. 42.

8 *Ibid.*

9 S.A. Bello and O.C. Michael, "Piercing the Veil of Business incorporation: An Overview of what Warrants It" 3 *Review of Contemporary Business Research*, 118-120 (2014).

10 *Id*. at 120.

11 *Supra* note 3 at 191-192.

12 *Supra* note 7, s. 42.

13 *Supra* note 4.

14 *Ibid.*

15 The so-called otherwise known as human organs include the Board of Directors, the Members in Annual General Meeting, the Managing Director and the Secretary; C. Nnawuihe, "Management of Companies: The Exercise of Corporate Managerial Powers in Nigeria" 1-2, *available at:* https://thenigerialawyer.com/management-of-companies-the-exercise-of-corporate-managerial-powers-in-nigeria/ (last visited on November 27, 2020).

16 A.A. Muhammed-Mikaaeel, *et al*, "Corporate Governance and Practice in Nigeria: Exploring its Tricky and Prognoses" 1 *International Review of Law and Jurisprudence* 108 (2019).

formed it.[17] Little wonder a corporate person in law is a body corporate distinct from the individual that formed it thereby having perpetual succession, can sue and be sued, can enter into contract with any person, can own land, can make profit, can make loss and so on.[18]

The law regulating the corporate status of corporation is as dictated by the Nigerian legal system which is unique in nature. Every country has its unique separate legal system though may be similar in content and application. Thus, the Nigerian legal system prides itself with its tripartite nature.[19] This is because, it comprises of three distinct legal systems although one of them enjoys dominance over the other two legal systems.[20] This is definitely not to say that the dominant legal system is superior to the other two.[21] The Nigeria legal system undoubtedly comprised of the received English common law, customary law and the Islamic law. The common law enjoys dominance in terms of application in Nigeria as a result of the colonial history of the nation.[22] Islamic law and customary law as the other two components of Nigeria legal systems are separate and district from each other which are also unique in their applications amongst the adherents of Islamic law and customary law respectively.[23] With respect to the practical application of the corporate personality doctrine in Nigeria, focus shall be placed on the Nigerian corporate law and *Shari'ah*.

Nigerian corporate law is an offshoot of the received common law in Nigeria. The specific aspect of the common law governing corporate law in the country is the Companies and Allied Matters Act, (CAMA), 2020.[24] CAMA, 2020 is divided into seven parts.[25] However, part 'B' deals with incorporation

17 *Ibid.*

18 *Supra* note 2.

19 C. Mwalimu, *The Nigerian Legal System,* 1-39 (Peter Lang: New York/Washington, D.C./ Baltimore/Bern Frankfurt am Main/ Berlin/Brussels/Vienna/Oxford, 1, 2002).

20 *Ibid.*

21 *Ibid.*

22 The Constitution of the Federal Republic of Nigeria, 1999 (As Amended for general reflection).

23 J.N.D. Anderson, "Colonial Law in Africa: The Conflict between English, Islamic and Customary Law" 35 *Indiana Law Journal* 433-442 (1960).

24 B.D. Awosusi, "Appraisal of the Policies, and Laws for the Development of Corporate Business in Nigeria" in Prof. E.T. Yebisi, *et al*, (eds.) *Law, Policy and Development Review*, 201-203 (EKSU Printing Press, Ado-Ekiti, 2020).

25 Namely Parts A-G as against Parts A-C in the old Companies and Allied Matters Act (CAMA).

of companies and incidental matters. The relevant section in part 'B' is section 42 which clothes the duly registered corporations with personalities that possess certain rights, duties and obligation like natural persons.[26]

On the other hand, *Shari'ah* is a divine law from the Allah SWT sent through Prophet Muhammad Ibn Abdullah (PBUH) to all mankind.[27] Originally, *Qur'an* and *Hadith* are the primary sources of *Shari'ah.*[28]*Ijma'a* and *Qiyas* are among secondary sources of *Shari'ah*.[29]

Corporate personality under Nigerian corporate law

The coming into existence of a corporate person in Nigeria is principally regulated by the Companies and Allied Matters Act (CAMA), 2020 (as amended)[30] which is the country's prominent corporate law. Pursuant to CAMA 2020, business tycoons desiring to venture into secured profitable business investment perceives incorporation of a company as the only option to enjoy legal protection.[31] Thus, the processes of registering or incorporating a company is like pregnancy stage of a natural person prior to birth. The consequential issuance of certificate of incorporation signifies the birth of a corporate person just as the certificate of birth in the case of a natural person.[32] It is important to note that corporate personality under the Nigerian corporate law is regulated and sanctioned by the statute and case law. Under the statute, it is established that from the date of incorporation and issuance of the certificate of incorporation, the pioneer subscribers and the subsequent subscribers by the memorandum shall become a body corporate in line with the name contained in the memorandum.[33] The law gives the body corporate the capability to hold land, to have perpetual succession and a common seal among others. By the foregoing, it is clear that

26 *Supra* note 2 at 102.

