

CORPORATE CRIMES AND LIABILITY UNDER NIGERIAN LAWS*

INTRODUCTION

In the past, it was inconceivable that a corporation could be held liable. The argument generally advanced was that a corporation as an artificial person, has no physical existence and could therefore not be subjected to the prescribed penalties attached to offences. Alongside this thinking, there were also those who felt that a corporation has all the attributes of a natural person and should therefore be capable of receiving all the punishments attached to all offences including physical punishment.

At present, under the Common law, unlike in the past, corporations are now criminally liable subject to certain limitations such as assault, manslaughter, murder, and rape. The present position which makes it possible to hold a corporation criminally liable is a departure from the past, when corporations were only held criminally liable for acts of non-feasance under the Common Law although this was later extended to mis-feasance. Movement from the Common Law rule began with strict liability welfare offences. In this respect, no mental state was required and the penalty which was practicable then was a fine which a corporation could easily be made to pay.

Presently, in offences that require the proof of *mens rea*, corporations are easily made liable by imputing the state of the mind of e.g. the directors who are the alter ego and directing mind of the corporation.

In other instances, corporations have been vicariously and criminally held liable for the acts of such junior employees as drivers, clerks or cashiers. This is done through either the law of agency or labour law which makes the principal liable for the act of its agent and the master liable for the act of its servant.

The Nigeria Legal system which is fashioned along the same system as the English legal system, accommodates the position at Common law to the effect that corporations could be criminally held liable but not for all offences.

Moreover, new insights have been gained largely through the onslaught of legislative activity, something that has become necessary as legislators try to regulate very closely socio-economic activities of corporations. While corporate veils were lifted or pierced in the past to determine liability in civil matters, it is now clear that such conduct as pollution, tax evasion, production of harmful drugs and offences against other regulatory laws attract corporate criminal liability. The emerging scenario is one in which the legislature seeks to mulct the offending corporation, and at the same time disposed to subjecting such corporation to more severe punishment than fine. In recent legislative history in Nigeria, the Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Act is an example of such law. The law imposes criminal liability on both the individual corporate officer and the corporate body.

This article therefore seek to discuss Nigerian laws in relation to the criminal liability of corporations by focusing its attention on what constitute corporate crimes and the extent to which corporations could be made criminally liable under Nigerian laws.

CORPORATE CRIMES

Corporate crimes are defined as, illegal acts, omissions or commissions by corporate organisations themselves as, social or legal entities or by officials or employees of the corporations acting in accordance with the operative goals or standard,

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operating procedures and cultural norms of the organisation, intended to benefit the corporations themselves¹

The review of both the criminal law and corporation law, clearly shows that there is a need for a mediating factor, if indeed criminal liability is to be imposed on corporations. A business corporation for that matter or any other corporation stand quite clearly as an identifiable body in the eyes of the law. Normally speaking since criminal liability is imposed on corporations as a specie of strict liability, it raises question about the desirability of the use of the criminal sanctions in securing compliance with certain goals. In *TESCO Super Market v Natrass*² Lord Reid put forward one of the conundrums that the law faces in this area. His lordship stated;

*It is sometimes argued as it was argued in the present case that making an employer criminally responsible, even when he had done all that he could to prevent an offence, affords some additional protection to the public because this will induce him to do more. But if he has done all he can how can he do more*³.

Lord Reid's statement holds the seeds of argument in this area of the law. Professor Sir Gordon Borrie has drawn attention to this as follows:

What seems to worry people about making employers liable vicariously under such legislation as the Trade Descriptions Act⁴ is that the Act imposes criminal sanction and that there is something basically unjust about making anyone responsible in criminal law for the sins of their employees... Yet it has long been accepted that in civil law, the employer is responsible for the torts of his employees and more significant an employer – trader is strictly liable for the breach of any of the obligations implied by the Sale of Goods Act⁵ even when he has done all he can do to prevent such breach and the cause is really some act or default of an employee or of some third party, such as the manufacturer ... people do not seem to object to strict liability because strict liability helps to ensure high standard and responsibility in trading⁶.

