DIVISION OF POWERS OF PRIMARY ORGANS OF A COMPANY IN NIGERIA: A LEGAL APPRAISAL.

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Abstract

This paper examines the distribution and exercise of corporate powers among the primary organs of a company under the Companies and Allied Matters Act 2020 (CAMA 2020), with particular emphasis on the board of directors, managing directors, and members in general meeting. Anchored on section 87 of CAMA 2020, the study demonstrates that Nigerian company law deliberately separates managerial authority from shareholder control in order to promote efficiency, accountability, and effective corporate governance. While the board of directors is vested with the power to manage the business and affairs of the company, shareholders in general meeting retain supervisory and constitutional powers over fundamental corporate decisions. The paper analyses the powers of directors and the board as a collective organ, showing that individual directors possess no inherent authority outside board authorisation. It further examines the statutory framework for delegation of powers to managing directors under sections 88 and 289(5) of CAMA 2020, arguing that once validly delegated, the managing director functions as a statutory organ of the company whose acts, when carried out in the ordinary course of business, bind the company. However, such delegated authority remains subject to fiduciary duties and active board oversight. A central focus of the paper is the seeming conflict between the powers of the board of directors and those of members in general meeting, particularly in relation to the institution of legal proceedings on behalf of the company. By engaging with Nigerian and persuasive common law authorities, the paper demonstrates that while shareholders possess residual powers under section 87(5) of CAMA 2020, these powers are interventionist and remedial, arising only where the board is unable, unwilling, or has neglected to act. The paper concludes that CAMA 2020 establishes a balanced corporate governance structure in which directors manage, managing directors execute delegated authority, and members in general meeting exercise oversight and corrective control. Judicial interpretation under the post-CAMA 2020 regime increasingly reinforces this balance by recognising the primacy of board management while preserving shareholder intervention as a safeguard against abuse, deadlock, or failure of corporate leadership.

Keywords: Board of Directors, Powers, Company, Organ, General Meeting.

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1.Introduction

A company is a legal abstraction that can only function through human organs vested with authority to act on its behalf. Corporate law therefore concerns itself not merely with the existence of the company as a separate legal person, but more fundamentally with the allocation and control of power within its internal governance structure. In Nigeria, this allocation of corporate power is principally regulated by the Companies and Allied Matters Act[2], which represents a significant recalibration of corporate governance norms aimed at promoting efficiency, accountability, and investor confidence. A recurring theme in company law is the inherent tension between ownership and control. While shareholders are the ultimate owners of the company, the day-to-day management of its affairs is entrusted to directors, who act as fiduciaries and agents of the company. This separation of ownership from control, though commercially necessary, often generates uncertainty and conflict as to the respective powers of the board of directors, managing directors, and members in general meeting. Questions frequently arise as to which organ of the company possesses "ultimate authority" in corporate decision-making, particularly in situations involving delegation of powers, shareholder intervention, and the institution of legal proceedings on behalf of the company.

CAMA[3] addresses these issues by deliberately dividing corporate powers among the primary organs of the company. Section 87 vests the management of the company's bess in the board of directors, subject to powers expressly reserved for members in general meeting by statute or the articles of association. At the same time, the Act recognises the practical necessity of delegation by empowering the board to confer managerial authority on managing directors and other officers, while imposing strict fiduciary duties and oversight obligations on directors. Members in general meeting, on the other hand, are accorded supervisory, constitutional, and corrective powers designed to safeguard the long-term interests of the company.

Despite this statutory framework, judicial decisions have revealed areas of interpretative tension, particularly regarding the scope of shareholder intervention and the authority to initiate legal actions in the name of the company. This paper examines the powers of the primary organs of a company under CAMA [4], analyses the legal basis and limits of delegation, and critically evaluates the seeming conflicts between board autonomy and shareholder control. It argues that CAMA[5] establishes a balanced governance model in which managerial efficiency is preserved while accountability is ensured through structured shareholder oversight and judicial enforcement.

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[2] 2020 (CAMA 2020),

[3] *Ibid*

[4] *Ibid*

[5] *Ibid*

1. Powers of Primary Organs of a Company in Nigeria

1.1 Powers of the Board of Directors

Under the Companies and Allied Matters Act[6], the board of directors is the principal management organ of a company. Section 87(3) of CAMA[7] provides that the business of a company shall be managed by the board of directors, which may exercise all such powers of the company as are not, by the Act or the articles of association, required to be exercised by the members in general meeting. This provision firmly establishes that managerial authority resides in the board acting collectively and not in individual directors acting independently.

The board is responsible for the formulation of corporate policy, strategic planning, entering into contracts, supervision of executive management, and ensuring compliance with statutory and constitutional obligations. In exercising these powers, directors act in a fiduciary capacity and are bound by the duties codified under sections 305–312 of CAMA[8], including the duty to act in good faith, in the best interests of the company, for proper purposes, and with reasonable care, skill, and diligence. The board's powers are wide, but they are circumscribed by the Act, the company's articles, and judicial oversight where there is abuse or breach of duty.

