

## **A Critical Appraisal on the Application of the Doctrine of Indoor Management to Memorandum and Articles of Association Under Companies and Allied Matters Act (CAMA), Laws of the Federation of Nigeria (LFN), 1990 (As Amended)**

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Article DOI: 10.48028/iiprds/ijiretss.v8.i1.05

### **Abstract**

This study examined the Doctrine of Indoor Management in relation to Memorandum and Articles of Association under Companies and Allied Matters Act, (CAMA). In the study the researcher discussed the origin of the doctrine of indoor management and its subsequent application to Nigerian corporate law with particular reference to companies' memorandum and articles of association. The methodology adopted in this study is doctrinal method whereby primary and secondary sources forming part of related literatures and judicial decisions are used. The researcher identified the legal problems associated with the doctrine which consequently, gave rise to statutory and judicial differences. The main findings in this study therefore were the two conflicting positions of the Act and that of the judicial decision on the doctrine. Accordingly, while the Act relieved persons from making inquiries on the powers of a company, courts have however, maintained a contrary position. Consequently, the researcher recommended for amending the provision of CAMA as regard the doctrine so that there would be conformity between the statute and judicial pronouncements.

**Keywords:** *Critical Appraisal, Doctrine of Indoor Management, Memorandum and Articles of Association, Companies and Allied Matters Act.*

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### **Background to the Study**

The Doctrine of Indoor Management arose sometimes in 1856 to supplement the rigorous and economically negative impact of the Doctrine of Constructive Notice. The doctrine of constructive notice presupposes that a person is presumed fully aware of the existence of certain facts, even though knowledge thereof has not actually been perceived by any of his senses but (those facts) are made available to the public. is a limitation to the doctrine of constructive notice? It is otherwise known as the rule in *Royal British Bank v Turquand*. The rule, though passed through several judicial modifications is direct opposite to the doctrine of constructive notice; same was essentially propounded in a bid to protecting outsiders against the fraudulent activities of crafty companies. The gist and legal consequence of the doctrine is that individual third parties contracting with a company in ignorance of its internal irregularity otherwise he is not hinted of the irregularity which may likely make him feel suspicious and resolve to embark on inquiries, would not be made to shoulder any liability thereof.

In Nigeria however, the doctrine has first came to light same was adopted and applied in decided cases and subsequently enshrined in the Companies and Allied Matters Act (CAMA) in 1990 consequent upon which, the hitherto position was changed and the *Turquand* Rule was modified. The current position of the law is that third persons dealing with companies are entitled to assume that all is well as per as its memorandum and articles of association.

### **Statement of the Problem**

Section 69 (now section 93) of the Companies and Allied Matters Act LFN, 2004 provides for the Doctrine of Indoor Management, consequently, persons dealing with companies through their agents are consequently entitled to assume that all internal formalities pursuant to memorandum and articles of association are duly complied with. However, position of judicial decisions in Nigeria has not been the same with provisions of the Act which accordingly yield to irreconcilable differences in our corporate matters.

### **Methodology**

The methodology adopted in this paper is doctrinal method whereby the materials used are documentary. The paper therefore relies on the analysis of both primary and secondary documents. This among other things includes materials such as statutes, text books, case laws articles, journals, papers and reports presented during seminars or workshops, internet materials and so on. It is generally used to study the law the way they are, to develop new concepts or to re-interpret the existing ones.

### **Nature and Origin of the Doctrine of Indoor Management**

The term indoor refers to performing some acts behind closed doors or inside building not necessarily accessible as of right by outsiders (Robinson, 2006; pp 773). Management on the other hand, presupposes an act of devising an intellectual skills by directing or planning some acts (Hornby, n.d., p. 611). It also refers to dealing with public or private affairs by direction, regulation or administration for the purposes of gaining profits or for peace and enjoyment by the members of a community or organization (Black, 1990; pp 960). The doctrine of indoor management otherwise, presumption of regularity means that if a person in good faith deals

with a board of directors or any other representative body of the company while exercising powers of and directing business and affairs of the management, as argued by Arti, (2019) that person is not affected by any defects in internal procedure or by its failure to fulfil conditions which are required by the company's memorandum or articles to be fulfilled before the act or transaction is effected.