27 A. Zubair, *Al-Masadir al-Arba'atu Fi Tashri'i al-Islamiyyah - The Major Sources of Islamic Law* 1-2 (Al-Madinah Heritage Publications, Lagos, 2005).

28 A.A. Muhammed-Mikaaeel, "Emergence of Usulul Fiqh under Shari'ah: From Developmental to Standardization Stage" 18 *Maiduguri Law Journal (MLJ)* 404-408 (2020).

29 *Id.* at 408-413.

30 Companies and Allied Matters Act, 2020 replaces that of 1990 that was long due for amendment. However, it is to be noted that the implication of corporate personality in the 1990 Act is not different from the 2020 Act except the changes in section from 37 to 42.

31 *Supra* note 7and *supra* note 4.

32 *Supra* note 7 and *supra* note 9.

33 *Ibid.*

corporate persons otherwise referred to as artificial persons are creation of the statute.[34] The implication of their creations is that, upon registration, they become artificial persons, different and distinct from the individuals who are their members, directors, and employee as the case may be. More importantly, the corporate persons have all the powers of a natural person of full capacity with respect to the discharge of their objects in memorandum.[35]

The position of the statute regarding the creation and existence of corporate personality is confirmed in a number of Nigerian case laws. Apart from the foreign *locus classicus* case on the doctrine and legal implication of corporate personality,[36] Nigerian judges have also provided reference points for the artificiality of corporate persons in a number of cases since the classical case of *Salomon* v. *Salomon & Co. Ltd.*[37] Few of those cases shall be considered.

The apex court in Nigeria held in the case of *Ayodele James* v. *Midmotors Ltd*.[38] that since corporation has attained the status of a person in the eyes of the law, it follows that it could be sued accordingly for the tortuous act of its human organ perpetrated in the course of employment.

The case of *Union Bank PLC* v. *Orharuge*[39] was very emphatic when the court held that once a company had been incorporated, it becomes a separate entity different from those who incorporated it and as such, there is no personal liability for any debts incurred by a company.

In determining the liability for the debt incurred *vide* a contract entered into by a director on behalf of a company, the court in *Hyacinth Orji* v. *Ezeani Anyaso*[40] stated that where a director of a company enters into contract in the name of the company, the director is not personally liable because the liability should be attributed to the company, *i.e.*, the principal.

34 *Ibid.*
35 *Supra* note 19.
36 *Supra* note 4.
37 1897 AC 22.
38 1978 SC 11-12, 31.
39 NWLR 2000 SC 510, 517.
40 NWLR 2000 SC 19.

The foregoing positions were in-sighted by the clear *ratio decidendi*[41] in the case of *Trenco (Nig) Ltd* v. *African Real Estate Ltd.*[42] that having regards to the corporate personality enjoyed by corporations, all operations and activities of corporations have to be inevitably carried out by the corporate human organs which in most cases are the corporate directors.

The above showcases that both the statute and case law gave credence to the status and implication of the corporate personality of corporations in Nigeria. If corporations are artificial persons as created by the law, what then are their functions within the purview of the Nigeria corporate law?

III Functions/powers of corporate entities

The law created corporate entities and bestowed on them certain powers and privileges that natural persons could have. These powers and privileges are encapsulated by the functions of the corporations in accordance with the law.[43] Though, the corporate entities inevitably depend on their human organs for the discharge of their functions, the functions once discharged under normal circumstances would be deemed as if they were performed by the corporations themselves.[44] Some of the functions of corporate entities are thus examined below.

Entering into a valid contract

Corporations have capability and capacity under the law to enter into a contract with any person(s) either a natural person or an artificial person like themselves. The nature of the contract can be in form of oral or written.[45] But for records and due diligence, the contract to be entered into by a corporation should be in written.[46] Such contract must be a valid and enforceable contract,

41 This refers to the legal principle upon which the decision in a specific case is founded; H.K. Lucke, "Ratio Decidendi: Adjudicative Rational and Source of Law" 1 *Bond Law Review* 36-51 (1989).