Once duly appointed, the board is not subject to day-to-day control by the members in general meeting. Provided the directors act within their powers and in good faith, they are entitled to manage the company without interference from shareholders. This principle reflects the separation of ownership from control that underpins modern corporate governance.

1.2 Powers of Individual Directors

Although the board of directors wields extensive managerial powers, an individual director does not possess inherent authority to bind the company solely by virtue of holding office. Any power exercised by an individual director must be derived from the articles of association, a resolution of the board, or a recognised course of conduct giving rise to actual or ostensible authority. This reinforces the principle that corporate power is vested in the board as a collective organ.

For the effective discharge of their functions, directors may summon and attend board meetings, participate in decision-making, and vote on board resolutions. CAMA[9] permits directors to regulate their internal proceedings, subject to the articles of association. Importantly, the Act provides that acts done by a director shall not be invalidated merely because of a defect in appointment or qualification, thereby protecting commercial certainty and third-party dealings.

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[6] *Ibid*

[7] *Ibid*

[8] *Ibid*

[9] *Ibid*

1.3 Powers of the Managing Director

CAMA[10] recognises the practical necessity of executive management by permitting the delegation of board powers to a managing director. Under sections 88 and 289(5) of the Act[11], the board may appoint a managing director and delegate to him or her such powers as it thinks fit, subject to any limitations imposed by the articles or the board itself. Once validly appointed and delegated authority, the managing director functions as a statutory organ of the company.

The managing director is primarily responsible for the day-to-day management and operation of the company's business, including the implementation of board policies, supervision of staff, and execution of contracts in the ordinary course of business. Section 89 of CAMA 2020 provides that acts of the managing director carried out in the usual way of business are treated as acts of the company and are binding on it. However, the managing director's authority is entirely derivative and limited by the scope of delegation, and ultimate responsibility for corporate management remains with the board, which retains a continuing duty of oversight.

1.4 Powers of Members in General Meeting

Members in general meeting represent the collective body of shareholders and exercise powers expressly reserved to them by CAMA 2020 or the company's articles of association. These powers are primarily supervisory, constitutional, and corrective rather than managerial. While shareholders are the owners of the company, they do not participate in the day-to-day management of its affairs. Among the most significant powers of members in general meeting is the power to appoint and remove directors. Section 288 of CAMA 2020 empowers members to remove any director by ordinary resolution, notwithstanding anything contained in the articles or any service contract. Members also possess the power to alter the articles of association by special resolution, thereby reshaping the internal governance framework of the company. In addition, shareholders approve major corporate actions such as alterations of share capital, mergers, schemes of arrangement, and other fundamental structural decisions.

Members in general meeting further exercise financial oversight by considering audited financial statements, appointing and removing auditors, and declaring dividends based on the recommendation of the board. These powers enable shareholders to hold directors accountable while respecting the autonomy of the board in management matters.

1.5 Residual and Interventionist Powers of the General Meeting

Although members in general meeting do not ordinarily manage the company, CAMA 2020 recognises exceptional circumstances in which they may exercise residual or interventionist powers. Section 87(5) empowers the general meeting to act where the board is unable or unwilling to do so, such as in cases of board deadlock, disqualification, or neglect. In such situations, members may authorise the institution of legal proceedings in the name of the company, ratify actions taken by the board, or make recommendations concerning corporate action.

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[10] *Ibid*

[11] *Ibid*

These residual powers are remedial rather than managerial and are designed to safeguard the company's interests where the board has failed in its responsibilities. Nigerian courts have consistently treated such shareholder intervention as exceptional, emphasising that it arises only where the board has demonstrably failed or refused to act in the best interests of the company.

2. Division of Powers of Primary Organs of a Company in Nigeria

Under the Companies and Allied Matters Act[12], corporate powers of primary organs of a company are deliberately divided between the board of directors, managing directors and the members in general meeting to achieve managerial efficiency and shareholder oversight. The statutory foundation of this division is primarily in Section 87(1), which vests the management of the company's business in the board, granting directors authority to exercise all powers of the company except those expressly reserved by the Act or the Articles for shareholders. This reflects the core principle that directors, not shareholders, control day-to-day and strategic management.

However, shareholders retain constitutional and residual powers under CAMA[13]. Through the general meeting, members control fundamental changes such as amendment of the Articles[14], alteration of share capital, removal of directors[15], and approval of special categories of transactions. Section 87(5) of CAMA[16] further empowers the general meeting to act where the board is unable or unwilling to act, such as in cases of deadlock, disqualification, or misconduct, creating an important supervisory safety valve.