Quite clearly, support for strict liability in civil law is well established and articulated. Nowadays, there is a growing awareness of the need to introduce strict liability in criminal law. There is a greater reliance and preference to use the criminal law and the stricter standards embodied therein to safeguard the integrity of trade related agreements. This is because such preference would enable both private individuals and public officials to take actions in respect of any infringement.

In support of imposition of strict criminal liability on corporations, the English Law Commission in one of its Working Papers on the criminal liability of corporations, has

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- 1 C. Reasons: Crime Against The Environment: Some Theoretical And Practical Concerns. *Crim. L.Q.* Vol. 34 Nov. 1 (1991) See also R. Krame. "Corporate Criminality: The Development of An Idea": In E. Hochstedler, ed. *Corporate as Criminals*. (Beverly Hills. Sage Publication 1984).
 - 2 (1971) 2 ALL E.R. p. 129. See R.W.L. Howells 'A Blow Against Enterprise Liability': [1971]3 M.L.R.676-680. The breach was attributed to the joint neglect of a store assistant and the manager.
 - 3 *Tesco Super Market v Natras* (1971) 2 ALL ER P. 129.
 - 4 Trade Descriptions Act (1968) (UK).
 - 5 Sale of Goods Act 1893 (England). See also Sale of Goods Law Bendel State 1976 S 14, 15 and 16 to the same effect.
 - 6 Gordon Borrie A Review of the Trade Description Act 1968. [1975] *Crim. L.R.* p. 662, 664 – 665.

agreed with the principle that bodies corporate should be liable at least in the regulatory field.

The Report reads as follows:

The main objective of criminal law is prevention of crime and it is argued that the publicity attendant upon the prosecution of the company, has a strong deterrent effect, the prosecution of a company for the omission of an offence symbolises the failure of control by the company, and it is socially desirable to have the company's name before the public⁷.

The Law Commission⁸ has proposed a special crime of corporate Manslaughter. A corporation is guilty of corporate killing if:

- (a) a management failure by the corporation is the cause or one of the causes of a person's death; and
- (b) that failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances.

In jurisdiction like the United States of America, structural foundations of corporate liability developed differently. A vicarious form of liability applies in fault based crimes as well as in strict liability cases so that, the company will be liable for any of the Federal offences its employees commit⁹. The American approach is seen as too wide for conventional offences while the English direct liability scheme is seen as too narrow.

LAWS ON CRIMINAL LIABILITY OF CORPORATIONS IN NIGERIA

In addition to the Common Law of crime and the codes are enactments and statutes by the respective Federal and State legislatures. Examples of such statutes are the Dangerous Drug Act¹⁰, the Consumer Protection Council Act, the Environmental Sanitation Edict of Edo State¹¹ and the Failed Banks (Recovery of Debt) and Financial Malpractice in Banks Act which would be discussed later.

Today, in Nigeria, there are three main sources of criminal law. The three sources are the Common Law of crime, the respective codes, and statutes such as Laws, and Acts enacted by various state governments and the Federal Government. These laws have far reaching effects on the criminal liability of corporate bodies in Nigeria.

When the Common Law was being developed, no one ever thought that a corporation could be criminally held liable. This was because the idea of corporation was relatively new. As time went on and the Common Law was going through some changes, the need for the imposition of some forms of corporate criminal liability was gradually being felt¹². The model of civil liability of corporation at Common Law through the doctrine of respondeat superior¹³ had exerted a considerable pull on the criminal law, since at Common Law, criminal liability rested on the twin pillars of *mens rea* and *actus reus*. Any thought of establishing corporate criminal liability had to confront the issues of

7 U.K. Law Commission Working Paper No. 44 (172) Page 34 and 38.

8 See Jonathan Herring and Marise Cremona. Criminal Law (2nd ed. Macmillan London, 1997) p. 88.

9 Celia Wells: Corporations: Culture, Risk and Criminal Liability. [1993] C.L.R. p. 563.

10 Dangerous Drug Act Cap. 91 L.F.N.1990 Now Cap D 1 Vol.5 Laws of the Federation of Nigeria 2004.

11 Environmental and Sanitation Edict (1994) (Edo State) enacted by virtue of Constitution (Suspension and Modification Decree, 1993)

12 See Smith and Hogan. Criminal Law Cases and Materials (6th ed. Butterworth 1996) p. 254 where it is stated that a Corporation may be a party to a Common law conspiracy and manslaughter.