42 NLR 1978 SC 146, 153.

43 Supra note 7, s. 43(1).

44 *Hyacinth Orji* v. *Ezeani Anyaso* NWLR 2000 SC 19.

45 However, for record purpose, it is safer that the contract entered upon on behalf of corporation should be in writing; *Supra* note 2 at 104.

46 *Ibid.*

otherwise, none of the parties will be allowed to enforce their rights under the contract.[47]

Land holding

The law empowers a corporation just like natural person to hold land in her name.[48] Such land held by a corporation is the property of the corporation. The corporation can exercise all rights of ownership such as right to possess, right to occupy, right to let and sell the landed property in question. The way and manner natural persons hold land and deal with it is not different from that of the corporate persons.[49]

Legal capacity to sue and be sued

A corporation has capacity under the law to sue for the purposes of seeking redress against any wrong perpetuated towards its interest.[50] For instance, corporation can sue her debtor to recover the debt; a corporation can sue her tenant or lessee to recover the demised property; a corporation can sue to seek redress and damages in case of defamation of her character/goodwill or against her personality. Likewise, under the law, a corporation can be sued if she commits any wrong to which the other party is aggrieved.[51] Even a corporation can be charged for a criminal offence and duly punished in accordance with the law if found guilty.[52]

Existence

A corporation, once created by law after incorporation, can exist or live like natural person. If a corporation is subject to a good corporate governance, it is capable of living perpetually. That is why one of the features of artificial person is perpetual succession.[53] The existence of a corporation can come to an end like that of the natural persons if the incidence of corporate governance failure prevails or manifests beyond repair in corporate administration. It must therefore

47 Y.K. Yonjan, "An Analysis on Major Elements of a Valid Contract under Muluki Civil Code, 2074" 1-13 *available at*: https://papers/ssrn.com/sol3/papers.cfm?abstract_id+3437233 (last visited on November 27, 2020).

48 *Supra* note 7.

49 *Id.*, s. 43(1).

50 *Id.,* s. 42.

51 *Supra* note 2 at 103.

52 *Ibid.*

53 *Supra* note 7.

be noted that the law that created artificial corporate persons is also the only instrument through which their existence can be determined in line with laid down procedures for winding-up under the corporate laws.[54]

Having bank account(s)

The capability to have bank accounts is not at the exclusive preserve of the natural persons. Artificial persons too can have bank account(s) in the causes of their existence.[55] In fact, as parts of the measures to curtail corporate governance failure, it is desirable that a corporation has a corporate account purposely for its businesses and for records purpose. This, is in most cases, helps to discover misappropriation of the corporate funds by corporate managers since the statements of the corporate account reflects all transactions. More so, corporate accounts belonging to corporations also help in periodic auditing of the corporate activities over a given period of years.

Acceptance of gifts and donations

Like natural persons, a body corporate or corporate entity can accept gifts or donations just as she can give out gifts and donations. However, the provisions of corporate law in Nigeria has come to regulate this aspect of corporate activities to avoid abuse, sham, corruption and breach of fiduciary duty amongst other cases of corporate governance failures.[56]

Principal/agency

The main existence of corporations is deeply rooted in the operation of principal/agency relationship. As already pointed out above, the personality of corporations is abstract in nature Thus, they depend on their human organ to carry out or discharge their duties and responsibilities under the law. This brings to fore the principal/agency relationship or activities in corporate governance.[57] This principal/agency activities can take two forms. The corporation can be a principal while her directors or secretary or any designated human agent of the corporation would be an agent for the running of the affairs of the corporation or for the purpose of transacting her businesses in accordance with the law. In the same vein, a corporation may appoint an external person or group of persons

54 *Supra* note 7, ss. 341-870.

55 *Supra* note 7.

56 *Supra* note 7, s. 43(2).