The principle of indoor management was first decided in the case of *Royal British Bank v Turquand* (1875) LR 7 HL 869 in which the directors of the defendant company borrowed the sum of £2,000 from the plaintiff. According to its memorandum and articles of association, the directors are only empowered to borrow money subject to approval by an ordinary resolution of the members in general meeting. The resolution was in fact passed but it had not specified the amount the directors could borrow. The company contended that under its articles of association, directors are only empowered to borrow certain amount authorised by resolution of simple majority of members in its general meeting. It was held that the bond was valid and enforceable; as such the plaintiff can legally enforce its terms. The court further held that the plaintiff bank is by law, permitted to assume that the resolution permitting the directors to borrow the amount pursuant to the articles was duly held and allowed, it was not in position to know or enquire about the internal formalities of the company. The defendant company was therefore liable. According to the court:

*... We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done.*

It is clear that by the judicial decision above, a third party is still having some little problems in the sense that the rule only obviated him from the cumbersome and burdensome inquiries into the internal affairs of a company to which the doctrine of constructive notice hitherto, made no reference.

Some common law countries in many jurisdictions adopted the *Turquand* Rule in judicial decisions and statutory provisions. The rule was modified in some cases like the case of *Mahony v. East Holyford Mining Co* (1875) LR 7 HL 869 where new principles emerged as in the case of *Morris v. Kanssen* (1946) 1 All ER 546 was laid down to meet up the test of the day and to defeat attempts by crafty companies to rely on lack of board meeting or sufficient quorum to pass a resolution (Campbell, 1960), In recent times, the *Turquand's* Rule has played significant role to the development of the law and jurisprudence. The rule is now firmly entrenched in countries like Section 290 of the Indian Companies Act, 1956, United Kingdom, Section 290 of the Indian Companies Act, 1956, India and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria (LFN), 2020, Nigeria, just to mention a few. The sections, though differently worded, bear the same meaning. Consequently, acts done by a

person as director is in law valid notwithstanding that his appointment may afterwards be discovered invalid by reason of any defect or by virtue of any provision contained in the articles that are of internal regulations (Emiola, 2001; pp 108).

As such, the rule appears to protect third parties and perhaps any member or director of the company due to their ignorance of a particular transaction that they seek to enforce. Conversely, any outsider who has knowledge of the affairs of the company or is put on inquiry would not be protected by this rule (Campbell, 1960),

Many common law courts followed the rule in *Turquand* case and in some cases many novel principles emerged to the extent that the rule is now settled in United Kingdom. Accordingly, section 40 of the Companies Act of the United Kingdom, 2006 provides that a company is bound by the acts of its agents notwithstanding anything to the contrary as may be contained in its articles of association. By section 290, Companies Act, 1956, India, the principle in *Turquand* case was firmly codified whereby acts of company agents are considered binding on the company notwithstanding anything to the contrary as may subsequently be discovered.

Similarly, *Trunquand* case also attracted subsequent common law courts whereby some followed the principles accordingly while others deviated therefrom owing to some newly emerged facts. Most of One of these cases is the case of *Mahony v. East Holyford Mining Co.* (1875) LR 7 HL 869, in this case, a company was formed by one Wadge but its memorandum and articles of association was subscribed by two persons to purchase his (Wadge) Mine at a price in excess of its real value. Hoare and Wall subsequently joined Wadge in directing the company's affairs together with four clerks employed by Wadge and one independent person, McNally. The articles empowered the subscribers to appoint the company directors. This was not in fact done. However, Wadge Hoare and Wall continued managing the company's affairs from its registered office and issued a prospectus inviting ordinary members of the public to subscribe to its shares. The money received from the applicants was deposited in the company's account at the appellant bank. Afterwards, Wadge communicated to the bank as 'Secretary', (though he was never appointed to the post), asking them to honour *cheques* signed on the company's behalf by any two of the three directors which the bank made no inquiries.