13 The doctrine of "respondeat superior" makes a master liable for the action of his servant. It was very easy to adopt this doctrine under the civil law to make corporation liable since a corporation can only act through its servants.

mens rea, and *actus reus* since a corporation has no existence of its own let alone a mind of its own¹⁴. Then there was the issue of punishment, it could not be punished with such sanction as imprisonment, which could be imposed at assizes¹⁵. This led to the conclusion that there is no criminal offence that a corporation could commit since it had no physical capacity, and its existence depends entirely on legal fiat. It was therefore impossible to subject a corporation to some punishments which hitherto were only capable of being committed by human beings. It could therefore be maintained that a corporation has no capacity to do anything illegal. If this were assumed to be true, then the corporation would always be innocent and only the principal officers of the corporations could be punished for wrong doing. As time went on, under the Common Law of crime, particularly in England, it became possible to hold a corporation criminally liable.

Corporate criminal liability became very pronounced with the introduction of strict liability¹⁶ offences. These are offences for which the mental state is not required for the commission of such offences and the penalty (a fine) was such that it could be imposed upon a corporation. Initially, corporations were prosecuted for acts of non-feasance. The case for corporate criminal liability was, strongest in such instances, as public duties imposed upon a corporation by the law. For example, keeping a railroad or bridge in a state of repairs. Such duties are just as applicable to corporations as individuals, and for such omissions, no individual corporate employee could be said to be in breach of these duties. This reasoning led some courts to rule that corporations could not be convicted for mis-feasance.

However, courts have abandoned the non-feasance mis-feasance distinction on two grounds. First, the distinction was viewed to be more of a matter of form than of substance, in that the same offence often could be just as easily characterised as a failure to do an act like failure to construct a safe bridge as an act, for example, construction of a bridge in an unsafe manner. It seemed appropriate therefore to punish for mis-feasance when the mischief aimed at by the penal statute could as easily be produced by a corporation. It was in such cases that the earliest development of corporate criminal liability took place. In *R v Birmingham and Gloucester Railway Company Ltd*¹⁷, a corporation was convicted for failing to fulfill a statutory duty imposed upon it. Some years later in *R v North of England Railway Company Ltd*¹⁸, the court held that the distinction between non-feasance and mis-feasance was unnecessary. The position in Great Britain today is that, corporations could be held criminally liable under strict liability offences. However, there are some exceptions in such instances as murder, rape, bigamy and so on. In the above instances corporations, are assumed to be incapable of committing the crimes stated above and therefore may also not be capable of receiving the attached penalties. For example, the penalty for murder is

14 The difficulties in punishing corporations physically prompted Second Baron Thurlow to ask; "Did you ever expect a corporation to have a conscience when, it has no soul to be damned and no body to be kicked" see Richard Card Cross and Jones. Introduction to Criminal Law, (London, Butterworth 9th ed 1980) p.107.

15 Smith & Hogan, Criminal Law, (London Butterworths, 6th ed. 1988) P. 170.

16 In *National Rivers Authority v Alfred McAlpine Homes East* (1944) CLR 760. The Court stated that the pollution legislation was a strict liability offence and further held that the only way of enforcing such laws, where the pollution will often be caused by persons of low position in the corporation hierarchy, was by imposing vicarious liability on the company. It would seem from this decision that there can be no strict liability on a company except through omissions or commission by its employee. See Clarkson C.M.W. Kicking Corporate Bodies and Damning Their Souls. Modern Law Review (Vol. 59, 1996)

17 (1842) 3 QB 231, 114 E.R. 492.