57 *Hyacinth Orji* v. *Ezeani Anyaso,* NWLR 2000 SC 19.

to carry out certain functions on behalf of the corporation. In this wise, the corporation acts as a principal while the external persons or group of persons is/are the agent of the corporation for the time being. So, as natural being can leverage on principal/agent relationship to carry out some activities, the same is also applicable to corporate entities.[58]

IV Abuse of corporate personality/lifting the veil

Corporate personality is specifically designed by law to aid business ventures against associated risks.[59] Thus, after incorporation, the shareholders, directors and other human agents of the company rely on the veil of incorporation as a form of statutory protection.[60] In the activities of the human agents of the companies with the third agency, the law only sees the corporations and not the human agents in question. This is as a result of incorporation which shield the corporate members from personal liability in their dealings.[61]

In so far as corporate governance framework is being strictly followed to the latter, the human agents of the corporation continue to enjoy the legal protection of veil of incorporation. However, once the members, directors, employees and other human agents of the corporation employ the legal protection to perpetuate any of the instance of corporate governance failures, then the legislature gives the judicial power to lift the veil of incorporation and deal with the individuals involved in the odious, atrocious, unethical and unwarranted activities in their personal capacities.[62]

The foregoing is to prevent the legal protection from being used as the sword instead of shield. This is because the law cannot be used as an instrument of fraud against the third parties. To this end, the position of the law and attitudes of courts in Nigeria shows that the legal protection of the veil of incorporation is not an absolute one. It is only meant to be enjoyed so long the corporate governance law, rules, regulations, guidelines and frameworks designed in line with international standards are being observed strictly.[63]

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58 *Supra* note 7.

59 P.I. Blumberg, "The Corporate Personality in American Law: A Summary Review" 38, *The American Journal of Comparative Law* 49-69 (1990).

60 *Ibid.*

61 *Supra* note 7.

62 *Supra* note 16 at 112-113.

63 *Ibid.*

Corporate personality under *Shari'ah*

Corporate personality which is synonymous to artificial personality does not enjoy stereotype recognition under *Shari'ah* as it is under the conventional corporate law orchestrated above. The Muslim jurists are unanimous that artificial personality (*shakhsiyyah* '*itibaariyyah*) depicts artificial persons separate from natural persons but which exist and perform certain role like that of natural persons.[64] These unanimous positions of Islamic jurists regarding the nature of artificial person bring forth recognition of artificial person under *Shari'ah*. This segment shall examine the divergence of opinions of the scholars with respect to the recognition of artificial personality from the perspectives of the antagonists and protagonists of artificial personality.

The view of the antagonists is premised on the express and specific provision of the holy *Qur'an* when Allah (SWT) ordained that "He never created the *jinns* and mankind except for worship purpose."[65] The so-called antagonists contend that as far as *Shari'ah* is concerned, the purpose of creation of *jinns* and mankind is for religious worship of Allah. The *jinns* and mankind are natural persons who are going to be accountable to Allah in the day of resurrection. The arguments of the antagonists extended further that there is no evidence from the scripture that Allah created artificial persons either for religious worship or otherwise.[66] Their conclusion is that the concept of artificial personality is alien to *Shari'ah*.

The protagonists of the concept of artificial personality (*shakhsiyyah* '*itibaariyyah*) employed the instrumentality of *Qiyas* (analogical deduction) to make case for the existence and recognition of artificial personality under *Shari'ah*.[67] It is important to note that the view of the protagonist was established through inferences. They took a cursory examination of certain indisputable and well recognised institutions under *Shari'ah vis-à-vis*, how they are being operated in a similar way and manner of the body corporate under the Nigerian corporate law. The institutions which are subject matter of their examination include the state (*ad-dawlah*), public treasury (*baytul mal*), hospital (*mustashfa*) and mosque

64 Z.A. Abd Ghadas, H. Abd Aziz, "Shariah Compliant Companies: An Appraisal of the Legal Theories of Body Corporate for Shariah Compliant Companies" 1 *Herald NAMSCA* 913-914 (2018).

65 *Id.* at 915-916.

66 Drawing inference from the provision of Qur'an Surat *Adh-Dhariyat* (51:56) which reads: "We have not created *Jinns* and mankind except that they should worship me."

67 *Supra* note 65 at 914-915.

(*mosjid*).[68] The protagonists maintained that the foregoing institutions exist in abstraction under *Shari'ah* but their operations, functionalities and interactions are regulated by certain natural persons as their alter ego. The aforementioned institutions are saddled with certain functions carried out on their behalf by human being in similar way to conventional corporate practices. Thus, it is beyond argument that these institutions are recognised under *shari'ah* as having capacity to enter into contract, holding/owing lands, having bank account, giving and accepting donations amongst other functions similar to that of natural persons.