The company went into liquidation and the liquidator sued the bank for the amount thus paid. The bank while relying on the basis of the *Turquand* rule argued that it was not liable as it had no knowledge of the directors' lack of authority. It was held that the bank was not legally required to enquire about the internal procedure but rather the memorandum of and the articles of association. The bank in so doing, it would have found that there was a specified procedure of appointing directors and from this; the bank could reasonably have assumed that the directors had actually been appointed. This case is apparently distinct with the *Turquand* rule and the rule of Apparent Authority of a company's agents. In the former, unlike the latter, a party does not need to rely on the representation and act on it. If this were the case, the bank would have been held to the standard of the reasonable man and accordingly, would have had a duty to at least inquire whether all the procedures have been followed.

Similarly, the *Turquand* rule is not applicable to parties that formed parts of the company management though, were alien to the procedures in question. This question was decided in the case of *Morris v. Kanssen*, (1946) 1 All ER 546, where the appellant on the date of transfer of shares was appointed to the Company's Board of Directors. It was not within the appellant's knowledge that the procedural requirements of appointing the other directors had not been followed. The court held that the appellant could not rely on this rule as he had assumed the position of a director on the date of the transaction and was thus under an obligation to inquire about the procedural requirements of such transfer and whether the requisite authority had been vested with the other directors. In the instant case, the court did not question the *Turquand* Rule itself, simply because had the appellant not been appointed a director at the time of the transfer, his reliance on the *Turquand* Rule would have been successful.

### **Application of Doctrine of Indoor Management to Nigerian Corporate Law**

The doctrine of indoor management was first embraced and applied in the Nigerian corporate matters through judicial pronouncements. This principle was laid down in the case of *In Pool House Group (Nigeria) Ltd. v. African Continental Bank Ltd.*, (1969) N.M.L.R. 347, the plaintiff company was a customer of the defendant bank. To secure an overdraft of £25,000 from the bank, the plaintiff executed a deed of mortgage comprising leasehold land in favour of the bank. The deed was signed by a director of Lebanese origin, another director and the secretary, under the company's seal. The company sought a declaration that the purported mortgage was null and void, in that the director of Lebanese origin purporting to act as a director of the company was an alien, and was prohibited under section 33 (4) of the Immigration Act 1963 from being a director of the company. The court held that the defendant bank was entitled to assume that the director was properly appointed and had the authority to execute the mortgage on behalf of the plaintiff company.

Also in *African Development Corporation Ltd. v. Lagos Executive Development Board & Anor.*, (1978) NSCC 220, the plaintiff acquired leasehold of two plots of land from the first defendant, LEDB which executed a deed of lease in plaintiff's favour. Afterwards, following a request conveyed by the managing director of the plaintiff company to surrender the deed and be released from the contract, the plaintiff's general manager who was a director of the company, signed the deed of surrender on behalf of the company which was witnessed by an accountant with the company's seal affixed. Eleven years later, the plaintiff brought an action against the 1<sup>st</sup> defendant seeking a declaration that the deed of surrender was null and void, claiming that the board of directors had not given the general manager authority to execute the deed of surrender. It was held applying the earlier authorities, that the defendant board was entitled to assume that plaintiff's general manager being a director in his own right in the company, had authority to execute the deed of surrender of the lease, and that the plaintiff company was bound accordingly.

In another case of *Trenco (Nigeria) Ltd. v. African Real Estate and Investment Co.*, (1978) 3 S.C.9, (1978) 1 L.R.N. 146, The appellants claimed against the respondents, the sum of N102, 702.73, as endorsers of a Bill of Exchange, dated 1<sup>st</sup> March, 1972 and payable on the 30<sup>th</sup> March 1972; and in the alternative, as guarantors of a contractual undertaking made to the appellants by West African Steel and Wire Company Limited. The West African Steel and

Wire Company Limited had been indebted to the appellants, and being unable to settle the debt, it was agreed by both parties, that the debt be liquidated monthly, over a period of time; with the respondents as guarantors in lieu of a Bankers Guarantee. The appellants accepted twelve Bills of Exchange endorsed by the respondents, each bill maturing monthly. The first bill was successfully negotiated but the second was dishonoured. The appellants (as plaintiffs) commenced this action to recover the amount. The respondents denied liability, stating inter alia that: (1) the director who purported to act for them did not have the authority to do so; (2) no consideration moved from the appellants in respect of the guarantee; and (3) the bill was never properly presented to them and the appellants never gave them any notice of dishonour of the said bill. The Supreme Court held that the defendants were entitled to assume that the chairman of the plaintiff company had the authority to enter into a binding contract with the defendant company on behalf of the plaintiff company.