At common law, this division is supported by the leading English cases of *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* and *Shaw v Shaw*, which established that shareholders cannot usurp managerial powers that the constitution vests in directors. Nigerian courts have consistently adopted this approach, most notably in *Longe v. First Bank of Nigeria Plc*[17], where the Supreme Court affirmed the distinct competencies of the board and shareholders and held that shareholder dissatisfaction must be addressed through lawful mechanisms such as removal of directors, rather than direct interference with management.

In effect, CAMA 2020 creates a balanced governance structure: directors manage, while shareholders supervise and decide constitutional matters. Courts enforce this separation strictly, intervening only where either organ exceeds its lawful powers or acts in breach of statutory or fiduciary duties.

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[12] *Ibid*

[13] Companies and Allied Matters Act, 2020

[14] *Ibid*, s. 53

[15] *Ibid, s.* 288.

[16] *Ibid*

[17] (2010) 6 NWLR (Pt.1189) 1.

3.1 **Powers of a Directors**

CAMA 2020 defines a director of a company to be a person duly appointed by the company to direct and manage the business of the company.[18] Therefore, for one to be considered a director of a company such person must have been duly appointed by the company to direct and manage its affairs. However, notwithstanding, the CAMA 2020 assumes a rebuttable presumption in favour of any person dealing with the company that all person who are described by the company as directors, whether as executive or otherwise, is and was duly appointed.[19] Thus, where a company represents any person (s) as its directors in whatever capacity in its relationship with any party, such person (s) shall for the purpose of such relationship be rebuttably presumed to be the directors of the company.

It is important to note that, an infant--- that is a person under the age of 18 years, a lunatic, a corporation other than its representative appointed to the Board and other persons expressly disqualified under the Act are prohibited from acting as directors of any company. Therefore, any person below the age of 18 or a person of unsound mind cannot seat on the board of directors or be appointed as such. It is also quite pertinent to note that, notwithstanding any defect that may be discovered in the appointment or qualification of a director, such directors act will not be rendered invalid by reason of such defect.[20]

For the dispatch of their business, directors may meet together, adjourn and otherwise regulate their meetings as they think fit.[21] It is pertinent to note that in the exercise of a director powers under CAMA 2020, a director has the powers on a requisition at any time to summon a meeting of the directors of the company.[22]

3.2 **Powers of the Board of Director**

The powers of a director under Nigerian company law are fundamentally shaped by the Companies and Allied Matters Act 2020 (CAMA 2020), which deliberately limits the authority of individual directors while vesting corporate management collectively in the board. A company may act through its members in general meeting or its board of directors or through officers or agents appointed by members in general meeting or the board of directors.[23] Section 87(3) of CAMA 2020[24] expressly provides that the business of a company shall be managed by the board of directors, thereby confirming that managerial powers reside in the board as a collective organ and not in individual directors acting in isolation. This statutory framework reflects the well-established

[18] Companies and Allied Matters Act 2020, s. 269.

[19] *Ibid*, s. 269(2).

[20] *Ibid*, s. 286.

[21] *Ibid*, s. 289.

[22] *Ibid*, s. 289(3)

[23] *Ibid*, s. 87(1)

[24] *Ibid*, s. 87(3).

principle that an individual director has no inherent unilateral power to bind the company unless such power is derived from the company's articles of association, a formal resolution of the board, or a long-standing and recognised course of conduct that gives rise to implied or customary authority. The board of directors, when acting within the powers conferred upon them by statute or the articles, is not bound to obey the directions or instructions of the members in general meeting provided that the directors acted in good faith and with due diligence.[25]

Section 87(3) further reinforces this position by providing that the directors may exercise all such powers of the company as are not, by statute or the articles, required to be exercised by the members in general meeting.[26] This provision underscores the fact that directors act as agents and trustees of the company's powers rather than as owners of those powers. Where authority is delegated to a particular director, such delegation derives legal force from the board and not from the personal status of the director. Section 289(5) of CAMA 2020 supports this by allowing the board to delegate its powers to a managing director or executive director, subject to such conditions as the board may impose.

The fiduciary limits on directors' powers are codified in sections 305 to 312 of CAMA 2020. In particular, section 305(3) requires directors to act in good faith, in the best interests of the company, and for proper purposes. Section 306 prohibits directors from fettering their discretion or placing themselves in positions where their personal interests' conflict with those of the company without disclosure. Section 307 introduces the statutory duty of care, skill and diligence, requiring directors to exercise the level of competence reasonably expected from a person performing their functions. Therefore, in *Olawepo v S.E.C*[27], the Court of Appeal held that the "*issues of responsibility of a director to the company arises under the duty to the company to exercise reasonable care, skill and diligence"*. These provisions collectively transform what were once purely equitable duties into express statutory obligations.