Protagonists argued further that the so-called artificial institutions (*baytul mal*, *mosjid, mustashfa, dawlah*, *etc*.,) are clothed with *dhimmah* (*i.e*., ability to be imposed with obligations and the consequent discharge of the obligations).[69] Thus, concept of *al-dhimmah* under Islamic jurisprudence depicts conferment of obligation (*al-iltizaamah*) and capacity (*al-ahliyyah*) on a particular entity.[70] From the argument of the protagonists, it is deducible that hospital (*al-mustashfa)* is an institution that is imposed with obligation to treat the sick in the same way *ad-dawlah* (state) has the obligation imposed on it to protect its citizenry. The obligation imposed on these institutions are discharged on their behalf by Muslims directing their affairs such as *saahib al-baytul mal* ,*i.e.,* the manager of the public treasury; *Tabeeb* (doctors)/*mumarreed* (nurses) in the case of hospital (*mustashfa)*; *Amir* and his chiefs in the case *dawlah* (state); and *imam* and other committee members in the case of *masjid* (mosque). Thus, the artificial persons are able to exist through the instrumentality of *dhimmah*.[71]

The forgoing position of the protagonists with respect to firm recognition of artificial personality has culminated into source of inspiration for some Muslim dominated states to begin to impose *zakat* (compulsory charity) on corporations.[72]

The position of *Hanafi* school is that everything is considered *halal* (lawful) unless made *haram* (forbidden) by *Shari'ah*.[73] To this end, a corporation

68 *Ibid.*

69 *Id.* at 915.

70 Z.A. Abd Gahdas, H. Abd Aziz, "Legal Framework of Shari'ah Corporations in Malaysia: Special Reference to Waqf Corporation" 13 *Journal of Modern Accounting and Auditing*, 123-124 (2017).

71 *Id.* at 125.

72 T.A.H. Mohamad, A. Trakic, "Critical Appraisal of the Companies Obligation to Pay Zakat in the Malaysian Context" 10 *International Company and Commercial Law Review* 375-381 (2013).

73 *Ibid.*

can engage in business in so far that such business does not offend the tenet of *Shari'ah*. Invariably, existence of corporation as an artificial person is permissible provided such existence is not exploited to defeat the purpose of *Shari'ah*.

According to *Shafi'i* school, it is specifically propounded that when more than one person entered into a partnership for business purpose, the rule of compulsory charity (*zakat*) is applicable to them jointly and severally.[74] Hence, individual is obligated to pay *zakat* if his earnings satisfies the condition precedent and at the same time, their joint stock as a whole is *zakatable*[75] even though individual share is less than *nisab* (minimum amount of money on which *zakat* is payable).[76] Thus, the sanction of payment of zakat on partnership joint stock signifies that it is treated as an entity different from the individual that formed it. This laid to rest that the concept of artificial personality enjoys recognition in Islamic jurisprudence.

Unlike what is obtainable in the Nigerian corporate law, there is dearth of decided cases on recognition of corporate personality under *Shari'ah*. Recourse is usually made to the opinions of scholars within the context of *maqasidus shari'ah* (objective of Islamic law). The reason being that, the primary procedure for emergence and existence of corporations is regulated by the Nigerian corporate law. However, after the birth of those corporations, the rules of *Shari'ah* come to being with respect to their governance structure and business operations.

In view of the above, there have been cases of emergence of a number of companies operating within the *Shari'ah* precept. The companies vary in terms of nature and purpose of incorporation as there are joint stock companies, insurance companies, Islamic bank's corporations, and Islamic capital market companies, *etc*. Nigeria is blessed with JAIZ Bank[77] as a foremost Islamic company in Nigeria. Country like Malaysia, as one of the leading countries in terms of existence of corporations dealing in Islamic banking, is blessed with Islamic corporations

74 J.C.K. Lok, "Corporate Personality from the Eyes of Shari'ah" *Thomas Philips-Advocates and Solicitors*, November 3, 2020, *available at:* https://www.thomasphilip.com, my/articles/corporate-personality-from-the-eyes-of-shariah/ (last visited on January 25, 2022).