Statutorily, the doctrine of indoor management came to light in Nigerian legislation when Companies and Allied Matters Act was promulgated in 1990. Adoption of the doctrine followed abolition of application of the doctrine of constructive notice with respect to the company's memorandum and articles of association under section 68 {now section 92}. Accordingly, the section provides that except as mentioned in section 223 of this Act, regarding particulars in the register of particulars of charges, a person is not deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Commission or referred to in the particulars or documents so registered, or are available for inspection at an office of the company. Though the Act witnessed several amendments, it is provided for under section 69 and presently, section 93 of the Act. The Act provides that where a person deals with a company or with any of its officers or agents, that person is entitled to assume that certain acts of the company are in line with its constitution and the company and its officers or agents are estopped from denying its truth subsequently. These acts are as follows:-

*That there is due compliance with the company's memorandum and articles of association. This principle codifies the position of Turquand's Rule in that persons dealing with the companies through its officers or agents are deemed to have ascertained that the transaction so entered is not inconsistent with its articles of association* (Emiola, 2001; pp108).

That the particulars of persons described to act as a director, managing director or company secretary as filed with the commission in compliance with sections 36 (4) (c), 319 and 337 of the Act has been duly appointed and vested with authority to exercise and perform the functions of holder of these offices respectively. This position was followed and applied by subsequent judicial pronouncements. For instance, in the case of *Batracco Ltd. v Spring Bank Ltd.*, (2015) 5 NWLR (pt. 1451); pp 107, it was held that where a board of directors gives security in accordance with their legitimate powers or authority derived from the constitution of the company, a third person dealing with them is entitled to assume that they have power to do so.

However, it would appear that this rule cannot be upheld in all cases involving the authority of company employees. Its application or otherwise depends on a particular circumstance of each case including the status of the company official. This principle could be seen in the case of *Onuh v. United Nigeria Insurance Co. Ltd.*, (1974) 3 A.L.R. Comm. 15, the court held that the rule was inapplicable and the company was not bound to a third party on the basis of a letter written by a clerk who did not sign even in a representative capacity. The court held that the plaintiff was under a duty to find out what position the person who signed the letter that emanated from the company; he was not entitled to assume that a company clerk is an authorized official. The inevitable conclusion from this is that, when an employee or agent of a company does not occupy certain position in a company whereby it will be usual for him to have been delegated authority to bind the company in a particular transaction, the company will not be bound, unless he has actual authority or has, in some other way, been held out as having authority to bind it in relation to that transaction.

### **Third Party's Ignorance of the Company's Constitution**

There exist an irreconcilable difference between the Act and the courts' decision in respect of the dealings by a third party with the company or its agent in ignorance of the latter's constitution. It is no longer in dispute that documents filed with the Registrar of Companies is ranked public documents, as such, members of public are assumed to have read and fully aware and understood their contents, hence, constructive notice. (Ogbuanya, 2010 p. 202). Pursuant to section 68 (now section 92) application of the doctrine is however, abolished with particular reference to memorandum and article of association. (Arti, 2019). This being the case, it could safely be inferred that a third party is not bound to inquire the company's constitution to know the extent of its power in relation to the transaction at hand.

*On the contrary, other legal text writers and judicial authorities have clearly departed from the above principle in which they expressed that a person seeking to invoke the *Trunquand* rule must first show that he has knowledge of its memorandum and articles of association (Ignatus, 1984; pp 62).*

In a Nigerian case of *Ajayi v. Lagos City Council*, (1967) (3) A.L.R. Comm. 213, which followed the common law of *Ajayi v. Lagos City Council*, (1967) (3) A.L.R. Comm. 213 wherein the articles of association allowed powers to be delegated to a director of the company. The plaintiff entered into a contract with a director who had no power to do so. But the plaintiff was not aware of the delegation of powers contained in the articles of association. It was held that the plaintiff who had no knowledge of the articles could not rely on it as conferring ostensible or apparent authority on the directors and that the company was not estopped from establishing that there was no authority in the director to enter into the contract or agreement with the plaintiff on its behalf.

It should be stressed that, if persons dealing with the company are assumed aware of the company's capacity and extent of its powers (as contain in the memorandum and articles of association) to the extent that no party can successfully invoke *Trunquand* rule without first having full knowledge of the company's constitution, thus making the knowledge of the constitution mandatory. This could be seen as a tacit affirmation for the hitch-free operation of the doctrine of constructive notice, (Oshio, n.d., p. 70-87) which has completely been abolished by the operation of section 92 of the Act.

## **Conclusion**

The doctrine of indoor management otherwise known as the *Turquand* Rule is an equitable principle which the court employed in order to supplement the rigorous of common law doctrine of constructive notice. The principle was enunciated in the case of *Royal British Bank v Turquand* and applied to Companies and Allied Matters Act. The application was based on presumption of regularity because persons dealing with companies are not legally entitled to gain access to its internal affairs nor is the company bound to disclose same. It is unequivocally clear that operation of the doctrine of indoor management was not meant to disturb or restrict operation of the doctrine of constructive notice, but rather to halt encroachment of the constructive notice. Though the Companies and Allied Matters Act has completely abolished application of the doctrine to memorandum and articles of association, some judicial pronouncement seemed to have nodded its operation to the contrary.

## **Observations/Findings**

The doctrine of indoor management as examined in this paper was established to protect such fraudulent activities by companies in a quest to escape liability arising from a particular transaction which may likely result in lost of confidence and back of trust between third parties and the companies.

An impecunious outsider intending to rely on the *Turquand* rule to enforce his contract with a particular company is mandated to make enquiries on company's constitution to know extent of its powers, an exercise which the law has abolished.

## **Recommendations**

The observations made in this paper was characterised by some problems which consequently gave rise to the following recommendations:

1. The law should device a legislation to relax active participation by companies and their agents in the commission of fraudulent activities in their dealing with third parties dealing with them.
2. Our courts should be invited amend their previous decisions to conform with the existing laws.



## Reference

- Arti, B. (2019). *The doctrine of constructive notice and doctrine of indoor management*, <https://thecompany.ninja/doctrine-of-constructive-notice/>
- Black, M. A., (1990). *Black's law dictionary 6<sup>th</sup> edition*, St. Paul, Minn. West Publishing Co., Massachusetts.
- Campbell, I. D., (1960). Contract with companies: II – the indoor management rule, 76, *Law Quarterly Review*, 115, 117, from [legalserviceindia.com/article/1203-Indoor-Management.html](http://legalserviceindia.com/article/1203-Indoor-Management.html).
- Deji, A. (1991). *Companies and allied matters law and practice, 1<sup>st</sup> edition*, Lagos: DSC Publications
- Emiola, A., (2001). *Nigerian company law*, Emiola: Publishers, Ogbomosho.
- Hornby, A. S., (2000). *Oxford advanced learners dictionary*, Oxford University Press, London.
- Ignatus, A. (1984). *Nigerian company law, 1<sup>st</sup> edition*, Graham Burn, Bedfordshire.
- Ogbuanya, N. C. S, (2010). *Essentials of corporate law practice in Nigeria*, Lagos: Novena Publishers Ltd,
- Ojo, A. A. (2017). A legal excursion into the consequences and effects of the doctrine of ultra vires in Nigerian corporate governance Vol. 65, *Journal of Law, Policy and Globalization*, 224
- Oshio, P. E., (2016). The indoor management rule and agency principles in Nigerian Company law Modern Practice, *Journal of Finance and Investment Law*, 9 (1-2), 70-87).
- Robinson, M. (2006). *Chambers 21<sup>st</sup> century dictionary*, New Delhi: Harrap Publishers Ltd.
- Sasegbon, D. (1991). *Companies and allied matters law and practice 1<sup>st</sup> edition*, DSc Publications, Lagos.