Judicial authorities continue to give practical meaning to these statutory powers and duties. In *Yalaju-Amaye v. AREC Ltd*[28], the Supreme Court held that directors occupy a fiduciary position and must act with loyalty and fairness, a principle that aligns directly with sections 305 and 306 of CAMA 2020. In *Longe v. First Bank of Nigeria Plc*[29], the Supreme Court further emphasized that directors must exercise their powers strictly in accordance with statutory and constitutional procedures, thereby reinforcing the collective management model established by section 87(3) of the Act.

[25] Companies and Allied Matters Act, 20220, s. 87 (4).

[26] *Ibid.*

[27] (2011) 16 NWLR (pt. 1272) 122.

[28] (1990) 4 NWLR (Pt. 145) 422

[29] (2010) 6 NWLR (Pt. 1189) 1

The authority of an individual director to bind the company in external dealings is also governed by statutory and common law principles of agency embodied in CAMA 2020. The Act protects

third parties who deal with companies in good faith, providing that they are not obliged to enquire into the internal management of the company. This statutory adoption of the "indoor management rule" complements the judicial reasoning in *Hely-Hutchinson v. Brayhead Ltd*[30], which recognized that a director may bind the company where actual or ostensible authority can be established through board acquiescence or past practice.

Recent Nigerian appellate decisions continue to reinforce the statutory framework. In *Skye Bank Plc v. Iwu*[31], the Supreme Court reaffirmed that directors and senior officers are subject to strict fiduciary standards consistent with statutory duties under CAMA. Similarly, in *Bamisebi v. Registered Trustees of Masjid Ala-Nur*[32], the Court of Appeal insisted that corporate officers must act strictly within the scope of authority conferred by statute or constitution, a principle that mirrors sections 87(3) and 305 of CAMA 2020.

In essence, the powers of directors under Nigerian law are derived not from personal discretion but from statutory delegation, constitutional authorisation, and board authority. CAMA 2020, particularly sections 87(3), and 305–308, provides a clear legal framework that confines directors' powers, regulates their exercise, and subjects them to fiduciary discipline. Judicial authorities, both historical and recent, continue to interpret and enforce these provisions to ensure that directors' powers are exercised only in furtherance of the company's legitimate interests.

3.3 **Powers of the Managing Director (MD)**

Under CAMA 2020, the business and affairs of a company are, by default, vested in its board of directors. The board is empowered, under Section 87, to "exercise all such powers of the company" as are not by the Act or the company's Articles required to be exercised by the members in general meeting. This general vesting of management powers in the board ensures that the board, collectively, is the ultimate governance organ responsible for directing and overseeing the company's operations.

However, recognising the practical difficulties of having a full board meet and deliberate every time an operational decision must be taken, CAMA provides for delegation. Under Section 88, unless the Articles provide otherwise, the board may delegate all or any of its powers to committees composed of board members, or to one or more of its members appointed as a Managing Director. This provision is further reinforced under section 289 (5) which provides that the directors may delegate any of their powers to a managing director and the managing director in the exercise of the powers so delegated, conform to any regulations that may be made by the directors. Once such delegation is validly made, the Managing Director becomes for all intents and purposes an organ of the company. Indeed, under Section 89 of CAMA 2020, any act of the managing director, when carrying on in the usual way the business of the company, is treated as the act of the company itself.

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[30] (1968)1 QB 549

[31] (2017) 16 NWLR (Pt. 1590) 24

[32] (2021) 15 NWLR (Pt. 1798) 343

This ensures that the actions of the MD are legally binding on the company in contracts, liabilities, obligations, and other business dealings provided the MD acts within the scope of delegated authority.

In effect, CAMA 2020 transforms the MD from a mere senior employee into a statutory corporate organ once properly appointed and delegated powers. In practical governance and operation, this means that the MD often functioning as Chief Executive Officer (CEO) assumes responsibility for day-to-day management and execution of the company's business. This includes implementing operational decisions, managing staff, entering into contracts, binding the company in business transactions, overseeing operations, and serving as the company's primary representative in external dealings. Corporate-governance commentary often describes the MD, in this context, as "the number one employee … in charge of the running of the day-to-day affairs of the company.".[33] Yet, this delegated power is not unlimited or absolute. The capacity of the MD to act flows entirely from the delegation by the board; if the board does not delegate certain categories of powers for example, major corporate actions such as share issues, disposal of substantial assets, or other reserved matters then the MD lacks authority to act in those respects.

In sum, under CAMA 2020 the Managing Director occupies a pivotal but delegated position in the governance structure: the MD is not inherently endowed with all powers, but once the board validly delegates by virtue of Section 88, the MD becomes a statutory organ whose acts when within authorised scope bind the company[34]

3.4 **Powers of Members in General Meeting**

Under the Companies and Allied Matters Act 2020 (CAMA 2020), members in general meeting occupy the apex of corporate authority, but their powers are neither absolute nor unlimited. The Act reflects the classic corporate law balance between shareholder sovereignty and board autonomy by reserving certain fundamental decisions to members while vesting day-to-day management in the board. This dual structure is principally anchored in Section 87 of CAMA 2020, which provides that although the business of the company is managed by the board, shareholders in general meeting retain powers that are expressly reserved to them by the Act or by the company's Articles of Association.