75 It means *zakat* could be levied on it.

76 *Ibid.*

77 "Jaiz Bank Official Website" *available at:* <htpps://jaizbankplc.com/> (last visited on January 25, 2022).

like Bank Negara Malaysia,[78] Alliance Islamic Bank, Bank *Muamalat, Amlslamic* Bank, Standard Chartered *Saadiq Berdad, etc.*[79]

The nexus between corporate personality of companies under the Nigerian corporate law and that of *Shari'ah* lies in the fundamental right of Muslims to freedom of religion and religious practices in the Constitution which include Islamic corporate governance practices.[80] For Islamic corporate governance to practice to be administered in the affairs of corporations established pursuant Nigerian corporate law, it is important to establish the status of the recognition of corporate personality under *Shari'ah*. With recognition of corporate personality from *Shari'ah* perspective, the rules of *Shari'ah* can be applied to corporations albeit with modification as against what is obtainable under the Nigerian corporate law.

Shari'ah **modification**

It can be inferred from the above that artificial personality enjoyed by corporation is well established under *Shari'ah*. *Shari'ah*, as a complete code of life, has left nothing undiscussed. Islamic jurisprudence equally recognises the doctrines of human organism in favour of corporate entities. The reason being that abstract existence of corporation makes it imperatives for human organ to be the alter ego and directing mind of the corporation in order to discharge their obligations. Thus, artificial corporate person can validly perform obligations or carried out certain tasks with dependency on the human organ and such performed obligations will be imputed on the artificial person.

However, in the event of liabilities or taking responsibilities for the consequence(s) of the acts of the human organ, the position of *Shari'ah* differs from that of the Nigerian corporate law. This is where *Shari'ah* modification comes in. The principle regarding liability for the actions of natural persons are well espoused under *Shari'ah vide* the relevant provisions in the *Qur'an* and *Hadith*.

78 Malaysia International Islamic Finance Centre, "Malaysia World's Islamic Finance Market Place" *available at*: http://www.mfc,com/ (last visited on January 25, 2022).

79 Global banking and Finance, "List of Islamic Banks in Malaysia" *available at*: https://www.globalbankingandfinance.com/list-of-islamic-banks-in-malaysia/ (last visited on January 25, 2022).

80 *Supra* note 22, s. 38.

The *Qur'an* equivocally provides thus: 'Whoever acts righteously does so for his own good and whoever commits evil does so against his soul.'[81] In the same vein, Allah (SWT) unequivocally declared thus:

> And no bearer of burdens will bear the burden of another. And if a heavily laden soul calls (another) to (carry some of) its load, nothing of it will be carried, even if he should be a close relative. You can only warn those who fear their Lord unseen and have established prayer. And whoever purifies himself only purifies himself for (the benefit of) his soul. And to Allah is the (final) destination.[82]

In another verse, Allah ordains as follows: 'It (souls) gets whatever good that it earns and it suffers every ill that it earns.'[83] Also, the Quran provides: 'Every soul will (held) in pledge for its deeds.'[84] Yet in another verse of the Holy Quran, Allah emphasizes that 'Then shall anyone who has done an atom's weight of good shall see it! Anyone who has an atom's weight of evil shall see it.'[85]

It is instructive to note that on the day of Judgment, mankind would be asked of every detail of their practices on earth including those who found themselves in corporate practice.[86] They would have no excuse for their acts and personally face the consequences accordingly.[87] Allah emphasis this when He states that: 'The Day we shall set a seal on their mouths. But their hands will speak to us, and their feet witness to that they did.'[88]

81 Qur'an, Surah *Fussilat* (41:46).

82 Qur'an, Surah *Fatir* (35:18).

83 Qur'an, Surah *Al-Baqarah* (2:286).

84 Qur'an, Surah *An-Naba* (78:38).

85 Qur'an, Surah *Az-Zalzalah* (99:7-8).

86 Shuhari, M.H., Hamat M.F. "Concept of *Al-Amanah* (Trustworthiness and *Al-Mas'uliyyah* Responsibility) for Human's Character from Ethical Islamic Perspective" 22 *Journal of Legal, Ethical and Regulatory Issues* (2019), *available at*: https://www.abacademies.org/articles/concept-of-alamanah-trustworthiness-and-almasuliyyah-responsibility-for-humans-character-from-ethical-islamic-perspective-7861.html (last visited on April 24, 2021).

87 *Ibid.*

88 Qur'an, Surah *Ya-Sin* (36:65).

The *Hadith* of the Messenger of Allah (PBUH) is very apposite when Ibn 'Umar said: I heard the Messenger of Allah (PBUH) says: [89]

> All of you are shepherds and each of you is responsible for his flock. An Imam is a shepherd and he is responsible for those in his care. A man is a shepherd in respect of his family and is responsible for those in his care. The woman is a shepherd in respect of her husband's house and is responsible for those in her care. The servant is shepherd in respect of his master's property and is responsible for what is in his care. All of you are shepherd and each of you is responsible for his flock.

