



## THE POSITION OF THE SECRETARY IN A REGISTERED COMPANY IN NIGERIA: A CRITICAL DISCOURSE

**SHEKARA PEACE JOHN**

Federal Polytechnic Bauchi, School of  
Environment, Department of Estate  
Management

### **ABSTRACT**

*The company secretary is one of the very important persons of a registered company who is involved in the daily implementation of management decisions with other officers of the company that form part of the management team under the*

### **Introduction**

The company secretary as an important officer of a company is more than a mere servant whose functions are prima-facie “clerical and ministerial only”, and that his duties were “of a limited” and somewhat humble character<sup>2</sup>. Note that the law has since left proponents of such view behind as it has proceeded to elevate the company secretary into a principal officer in the similar position with managers and directors and with the statutory powers that can bind the company as if the acts of the secretary were that of directors and managers of the company. The law also made the existence of a secretary indispensable in the company and by implication graduate him from a record keeper to the position of a principal officer in the company.

<sup>1</sup> The Companies and Allied Matters Act Laws of the Federation of Nigeria 2004

<sup>2</sup> J. O. Oroja, Company Law and Practice in Nigeria. Mayi and Associates (Nig) Ltd, Ikota, Isolo, Lagos



*oversight of the managing director. Despite the fact the company secretary does not take part in management decisions, but the law made it mandatory that every registered company in Nigeria must have a secretary. Therefore, the position of the secretary, his functions, mode of appointment and removal will be discussed in this paper to determine his importance and powers in the company.*

**Keywords:** Position, Secretary, Registered, Company, Nigeria, Critical Discourse

### **The Position of the Secretary under Common Law**

the company secretary under the common law was regarded as a mere servant of the company whose function was to carry out secretarial responsibilities at its general meetings and that of board of directors. His duties in the company were “of limited and somewhat humble character”<sup>3</sup> in *Barnetti, Haores and co vs south London tramways co*<sup>4</sup>. Lord Esther said, inter alia that;

“a secretary is a mere servant; his position is that he is to do what he is told, and no person can assume that he has authority to represent anything at all...”

In the early English company’s statutes, no provision was made for the position of a secretary until 1948 when section 177(1) UK companies act made such provision. Accordingly, in Nigeria, section 169 of the companies and allied matters act 1968 made the appointment of a company secretary mandatory. Even then, neither the English common law nor the Nigerian act clearly spelt out the general duties of the secretary and these were left to the directors, the general

---

<sup>3</sup> 2 Q. B. (1971)

<sup>4</sup> 1971 Nigeria Supreme Court Cases



meetings, and sometimes, the court to determine as circumstances required.

The opinion of lord Esther was the decision of the court until 1971 when the modern view was formulated in panorama developments (guild ford) ltd vs fidelis furnishing fabrics ltd. Where the question for determination in the court was the ostensible authority of a secretary. It was contended that the position of the secretary still remains as stated by lord Esther M. R. but lord Denning in his judgement referred to that statement of the law and said;

*“but times have changed, a company secretary is a much more important person nowadays than he was in 1887, he is an officer of the company with extensive duties and responsibilities, this appears not only in modern companies acts, but also by the role which he plays in the day-to-day business of the companies. He is no longer a mere clerk...”*

Salmon L.J. strengthens the argument further and state thus;

*“at the end of the last century a company secretary still occupied a very humble position very little higher if any, than a minor clerk. Today, not only has the status of a company secretary been enhanced, but that state of affairs has been recognized by statute...”*

The above views have since guided the English courts in their approach to the question of the status and authority of the company secretaries.

Prof. Gower therefore observed that;

*“it is arguable, therefore, that the secretary has also graduated as an organ of the company. Though appointed by the directors, he is not their servant, but an officer of the company with substantial authority in the administrative sphere and with powers and duties derived directly from the articles and*



*the companies acts. And in the performance of his statutory duties, he is clearly entitled to resist interference from the members, board of directors or managing director, where he differs from them is that he has no responsibility for corporate policy or for making managerial decisions, as opposed to playing on administrative role in ensuring that the policy and managerial decisions are implemented”<sup>5</sup>*

Nigerian courts have also followed the position of the English courts as illustrated in the case of Okeowo vs Migliore where Idigbe J.S.C. opined that in Nigerian law, a company secretary is “a principal officer of the company”

Similarly, in Wimpey Ltd v Balogun <sup>6</sup> where the question for determination was whether the service of court process on a clerk secretary employee instead of the secretary was valid. The court held that it was a bad service because it is the secretary not the clerk that is an administrative officer of the company.