18 (1864) 9 QB. 315, 115 E.R. 1294.

death sentence, since a corporation has no physical human existence, it might be difficult to subject it to such punishment as death sentence or imprisonment.

The trend in Nigerian law which is a reflection of the development in England is towards holding an employer (company) criminally liable for the acts of its employees even though the company did not know it had taken place.

Crimes created by statute as stated earlier on are usually strict in nature. They do not require the proof of *mens rea* in form of intention, recklessness, knowledge or even negligence. All that is needed is a proof of the *actus reus*. In great many cases, parliament's intention were interpreted by courts to impose strict liability and have in several cases convicted defendants who lacked the necessary *mens rea*. In *Sharras v D Rutzen*¹⁹, Wright J. Stated that;

there is a presumption that mens rea or evil intention or knowledge of wrongfulness of the act is an essential ingredient in every offence, but the presumption is liable to be displaced either by the words of the statute creating the offences or by the subject matter.

In *Parker v Alder*²⁰, the defendant delivered a consignment of milk to a Railway company for onward transportation. The milk was in a pure and unadulterated condition when it was delivered to the carriers and the adulteration had been carried out without the knowledge or consent during transit. Lord Russel, C J. in holding the defendants liable, said²¹;

Now assuming that the respondent was entirely innocent morally, and had no means of protecting himself from the adulteration of the milk in the course of the transit, had he committed an offence against the Act? I think that he has. When the scope and objects of these Acts are considered, it will appear that, if he were to be relieved from responsibility a wide door would be opened for evading the beneficial provisions of this legislation.

However, where the offence is such that proof of *mens rea* is necessary, how then would a corporation's state of mind be determined so as to make the corporation criminally liable? The proof of a corporation's state of mind becomes more difficult since a corporation does not have a physical existence like a natural person. Again, where it is possible to ascribe the state of mind of any of its employee to a corporation, another problem also faced is, who among the employees of a corporation is to be regarded as acting on behalf of the corporation so, as to make such employee's act, the act of the corporation. This is because, some of the employees, are so low in rank²², that their acts in relations to their schedule of duty can never bind the corporation. These problems have to some extent been partially resolved by courts both in England and Nigeria. In *Mousell Brothers V London and West Railway Company*²³, the court held the defendant company liable for an offence of giving false account with intent to avoid payment of tolls on the ground that this was an offence of vicarious responsibility. The liability was not based on the principle of imputation of *mens rea*. Here the offence was

19 [1895] 1 QB 918 at 921.

20 [1899] 1 QB 20.

21 *Parker V Alder Supra.*

22 *Parker v Alder* [1895] 1 QB 20.

23 *Mousell Brothers V London and West Railway Company* (1917) 2 K.B. 836. See also *D.P.P. Western Nigeria v Associated Press of Nig. Ltd & Anor* [1959] W.R.N.L.R. 247 where the court held the Newspaper liable for the acts of a mere reporter.

actually committed by a junior officer and the position is that a master is vicariously liable for the act of his servant.

In Nigeria, corporate criminal liability is a recent development and as a result, cases are quite few. However, in *Ogbuagu v Police*²⁴, the appellant was the proprietor and publisher of a Newspaper in Jos, Northern Nigeria. When leaving Jos, he instructed the man he left in charge not to publish the paper while he was away. The man, however, published the paper, which contained a seditious libel in one issue. In allowing the appeal against conviction by the lower court, the Appeal Court stated that;

When the proprietor tells the servant not to publish the paper, I cannot see why the proprietor should be answerable for an issue of a paper published by a disobedient servant.

Here the court refused to impute the state of mind of the employee to the proprietor of the newspaper.

However, in *R.v African Press*²⁵, a case with nearly the same facts as *Ogbuagu*, the article was written by and under the responsibility of the editor and the court held both the defendant company and the editor jointly liable since the article was written by and under the responsibility of the editor.

In *R v I C R Haulage Company Ltd*²⁶ Stabile J.C. emphasised this point when he said that, whether in any particular case there is evidence to show to a jury that the criminal act of an agent including his state of mind, intention and knowledge or belief is the act of the company... must depend on the nature of the charge, the relative position of the officer or agent and the relevant facts and circumstances of the case. In this particular case, a company was criminally held liable for conspiracy to defraud through its managing director. In *Inspector General of Police v Mandilas and Karaberis and Anor*²⁷, the court jointly held liable the company and its manager for the offence of stealing. In his judgment, Thomas J. relied on the general principle that a corporation acts through its agents and that once such agents act within the scope of their employment, the principal, which is the corporation would be vicariously and criminally liable.

One aspect, that baffled the writer was that (the company) employer of the second accused was given a fine of four hundred thousand naira only, while the second accused (employee) of the first accused defendant company was sentenced to one year imprisonment with hard labour.

The Penal Code of the American Law Institute makes it clear that a corporation should only be punished or held criminally liable for conduct authorised, performed, or recklessly tolerated by its Board of Directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment. "A high managerial agent" is defined as "an officer of a corporation, or an agent, having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation²⁸". Towards this end, the court has held that a company will be liable for the acts of its controlling officers even where the officer acted to defraud the company itself.

24 [1953] 30 NLR 139

25 [1957] W.R.N.L.R. 1 See also *Ako Adjei and Anor.* (1951) 12 WACA 253 where the West African Court of Appeal held that the Chairman, the managing director and the editor of a newspaper which published a seditious publication could be found guilty under a similar provision of the Gold Coast (now) Ghana Criminal Code.

26 [1944] K.B 551

27 [1958] W.R.N.L. R. 147.

28 American Law Institute, Model Penal Code, proposed official draft, 1962, S. 207 Quoted by Aguda Akinola, Principles of Criminal Law (2nd ed., Ibadan University Press, (1990) p. 339.

In *Moore v Brester Ltd*²⁹, the secretary of the respondent company who was also the general manager of a branch of the company and the sales manager of the same branch sold certain of the company goods intended for sale with the object of defrauding the company. They then made false return in respect of the purchase tax on the sales. Both the company and the two officers were charged and convicted. The writer is of the view that the principle applied here was not vicarious one but one of strict liability³⁰. This is because, the company was also defrauded. The company could not have collaborated with its employees to defraud itself and the state. Neither would the company have been at peace to ever imagine that an employee who defrauded it and the state at the same time was acting in its behalf and by law exercising the mind of the company.

Wherever, a duty is imposed by statute in such a way that a breach of the duty amounts to a disobedience of the law, then if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence for which a corporation may be indicted, whether or not the statute refers in terms to corporations. In *R V Tyler and International Commercial Company Ltd*³¹, Bowen L.J. stated that, the Interpretation Act of 1889 an English statute provides that;

In the construction of any enactment relating to an offence punishable on indictment or on summary conviction, the expression "person" unless the contrary intention appears, includes a body corporate.

This principle is also applicable in Nigeria.

Certain statutes provide that, where a corporation has committed an offence, its officials shall in certain circumstances be deemed guilty of that offence. Occasionally, particular types of corporations specifically exempted from such restrictive legislation are usually identified.

CRIMINAL LIABILITY OF CORPORATIONS UNDER STATUTE

Statutory offences are usually strict. Strict liability is the term used to describe the imposition of criminal liability without proof of fault on the part of the defendant. It has been said that to punish a defendant for the commission of a strict liability offence is, per se unjust³². The argument could be faulted. There is need for strict liability offences particularly with respect to welfare offences and more so when corporations are now involved in profit making activities. In *Sweet v Parsely*³³ the court held that; imposition of strict liability maybe more justifiable where the defendant (company) is engaging in a profit making activity which creates hazards for the public. This should be the position, particularly where it becomes difficult to identify a particular officer whose acts could be regarded as the acts of the Company.

The leading authority on the criminal liability of corporations is the case of *Griffith v Studebaker*³⁴. Here the court held that an employer can be vicariously liable in respect of strict liability offences committed by an employee during the course of his employment

29 (1944) 2 ALL E. R 515.

30 Except under strict liability offence it is a general principle of criminal law that one is not criminally liable for how some else acts, unless he directs or encourages or aids the other so to act. Thus, unlike the case with torts an employer is not generally liable for the criminal acts of his employee even though the employee does them in furtherance of the employees business. See *Love v State* (191) Miss 622. So 2d 796 (194) cited by Wayne R. Lafave & Augustin W. Scott Jnr. Criminal Law (St. Paul MINN USA West Pub. Co. 2nd ed. 1956) p.252.

31 [1891] 2 Q.B. 588 at 592

32 R. V. Larsonner [1933] 24 Gapp. R. 74

33 Sweet v Parsely [1970] AC 132

34 [1924] 1 KB. 102

provided the wording of the statute is appropriate. In this instant case, an employee of the defendant company had taken a number of prospective purchasers for a trial run in one of the company's cars. The company was charged with using the vehicle contrary to the Road Vehicles (Trade Licenses) Regulations 1922, on the ground that more than two passengers were carried on the trial run. The court held the company liable for using the vehicle through its employee. As the offence was one of strict liability, there was no jurisprudential difficulty, in holding the company liable as the principal offender and the employee liable as an aider and abettor.

Liability of the employer for the criminal acts of the employee depends on how the courts choose to construe the statute in question and in particular, whether the offence is regarded as one of strict liability or one requiring full *mens rea*³⁵. In *Police v Adamu Yahaya*³⁶ the court held that once a vehicle is being used to carry smuggled goods, the *mens rea* of the owner is immaterial because the statute regulating custom and excise is a strict liability one.

In Nigeria, statutes have been specifically enacted in addition to the Nigerian criminal code and penal code which have provisions for corporate criminal liability. Such statutes include the Food and Drug Act³⁷, Standard Organisation of Nigeria Act³⁸ (SON), Weight and Measures Act³⁹, the Companies and Allied Matters Act⁴⁰, the Consumer Protection Council Decree⁴¹, the Federal Environmental Protection Agency Act⁴², the Failed Bank (Recovery of Debts) and Financial Malpractice in Banks Decree⁴³, Environmental and Sanitation Edict⁴⁴ and a host of other statutes. These statutes were enacted to promote the social, economic and well-being of the citizens.

The Consumer Protection Council Act seeks to safeguard the consumer from the hands of unscrupulous and exploitative companies, firms, trade associations and individuals. It is intended to encourage the adoption of adequate and appropriate measures to ensure that products are safe.

The Act⁴⁵ states that;

It shall be the duty of the manufacturer or distributor of a product, on becoming aware after such a product has been placed on the market of any unforeseen hazard arising from the use of the product to notify immediately the general public of such risk or danger and cause to be withdrawn from the market such product.

The Act also states that;

Any person who violates the provision of sub-section of this section is guilty of an offence and liable on conviction to N50,000.00 fine or imprisonment for five years or both.

35 Michael T. Molan Criminal Law Text book 17th ed. (1993 – 1994). See *Alphavell Ltd v Woodward* (1972) AC 824.

36 [1942] 16 N.L.R; 1944 – 57 14 NLR 98 at 1011.

37 Cap. 150 L.F.N. (1990). Now Cap F 32 vol. 7. LFN 2004.

38 S.O.N. Act (Amendment Decree) No. 18 of 1990. Now Cap S9 vol. 4 LFN 2004.

39 Cap. 467 Laws of the Federation 1990. Now Cap W 3 vol. 5. LFN 2004.

40 Companies and Allied Matters Act, 1990. Now Cap. C 20 vol. 3 LFN 2004.

41 Decree No. 66 of 1992. Now Cap C 25 vol. 4 LFN 2004.

42 F.E.P.A. Act Cap. 131 L.F.N. 1990 as amended by Decree S. 9 of 1992. Now Cap F 10 vol. 6 LFN 2004.

43 Decree No 18 of 1994. Now Cap F 2 vol. 4. LFN 2004.

44 Environmental and Sanitation Edict 1994, Edo State (enacted by virtue of Constitution Suspension and Modification) Decree 1993.

45 S. 9 (2) Decree No. 66 of 1992. Now Cap. C. 25 vol. 4. LFN 2004.

Another Act that provides for corporate liability is the Failed Bank (Recovery of Debts and Financial Malpractices in Bank Act⁴⁶. The Act seeks to instill sanity into the banking industry by making it punishable for the bank or any financial institution and any of its staffs who contributed in any manner to the collapse of the financial institutions.

An early case decided under this provision, was the Federal Republic of Nigeria V. Dr. Nwochie Odogwu and Capital Merchant Bank No.1⁴⁷. In this case the managing director of Capital Merchant Bank, was also the promoter of the Bank in its formative stage. He floated other sham companies to which he granted unsecured loans which he later diverted to his personal purse. Within a short time, the bank went into liquidation and all the depositors lost their money. Both the bank and its managing director were charged before the Failed Bank Tribunal. The managing director, was sentenced to 18 years jail term and ordered to refund N76 million Naira, with a fine of N35,000.00 while the bank itself was discharged and acquitted.

It would seem from this judgement that the tribunal simply lifted the veil⁴⁸ of incorporation to find out who was behind the mask. It accordingly dealt with the natural person behind the mask instead of chasing the ghost by holding the bank criminally liable for an act that was masterminded by its employee for his own benefit. This kind of judgment, although is in the best interest of the public seems to have done away with the principle of distinct corporate entity⁴⁹.

In Public Finance Securities Ltd. V. Jefia⁵⁰ the court stated that;

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

In most cases when prosecution knows that a corporate body has committed a crime jointly with some of its employees, and since in most cases, the corporation cannot be subjected to the same punishment as its workers, it would rather prefer not to charge such corporate body or charge it with a lesser offence or charge its officers alone because of the difficulty in subjecting such corporate body to certain punishments like jail term or death sentence⁵¹. This position is very unfair as it encourages individual criminal liability, instead of corporate liability thus enabling the corporation that benefited from the whole transaction to escape punishment. No wonder it was stated by Bierce C. A. that; "a corporation is an ingenious device for obtaining individual profit without individual

46 Failed Bank (Recovery of Debts) and Financial Malpractices in Bank Decree No. 18 of 1994. Now Cap F 2 Vol. 6 LFN 2004.

47 (1997) 1 F.B.T.L.R. 179 same case went on appeal for variance of the sentence. This was granted in F.R.N. v. Dr. Odogwu N o. 2 (1997) 1 F.B.T.L.R. 236.

48 The principle of lifting the veil is a principle by which the veil or mask of an incorporated body is lifted to find out those behind it who use such incorporated bodies to commit crime. The principle seeks to do away with the principle of corporate personality by which a company is termed a distinct person.

49 Salomon v Salomon [1897] A.C. 22 where the court held that Salomon was a distinct person from the company.

50 [1998] 3 NWLR pt. 59.

51 A.G. Eastern region c Amalgated Press of Nigeria Ltd. Suprawhere ainley C.J. said, I will concede that a corporation cannot be charges with offences of personal violence or with offences for which the only punishment is imprisonment.

responsibility”⁵². From the discussion so far, it is evident that corporate bodies are now held criminal liable both under the Common Law, or codes and statutes. In so many instances, where they have been held liable, they were fined even when there is provision for a jail term. This stand conflicts with the principle which bestow on a corporate body the attributes of a natural person with corresponding powers, benefits and liabilities.

One other issue is whether corporations could be liable for all types of crime. The issue as to whether a corporate body could be liable for certain offences like manslaughter came up in *Spooner and Others; Exparte Rohan and Another*⁵³. In October, 1987 an application was made for leave to apply for judicial review against the decision of the Coroner for East Kent made on the 18th and 19th of September, 1987 in the course of an inquest into the death of 188 people arising out of the capsizing on 6th May, 1987 of the *Herald of Free Enterprise*⁵⁴.

In hearing the application for judicial review, Lord Justice Bingham said that, he was prepared tentatively to accept that a corporate body was capable of being found guilty of manslaughter⁵⁵. The court, however, refused to grant the application for judicial review because no substantial case had been made against named Directors of the company.

From the decision in this case, there seem to be a tentative acceptance of corporate criminal liability for a serious crime such as manslaughter.

In *R v Corry Brothers Ltd*⁵⁶, the Directors of a company decided to create a fence around a power house belonging to the company to prevent pilfering from it. Accordingly, a wire was erected and charged with electric current on the instruction of the power engineer of the company. Soon after, on the same day, the deceased accidentally stumbled on the fence and died. The company was then charged with the offence of manslaughter. The court, however, held that the company could not be held guilty of manslaughter or for the offence of setting traps with intent to inflict grievous bodily harm. This judgment seems to have done away with the alter ego principle, which makes the act or intention of some highly placed officers of the company (e.g directors) the acts and intentions of the company. However, in *Granite Construction Company v Superior Court*⁵⁷ in a charge of manslaughter, the corporation argued that as an economically motivated entity, it could be liable only for property crimes. The court responded

This argument is unsuccessful. It overlooks the substantial indirect economic benefit that may accrue to corporation through crimes against the person. To get these economic benefits, corporate management may short cut expensive safety precautions, respond forcibly to strikes or engage in criminal anti competition behaviour.

52 Bierce C.A. *Devil's Dictionary*, (1958). See Gobert James, *Corporate Criminal Liability: Four Models of Faults*. *Legal Studies Journal*.

53 See *The Times*, 10th October, 1987.

54 *Herald of Free Enterprises* is a commercial boat meant for carrying passengers.

55 Smith and Keenan *English Law*, (9th ed, London: Pitman Publishing Ltd. 1990) P.504-505.

56 (1927) 1 KB 810.

57 149 Cal. App. 3rd 465, 197 Cal. Rptr. 3 (1983) Quoted by Wayne Lafave and Austin W. Scott Jr., *Criminal Law* 2nd ed. (St. Paul MN, USA, West Publishing Company, 1986, p. 258).

The writer is of the view that such a corporation should be prosecuted for manslaughter. Mueller is also of the view that such a corporation must not be allowed to go free. In his words⁵⁸;

Why should not a corporation be guilty of murder where, for instance, a corporation's resolution sends the corporation workmen to a dangerous place of work, without protection, all officers secreting from these workmen the fact that even a brief exposure to the particular work hazards will be fatal, as was the case in the notorious Hawk's West Venture in West Virginia, where wholesome death (as in Bhopal's case in India) was attributed to silicosis.

In line with the above stand, in Northern Mining Construction Company Ltd. v Glamorgan Assizes⁵⁹, a corporation was tried for manslaughter, but acquitted on merit. The facts of this case simply establish the position that a corporation could be tried for such an offence as manslaughter⁶⁰, but the problem is whether the corporation could be made to face the punishment? Here in Nigeria, there are yet no known cases of corporations being charged for the offences of manslaughter or murder. Whatever may be the reason for this, it is clear that there are certain offences for which a corporation cannot be charged because of the difficulty in holding such corporations liable and making it to under go the prescribed punishment.

58 See Mueller, 'Mens Rea and Corporation' 19 U.P.L. Rev. 21, 23 (1957) quoted by Wayne Lafave and Austin W. Scott Jr. Criminal Law (2nd ed. St. Paul MNN, U.S.A. West Publishing Company 1986) p. 259.

59 Unreported February 1, 1965.

60 In Spooner, and others ex parte Rohan and Anor. The Times, 10 October, (1987) C.A. The Court expressed the opinion, obiter that a corporation may be convicted of manslaughter.