The foregoing authorities under *shari'ah* are to the effect that there is no *shari'ah* protection against the liabilities of corporate managers in the course of corporate administration/governance. Each individual involved in corporate governance is responsible for his act to the extent of his participation. This is the reason the Prophet warned that: 'Fear Allah wherever you find yourself.'[90]

V Application legal personality in Nigeria

Nigeria is a heterogeneous nation that practices tripartite system of law.[91] The systems of law in operation in the country are the received English common law, customary law and Islamic law. The common law enjoys dominance over other two systems of law.[92] This is because, it dictates their paces, practicability and applicability amongst their subjects. Thus, it could be argued that *shari'ah* modification for the practical application of corporate personality doctrine enjoys statutory flavour by virtue of section 38 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). The section guarantees right to freedom of religion and religious practices. One thing is for a citizen to be entitled to freedom of religion and another thing is for him/her to be able to practice all the

89 A.A. Elias, "Daily *Hadith* Online" *available at*: https://abuaminaelias.com/dailyhadithonline/2011/07/03/shepherd-his-or-her-flock/ (last visited on November 29, 2020).

90 A.A. Elias, "Daily *Hadith* Online" *available at*: https://abuaminaelias.com/dailyhadithonline/2012/02/17/akhlaq-fear-allah-wherever/ (last visited on November 29, 2020).

91 *Supra* note 19 at 1-39.

92 M.I. Gwangndi, "The Socio-Legal Context of the Nigerian Legal System and the *Shari'ah* Controversy: An Analysis of its Impacts on Some Aspects of Nigerian Women's Rights" 45 *Journal of Law, Policy and Globalization* 60-66 (2016).

religious rites. Little wonder the constitutional provision of section 38 accorded the complete right to freedom of religion and right to freedom of religious practices. Islamic law, by virtue of its divinity, is mandatory on all muslims without choice.[93] Apart from that, the religion also dictates or shapes every aspect of muslim lives from birth to death and even beyond.[94]

Thus, the doctrine of corporate personality as it operates in Nigeria can be categorised under Islamic law of transactions (*mu'amalat*). The Constitution itself, recognises Islamic personal law[95] and practices[96] which in the real sense include *mu'amalat* (transactions) and allied matters.[97] Islamic law of transactions covers corporate activities from which the doctrine of artificial personality sprung. It is noteworthy that the practical application of corporate personality doctrine is different under the Nigerian corporate law and *shari'ah* in terms of liability. While the corporate managers under the Nigerian corporate law enjoy statutory protection of veil of incorporation save for the circumstances of corporate governance failure;[98] such protection is not available for managers who intend to be bound by the provisions of *shari'ah* because *shari'ah* imposes personal liability in all situations despite the recognition of the doctrine of artificial personality in Islamic jurisprudence.[99] It is instructive to note that Islamic jurists usually interpret the *hadith* of Ibn Umar cited above as creating exception of vicarious liability to the general rule of personal liability;[100] such interpretation does not cover the circumstance of corporate/human agents' relationship. Thus circumstances that provide exception of vicarious liability to personal liability in Islamic jurisprudence is only applicable where the principal and agent are both natural persons as in the case of master/servant, master/slave, parent/ward, coercer/coerced, commander/commanded relationships.[101] The principle of

93 Qur'an, Surah *Al-Ma'idah* (5:44) and Qur'an, Surat *Al-'Ahzab* (33:36).

94 Qur'an, Surat *Al-Baqarah* (2:208).

95 *Supra* note 22, s. 277.

96 *Id*., s. 38.

97 J. Tyus, "Going Too Far: Extending *Shari'a* Law in Nigeria from Personal to Public Law" 3 *Washington University Global Studies Law Review* 199-221 (2004).

98 *Supra* note 4.