This new status of the company secretary continued to enhance with the expansion of the scope of business of companies, to the extent that it has gained statutory recognition in the principal law regulating company matters that is the companies and allied matters act 1990 (as amended) the act regulate everything about the existence of the secretary in the following terms;

**Appointment:** section 293(1) CAMA provides that every company must have a secretary. A critical look at the provision cited suggest that the word Must as used in the section made compulsory for all companies to appoint a secretary and refusal to comply with the law is capable of making the activities of the company illegal.

---

<sup>5</sup> (1957) 2 Nigeria Weekly Law Report Pt 322

<sup>6</sup> Wimpey (Nig) Ltd V Balogun (1986) 3



**Qualifications of the secretary:** section 295 CAMA provides that it is the duty of the directors to take all reasonable steps to ensure that the secretary is a person who appears to them to have the requisite knowledge and experience to discharge the functions of the secretary of the company.

While

The law did not specifically mention the qualification of a private company secretary; the qualifications of the company secretary is expressly stated as follows according to section 295 CAMA

- a. A member of the institute of chartered secretaries and administrations; or
- b. A legal practitioner within the meaning of legal practitioners act 1975; or
- c. A member of the chartered institute of accountants of Nigeria or such other bodies of accountants as are established from time to time by the act or an act; or
- d. Any person who has held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or
- e. A body corporate or firm consisting of members each of whom is qualified under paragraphs a, b, c, or d. of this section.

From the foregoing, the company secretary is a highly skilled individual and highly responsible and respected persons. It is important to note that the act statutorily recognizes the professional status of the company over the board of directors who are responsible for appointing him.

Furthermore, section 650 (1) CAMA <sup>7</sup> went further to show that the company secretary is indeed a very important officer of the company

---

<sup>7</sup> Lexpraxisng.com



and defines an officer to include a director, manager and secretary thereby placing the secretary in the class of directors and managers of the company.

### **Duties of the Company Secretary**

Before the advent of the companies and allied matters act, the duties of the company secretary were limited to secretarial duties and other related duties. However, the secretary under the act regime have specific and clearly defined duties as regulated by section 298 (1) of the act. The section provides that;

“the duties of the company secretary shall include the following”

- a. Attending the meeting of the company, the board of directors and its committees, rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meeting with the applicable rules and regulations.
- b. Maintaining the registers and other records required to be maintained by the company under this act
- c. Rendering proper returns and giving notifications to the commission required under this act; and
- d. Carrying out such administrative and other secretarial duties as directed by the directors, or the company.

From the foregoing, no meeting of the company and that of the board of directors will be valid without inviting the company secretary, and by section 293 (2) no other person can perform the functions of the secretary once there is a secretary who is capable or acting.

It is respectfully submitted that from the foregoing discussions of the provisions of the act, the new status of the company secretary made him the principal organ of the company and has ostensible powers to bind the company without any delegation from the board or general



meeting as required by section 221(1) of the act. The question as to whether the secretary is a management staff or not remain arguable, however, this researcher has with humility and respect affirmed the secretary as a management staff since he facilitates the performance of management functions by the board and general meetings, and without such facilitation, management is almost impossible.

If other management officers can be invested with corporate organic powers, it is respectfully submitted that the secretary should be invested with such powers also, considering that no valid and acceptable company or board meetings can hold without the input of the secretary in law and that makes the secretary under the act as important as other organs.

### **Removal of Company Secretary**

In an effort to further strengthen the position and office of the secretary, the law made express provisions for the procedures of removing a company secretary. This is to protect the office from being overshadowed by the board of directors and to prevent unnecessary intimidation that will prevent him from freely discharging his lawful duties without fear or favour.

Section 296 (1) <sup>8</sup> of the act provide that a secretary shall be appointed by the directors and subject to the provisions of this section, may be removed by them. If the board of directors desires to exercise their power of removal on the secretary, section 296 (2) of the act spells out the procedures for his removal as follows; where it is intended to remove the secretary of a public company, the board of directors shall give him notice;

- a. Stating that it is intended to remove him;
- b. Setting out the grounds on which it is intended to remove him;

---

<sup>8</sup> Lexpraxisng.com



- c. Giving a period of not less than seven working days within which to make his defense and;
- d. Giving him an option to resign his office within a period of seven working days

<sup>9</sup>Where, following the notice prescribed in subsection (2) of this section. The secretary does not within the given period resign his office or make a defense, the board may remove him from office and shall make a report to the next general meeting; but where the secretary, without resigning his office makes a defense and the board does not consider it sufficient, if the ground;

- a. On which it is intended to remove him is that of fraud or serious misconduct, the board may remove him from office and shall report to the next general meeting; and
- b. Is other than that of fraud or serious misconduct, the board shall not remove him without the approval of the general meeting.

The important to note about the secretary especially of a public company is removal of the company secretary by the board as stated under section 296 (2), and the decisions of the board is not the final verdict, but it must have reported in the next general meeting for necessary action to either review the decision or affirm it. In view of the fact that no other company officer enjoys the protection of the law as the company secretary makes him more respectful, since he cannot be fired by an individual except as a board or the general meeting. I, with respect adopt the argument of professor Gower that the company secretary is arguably an organ of the company who in the performance of his statutory duties is clearly entitled to resist interference from the members, board of directors and the managing director. It is important to state here that the secretary of a private

---

<sup>9</sup> Developments (guidford) ltd, v fidelis furnitures ltd 2. Q.B. (1971)



company does not enjoy same protection of the law as it is clearly referred to the secretary of a public company.

### **The Company Secretary under the New CAMA 2020**

The qualifications, status and the appointment process of the company secretary has been modified under the new CAMA 2020. The company secretary is a very important position in all administrative spheres. They are also referred to as “keepers of secrets” and have been found to be indispensable throughout history.

### **Appointment**

Section 330(1) CAMA 2020 provides that all companies except a small company shall have a secretary unlike the previous law (CAMA 1990) where all companies were required to have a secretary. The people responsible for the appointment are the board of directors. The person must have the requisite knowledge, skill and experience.

Section 332 CAMA 2020 provides for the function of the secretary to include the following;

- He must be a member of the institute of chartered secretaries and administrators.
- A legal practitioner within the meaning of the legal practitioner’s act
- A member of any professional body of accountants established from time to time by an act of the national assembly.
- Any person who has held the offices of the secretary of a public company for at least 3 years of the five (5) years immediately preceding his appointment in the public company or,
- A body corporate or firm consisting of members each of whom has the qualifications in the first three paragraphs above.



Section 330 (3), if the office of the secretary becomes vacant, his deputy or any qualified person may be appointed to act in that behalf, however, the law is silent on the qualifications of the assistant secretary.

Section 333 (2) states the procedure for removing a company secretary which are not different from the previous law.

Section 331 prohibits the performance of any duty imposed on a secretary and a director by a person acting both as a director and a secretary, they both must personally discharge their responsibilities.

### **Conclusions**

The company secretary has come a long way from his previous functions as an ordinary clerk to attain a higher and respectful position in class of the board and managers. The new role of the secretary clearly distinguished him as a principal organ of the company whom the board of directors, the general meeting and the entire management team rely on him for legal advice to validate their actions. It is therefore now clear that the act empowers the secretary to serve as another important organ of the company other than serving as an ordinary clerk as it then was.

### **References**

- The companies and allied matters act law of the federation of Nigeria (2004)  
J.O. Orojo, Company Law and Practice in Nigeria (Mbayi and Associate (Nig) Ltd, Okota, Isolo, Lagos)  
Developments (Guidford) Ltd v Fidelis Furniture's Ltd 2 Q.B. (1971)  
Barnet Hoares & Co v South London Tramways (1979) Nigerian Supreme Court Cases  
(1957)2 Okeowo v Milgliore Nigeria Weekly Law Report Pt 322  
Wimpey (Nig) Ltd v Balogun (1986) 3 NWLR (Pt 28) 328  
Migliore v Metal Construction Ltd (1977) 3 FRCR 177 at 120  
The Nigerianlawyer.com Accessed on 13/10/2021 at 9:49am  
Lexpraxisng.com Accessed on 13/10/2021 at 3:25pm