One of the most important powers of members in general meeting is the power to appoint and remove directors. Under Section 288 of CAMA 2020, members may remove any director before the expiration of his period of office by ordinary resolution, notwithstanding anything in the Articles or any agreement with the director. This power reinforces the principle of shareholder control over corporate leadership. Nigerian courts have consistently upheld this right. In *Yalaju-*

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[33] 360 Solicitors, 'Features of Nigerian Companies Under CAMA 2020 – Part 2' (*360 Solicitors,* 23 January 2021) < https://360solicitors.wordpress.com/2021/01/23/features-of-nigerian-companies-under-cama-2020-part-2/> Accessed 7 December 2025.

[34] Companies and Allied Matters Act 2020, s. 89.

Amaye v. AREC Ltd[35], the Supreme Court emphasised that while directors manage the company, they remain accountable to the members, and can be removed by them through proper statutory procedure. Although decided under the earlier Companies Act, the principle remains fully applicable under CAMA 2020 because the substantive provisions have been preserved.

Members in general meeting also exercise control over the company's constitutional documents. Section 48 of CAMA 2020 empowers members, by special resolution, to alter the Articles of Association. This is a core shareholder power because it allows members to redefine internal governance rules, redistribute powers between organs of the company, or impose limitations on directors. The courts have treated this power as wide but not unfettered. In *Allen v. Gold Reefs of West Africa Ltd*[36] (a case of persuasive authority frequently applied by Nigerian courts), it was held that alterations to articles must be made bona fide for the benefit of the company as a whole, a principle followed in Nigerian corporate jurisprudence.

Another critical area of shareholder authority is control over major structural and capital decisions. Members in general meeting approve increases or reductions in share capital. Under Sections 127 and 130 of CAMA 2020, share capital may be altered or reduced only with shareholder approval, usually by special resolution and subject to court confirmation where required. Similarly, arrangements such as mergers, schemes of arrangement, amalgamations and compromises are subject to shareholder approval under Sections 711–715 of CAMA 2020. These provisions ensure that decisions fundamentally affecting the company's structure and the economic interests of members cannot be taken unilaterally by directors.

Members also possess decisive powers over financial accountability and corporate transparency. Under Sections 374 and 375 of CAMA 2020, the annual general meeting (AGM) must receive and consider the company's financial statements, directors' reports, and auditors' reports. Members approve the appointment and removal of auditors under Sections 401–404. Through these powers, shareholders exercise indirect financial control by scrutinising how directors have managed company resources and by appointing independent auditors as watchdogs over management conduct.

The ability of members in general meeting to declare dividends further illustrates the balance of power. Although directors recommend dividends, members have the final authority to declare them under Section 426 of CAMA 2020 and may reduce but not increase the amount recommended by the board[37]. This ensures that while directors assess the company's financial position and sustainability, shareholders ultimately decide how much of the distributable profits should be returned to them.

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35 (1990) 4 NWLR (pt. 145) 422.

36 (1900) 1 Ch 656.

37 Companies and Allied Matters Act 2020, s. 426(3).

While members possess these significant powers, CAMA 2020 deliberately limits their ability to interfere in day-to-day management. The principle is that once directors are appointed, members

cannot usurp managerial functions except through lawful mechanisms such as altering the Articles or removing directors. This position was clearly stated in *Automatic Self-Cleaning Filter Syndicate Co Ltd v. Cuninghame*[38], a case of persuasive authority in Nigeria, which established that shareholders cannot override the board in matters vested in directors by the company's constitution. Nigerian courts have followed this reasoning, emphasising that general meetings are not a parallel management organ but a supervisory and corrective one.

In exceptional circumstances, however, members in general meeting may assume residual powers where the board is unable or unwilling to act.[39] In *Barron v. Potter*[40], the court recognised that shareholders may act where there is a complete deadlock in the board. Nigerian courts have acknowledged this principle in situations of board paralysis or conflict, recognising the general meeting as the ultimate repository of corporate power to protect the interests of the company.

In sum, under CAMA 2020, the powers of members in general meeting are primarily supervisory, structural, and corrective rather than managerial. They control the composition of the board, amend the company's constitution, approve major corporate changes, scrutinise financial performance, appoint and remove auditors, and ultimately safeguard the company's long-term interests. These powers, reinforced by both statutory provisions and judicial authority, position the general meeting as the supreme policy-making body of the company, while leaving operational management in the hands of directors.

3. Delegation of Powers to Managing Directors and Officers

As already established in preceding paragraphs, under CAMA 2020, delegation of directors' powers is rooted in Sections 87 and 88. Section 87 vests the management of the company's business in the board of directors, while Section 88(1) permits the board to delegate "all or any" of its powers to committees of directors, a managing director, or other officers, where the articles allow. These provisions reflect a modern corporate governance model which recognises that operational efficiency requires functional decentralisation, especially in large or complex companies.

While CAMA 2020 codifies the framework, Nigerian courts in recent years have refined the judicial attitude to delegation and oversight. In *Bello v. Eweka*[41], the Court of Appeal made it clear that directors cannot evade responsibility by claiming reliance on managing directors or senior officers where there is evidence of lack of supervision or failure to exercise independent judgment. The court stressed that delegation is a matter of convenience, not a defence to breach of duty. This

[38] (1906) 2 Ch 34

[39] Companies and Allied Matters Act 2020, s. 291.

[40] (1914) 1 Ch 895.

[41] (2015) 6 NWLR (Pt. 1478) 80

case has become a leading modern authority in Nigeria on directors' continuing accountability notwithstanding delegation. Similarly, in *Union Bank of Nigeria Plc v. Astra Builders (WA) Ltd*[42],

the Supreme Court examined corporate acts carried out by senior officers and reaffirmed that a company is bound by the acts of its authorised officers acting within the ordinary course of business, but that internal failures in supervision may ground liability of directors where the act was ultra vires the internal governance structure. Additionally, in *Intercontinental Bank Plc v. Brifina Ltd*[43], the Court of Appeal affirmed that where a company has held out an officer as having authority (whether via formal delegation or corporate practice), the company will be bound as against third parties acting in good faith. The court emphasised that directors must exercise active oversight because failures in supervision after delegation can expose both the company and the directors to liability.

A particularly important recent authority is *Ecobank Nigeria Ltd v. Honeywell Flour Mills Plc*[44]. While primarily a banking and security case, the Supreme Court made strong pronouncements on corporate authority and attribution of acts to the company, confirming that acts of senior executives taken within the business structure of the company may be attributed to the company itself. Courts have also treated improper delegation as a ground of personal exposure. In *FBN v. Integrated Real Estate Ltd*[45], the Court of Appeal stressed that where directors allow officers to exercise powers without constitutional or statutory authority and without oversight, such acts may be set aside and the directors personally questioned for breach of duty. This reflects the emerging judicial attitude under the CAMA 2020 regime: delegation must be structured, supervised, and legally justified.

The modern Nigerian position therefore reflects a coherent evolution. Delegation is statutorily encouraged under Sections 87–89 CAMA 2020 and operationally necessary, but it is treated by the courts as conditional, not absolute. Directors must ensure that delegation is authorised by the articles, executed in good faith, consistent with their duties under Sections 305–306, and actively monitored. Where these safeguards are ignored, courts now show a growing willingness to pierce the internal arrangement and impose responsibility directly on directors.

In summary, recent Nigerian judicial authorities now emphasise three core ideas: first, that delegation is legally effective and commercially necessary; second, that companies will be bound where officers act within apparent authority created by valid delegation; and third, that directors remain personally accountable for failures of supervision even after delegation. This represents a distinctly modern, post-CAMA-2020 judicial philosophy that balances flexibility with responsibility in corporate governance.

42 (2018) 5 NWLR (pt. 1612) 462.

43 (2022) 5 NWLR (Pt. 1823) 1.

44 (2023) 10 NWLR (pt.1894) 1 SC

45 (2023) 7 NWLR (Pt. 1886) 391.

4. Analysis of the Seeming Conflict in the exercise of Powers of Primary Organs of a Company

The question of which organ of a company wields the "ultimate power"—the members in general meeting or the board of directors—has generated sustained debate in corporate law discourse. This debate arises from the inherent tension between ownership and control, a tension that is structurally embedded in the statutory framework of Nigerian company law. A company being an artificial person, an abstraction, must act through human organs or agents. While the general meeting can be considered as the supreme legislative authority of the company, the directors are, subject to the articles, vested with the power of managing the company on behalf of the shareholders. The directors are not mere agents of the company to carry out its wishes as was formerly thought but are entitled to manage the company in accordance with the power vested in them.[46] In *Dike v Key Constr. Ltd*[47] the Court held that "*prima facie, the directing mind of the company is the Board of Directors".*

The governing provision on the division of powers between the two primary organs is Section 87 of the Companies and Allied Matters Act, 2020. Section 87 (1) CAMA 2020 provides that a company may act through (a) its members in general meeting (b) its board of directors (c) its officers or agents duly authorized. Section 87 (2) provides that the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles. However, the board of directors when acting within the powers as conferred upon it, is not bound to obey the directions or instructions of the members in general meeting provided they act in good faith and with due diligence.[48] Notwithstanding this, the member in the general meeting may in certain instances act in the stead of the board of directors. Some of these instances include; acting in any matter where the board of directors are disqualified or unable to act because of a deadlock on the board or otherwise; instituting legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so; ratify or confirm any action taken by the board of directors; and make recommendations to the board of directors regarding action to be taken by the Board.

One notable point of the conflict between the corporate power of the Board of Directors and the members at the general meeting is in the argument on who has the powers to institute actions on behalf of the company. Generally, the principle as enunciated in *Foss v Harbottle*[49] is that for any injury or wrong suffered by a company, only the company has the powers to redress such injury or wrong. This principle has been supported by Nigerian cases over the years. For instance, in *Omisade v Akande*[50] restated this principle by holding that "*in order to redress a wrong done to the company or to recover moneys or damages alleged to be done to the company, the action should prima facie be brought by the company itself".* Similarly, the principle was rehashed in *Citec Int'l*

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[46] *Automatic Self-Cleansing Filter Syndicate Co v Cunninghame* (1906) 2 Ch 34; *Shaw and Sons (Salford) Ltd v Shaw* (1935) 2 KB 113.

[47] (2017) 14 NWLR (Pt. 1584) 1

[48] Companies and Allied Matters Act 2020, s. 87(4).

[49] (1843) 67 ER 189

[50] (1987) 2 NWLR (Pt. 55) 158 (SC)

Estates Ltd v Francis[51]. Although, a company is a corporate personality with the powers of a natural person[52], the company notwithstanding, acts through its directors and members of at general meeting. They are regarded as the "hands" and "brains" of the company. Therefore, where there is a wrong against the company although, generally the company has the vires to redress that wrong, there has been argument on which between the board of directors and the members at general meeting has the powers to authorise the institution of such action.

In *Ladejobi v Odutola Holdings Ltd*[53] one of the issues for consideration in the Court of Appeal was who, between the Board of Directors and the general meeting, had the power to authorise the company to commence action in the court in the light of section 63 of the old CAMA.[54] In interpreting section 63(3) and (5) of the old CAMA, which is *pari materia* with section 87(3) and (5) of CAMA 2020, the Court of Appeal , per Aderemi J.C.A held after considering the decision in *Emesim v Mrs Nwachukwu*[55] where the word "notwithstanding" was held to mean "inspite of". The learned justice of the Appellate Court in his considered words held inter alia as follows:

> "I adopt the meaning ascribed to the word "notwithstanding" in this case as appropriate for the same word as used in section 63(5) of the CAMA. It then follows that when subsection (3) is read in conjunction with subsection (5), it translates to this: that although by virtue of subsection (2) of section 65, the power to manage the business of the company is vested in the Board of Directors, by virtue of subsection 5 all the same or nevertheless, the general meeting retains the power to determine whether legal proceedings may be instituted in the name of the company. Whereas subsection (3) places the management of the general business of the company under the Board of Directors, subsection 5(b) put a specific item under the exclusive control of the members sitting at a general meeting…where in a section of a statute, there is a provision in a subsection vesting power in a body to carry out certain specific duties, it seems to me that the intention of the law maker is to take away from the control of that body charged with performing the general duties, the power or authority to perform those specific duties. In construing the whole of section 63 of CAMA, the irresistible conclusion is that the powers of management or control of the company insofar as they affect the institution of litigation in the company's name are vested in the general meeting".

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[51] (2021) 5 NWLR (Pt. 1768) 148. See also, *Mainstreet Bank Reg. Ltd v Oshinuga* (2025) 5 NWLR (Pt. 1984) 727.

[52] Companies and Allied Matters Act, 2020, s. 43.

[53] (2002) 3 NWLR (pt. 753) 121

[54] Companies and Allied Matters Act 2004.

[55] (1999) 6 NWLR (pt. 605) 154 at 167

> Apparently, the decision of the Court of Appeal in *Ladejobi* seem to hold that the powers to authorize an action on behalf of the company lies with the members of general meeting as against the board of director.

However, contrary to the position of the Court of Appeal in *Olawepo v S.E.C*[56] the Court took a different position on this matter. In this case, the Court of Appeal while interpreting section 63(3) and (5) of the old CAMA held "*by virtue of section 63(3) Companies and Allied Matters Act, directors of a company are permitted to authorise or take actions that would protect the business of the company except if the company's articles contain otherwise".* Similarly, in *Ejekan v Devon Ind. Ltd*[57] the Court of Appeal on who has authority to institute an action or brief counsel on behalf of company held as follows, "*...any Director of a company may institute an action to protect the interest of the company".*

In the light of this seeming conflict, this paper seems to align with[58] the decision of the courts that support the powers to authorise an action on behalf of the company on the Board. This paper describes the powers of the general meeting in the light of section 87(5) and particularly under paragraph (b) of CAMA 2020 as "interventionist" and "remedial" and only operate when the Board of Directors neglects to act. Thus, generally, the powers to institute legal proceedings in the name and on behalf of the company lies with the Board of Directors, and the general meeting will only supplant them of this power where they fail to act or neglect to act. To this end, the general meeting cannot in the first-place institute legal proceedings in the name and on behalf of the company where the Board of Directors have not apparently failed or neglected to act. This position was supported by the Court of Appeal in *Ejekan v Devon Ind. Ltd,* where it held on who has authority to institute an action or brief counsel on behalf of a company as follows,

"...in matters, concerning the interest of a company in case it is being badly run or managed by the Directors…only then can the members of general meeting can sue or ratify any irregular conduct". Ostensibly, the powers of the general meeting to maintain legal actions against a company will only arise as an interventionist measure only where the Board of Directors have neglected or have badly handled the case.

Furthermore, it is the position of this paper in the light of the seeming conflict that the powers of the Board of Directors and the members at general meeting can be likened to the executive and legislative arms of the government in Nigeria and the powers they yield. The Board being the executive and saddled with the day-to-day management and running of the company and the general meeting being the legislature with the legislative powers to checkmate the powers which the Board of directors' yield or may exercise for the general interest of the company. Section 87(5) of CAMA 2020 accentuates this analogy by saddling responsibilities on the members of the general meeting to (a) act in any matter if the members of the board of directors are disqualified or unable

[56] (2011) 16 NWLR (Pt. 1272) 122

[57] (1998) 1 NWLR (Pt.534) 417

[58] *Supra.*

to act because of a deadlock on the board or otherwise; (b)) institute legal proceedings in the name and on behalf of the company, if the board of directors refuse or neglect to do so; ratify or confirm any action taken by the board of directors ; or (d) make recommendations to the board of directors regarding action to be taken by the board. These powers are all measures geared at checkmating the powers of the Board of Directors notwithstanding that the business and day-to-day management of the company is managed by the board of directors who may exercise all such powers of the company as are not provided under statute or the articles required to be exercised by the members in general meeting[59].

Conclusively, this paper posits that while the Board of Directors have the powers to manage the business of the company, however, to ensure corporate accountability the general meeting is saddled with the powers to ratify, intervene and authorize certain acts of the Board where necessary.

6. Conclusion

This paper has examined the allocation, exercise, and interaction of corporate powers among the primary organs of a company under the Companies and Allied Matters Act 2020 (CAMA 2020). It has demonstrated that CAMA 2020 deliberately adopts a structured governance framework that separates managerial authority from shareholder oversight in order to promote efficiency, accountability, and corporate stability. By vesting the management of the company's business in the board of directors under section 87, while reserving supervisory, constitutional, and corrective powers for members in general meeting, the Act reflects the modern corporate law principle that ownership does not equate to managerial control.

The analysis shows that individual directors possess no inherent authority outside collective board action, while managing directors derive their powers entirely from valid delegation by the board and operate as statutory organs only within the scope of such delegation. CAMA 2020 further reinforces this structure by codifying directors' fiduciary duties and imposing continuing obligations of oversight notwithstanding delegation. Judicial authorities, both historical and recent, have largely upheld this division of powers, recognising the primacy of the board in management while permitting shareholder intervention only through lawful and clearly defined mechanisms.

The paper also addressed the seeming conflict between the powers of the board of directors and those of members in general meeting, particularly in relation to the institution of legal proceedings on behalf of the company. It argued that section 87(5) of CAMA 2020 confers residual and interventionist powers on the general meeting, which arise only where the board is unable, unwilling, or has neglected to act. Accordingly, shareholder powers are corrective rather than managerial, serving as a safeguard against abuse, deadlock, or failure of corporate leadership. When properly understood, the statutory framework reveals not a conflict of powers but a complementary system of checks and balances designed to protect the company's interests.

[59] Companies and Allied Matters Act 2020, s. 87 (3).

7.Recommendations

First, greater legislative and judicial clarity should be provided on the scope of section 87(3 and 5) of CAMA 2020, particularly regarding the circumstances in which members in general meeting may authorise the institution of legal proceedings. Clear statutory or regulatory guidelines would help reduce conflicting judicial interpretations and promote certainty in corporate decision-making. Second, companies should ensure that their articles of association expressly delineate the powers of the board, managing directors, and members in general meeting. Clear constitutional drafting can minimise disputes over authority and align internal governance with the statutory scheme under CAMA 2020.

Third, boards of directors should adopt formal delegation frameworks that clearly define the scope, limits, and reporting obligations of managing directors and senior officers. This will enhance operational efficiency while ensuring compliance with fiduciary duties and oversight obligations imposed by the Act.

Finally, courts should continue to adopt a purposive and governance-oriented approach in interpreting section 87 of CAMA 2020, one that balances managerial autonomy with shareholder protection. Such an approach will strengthen corporate accountability, enhance investor confidence, and ensure that the objectives of CAMA 2020 in promoting sound corporate governance are fully realised.