99 Qur'an, Surat *Fussilat* (41:46) and Qur'an, Surah *Fatir* (35:18).

100 A. Zubair, *An Outline of Islamic Law of Torts* 85-126 (International Islamic Contact, Lagos, 1990).

101 *Ibid.*

Islamic vicarious liability cannot be employed in situation of principal/agent who are of the status of artificial/natural persons.[102]

The greatest foreseen challenge in the event of corporate liability is how the rules of *Shari'ah* will come to play to personally hold the affected corporate managers responsible for the consequence of his actions. Under *Shari'ah*, there are plethora of remedies to do justice to both civil and criminal wrongs under the Islamic laws of torts/personal injury and Islamic law of crimes respectively.[103] Thus, a conscious muslim who desires to activate the provisions of section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) *vis-à-vis*, relevant provision of Qur'an would face the problem of jurisdiction of court to contend with. Corporate liability cases in Nigeria are largely referred to English courts such as the Federal High Court,[104] Investment and Security Tribunal[105] amongst other competent court of jurisdiction in line with the subject matter of the cases. The so-called English courts in Nigeria will do no more than to merely activate the legal implication of corporate personality under the Nigerian corporate law. Thus, to this extent, the outright imposition of personal liability on the corporate manager by the provision of *shari'ah* cannot be enforced in the English courts. Worse still, the jurisdictions of the available s*hari'ah* courts in the country have not been extended to cover corporate liability cases.[106] Therefore, this remains a very strong challenge to the practical application and enforcement of *shari'ah* rules to corporate liability cases as extension of Islamic religious practices within the intendment of section 38 of the Constitution.

Invariably, matters arising from the operation of CAMA or against a body corporate cannot be subject of adjudication in an Islamic court which can apply the pristine Islamic rules. Thus, there is need to redefine or expansively interpret Islamic personal matters to include activities of Islamic corporate managers/ practitioners with a view to allowing Islamic law to take its due course on them. This will undoubtedly enable competent Islamic courts in the country to

102 *Ibid.*

103 M.A. Khan, "The Islamic Law of Torts and Product Liability: An Analysis" 19 *Pakistan Journal of Islamic Research* 15-35 (2019).

104 *Supra* note 7, s. 868.

105 Investment and Security Act, 2007, s. 274.

106 The *shari'ah* courts in Nigeria include area courts, upper area courts and *shari'ah* court of appeals which only heard the matters of Islamic personal law. The issues/disputes arising from corporate activities are still being determined by the Federal High Court.

adjudicate on such matters with a view to sharing jurisdiction with the English courts in appropriate situations.

VI Conclusion and recommendations

The Nigerian corporate law, which enjoys dominance over the rules of *shari'ah*, offers statutory protection to corporate managers from associated risks involved in corporate business transactions. However, in practice such statutory protection is being used by corporate managers to perpetuate corporate governance failure. The paper finds that both the Nigerian corporate law and *shari'ah* gave recognition to the doctrine of corporate personality.[107] The finds further that the implication of corporate personality doctrine under the Nigerian corporate law and *shari'ah* differs.[108] As the Nigerian corporate law *prima facie* gave the corporations vicarious liability for the acts done by their managers, *shari'ah* adopts outright individual liability by way of modification.[109]

It is found also that engagement in full-fledge practice and application of the corporate personality doctrine in line with *shari'ah* modification is not fully supported by the existing framework in the country. There is need to blend the existing framework to accommodate the *shari'ah* modification in line with the intendment of freedom of religious practices espoused in section 38 of Constitution of the Federal Republic of Nigeria, 1999 (as amended). This will go a long way in contributing to the prevention of corporate governance failure amongst muslim corporate managers in the country. It is hereby recommended as follows:

i. Islamic personal law under section 277 of the Constitution should be amended to include corporate activities of muslim managers so as to give room for dealing with them in accordance with *shari'ah* in the event of corporate liability. Doing so will enhance absolute activation of the freedom of religious practices espoused in section 38 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).

107 *Supra* note 19 at 1-39.

108 *Supra* note 65.

109 *Supra* note 22, s. 277.

ii. *Shari'ah* Court of Appeal's jurisdiction should be expanded to include hearing and determining matters (as the court of first instance) bothering on corporate activities of muslim managers with a view to enhance practical application of the corporate personality doctrine in line with dictates of *shari'ah*. This will definitely prevent the undeserved statutory of protection of veil of incorporation especially in the case of unscrupulous corporate managers thereby serving as checks to muslim corporate managers.

iii. By way of amendment, Nigerian corporate law should take cognizance of *shari'ah* modification of the doctrine of corporate personality to give room for application of the doctrine within the purview of rules of *shari'ah* with a view to giving full effect to the provision of section 38 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended).