PROMOTING FORENSIC LITIGATION SUPPORTS: A NEW PERSPECTIVE TO CORPORATE FRAUD PREVENTION IN NIGERIA

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Abstract
Corporate fraud prevention through forensic audits and investigations and the emergence of modern forensic audit techniques has placed corporate fraud perpetrators in a state of dilemma in recent years. However, a new perspective to corporate fraud prevention is presented in this study, which is the need to promote forensic litigation supports. This paper presents an argument through the fraud triangle theory and the collectivity fraud theory that the provision of litigation supports through forensic audits and investigations in relation to corporate fraud cases is ideal for corporate fraud prevention. To support the argument, a sample of 500 respondents was drawn from the population of professional accountants and legal practitioners in Nigeria. Questionnaire was used as the instrument for data collection and this was mailed to the respective respondents. Resulting responses were analyzed via the SPSS statistical software. The results indicate that the provision of litigation supports through forensic audits and investigations, fraud data mining and fraud data collection and presentations in court proceedings has a positive and significant impact on corporate fraud prevention in Nigeria. This study therefore recommends that regulators should promote the adoption of forensic audits and investigations in relation to existing and potential fraud cases in publicly listed firms in Nigeria, as this will help to provide reports that are acceptable in court proceedings for the purpose of prosecution.

1. INTRODUCTION

The emergence of forensic accounting has raised a lot of debates among scholars in the past few decades. Forensic accounting (also known as “investigative accounting”) is the application of financial and investigative skillsto unresolved issues within the context of the rules of evidence. As a discipline, it cuts across fraud detection knowledge, financial and economic expertise, as well as a sound understanding of business reality in particular, and the working of the legal system in general (Ozili, 2015). Forensic accounting is the three-fold practice of applyingmodern accounting, auditing and investigative skills to support legal matters (Olola, 2016). It is a special aspect of the field of accounting that describes litigation-related engagements and helps to provide. It is an aspect of accounting suitable for legal review as it often offers the highest level of assurance. Centre for Forensic Studies (2010) in Nigeria argues that the timely application of forensic accounting methodswould have prevented the leakages that caused major corporate failures in recent pasts. This is simply as a result of the proactive nature of forensic accounting methodsin looking for errors; engaging in operational vagaries as well as abnormal and suspicious transactions before they crystallize into major financial frauds (Ezejiofor, Nwakoby and Okoye, 2016).

Financial statement frauds and other forms of corporate scandals is a worldwide problem and efforts have been made by professional accountants and legal practitioners over the years to combat these corporate ills (Ogundana, Okere, Ogunleye and Oladapo, 2018). The arguments surrounding major unanswered questions that follow the aftermaths of high corporate collapses have revealed the weaknesses in the traditional statutory audit, and has, in turn necessitated the creation of a pathway to restoring the confidence of the investors and unsuspecting public in the business world, hence, the emergence of forensic accounting. Such questions as what went wrong? how did things go wrong? who is responsible? and how do we prevent future occurrences? have not been properly addressed until the emergence of forensic accounting in recent years. It is pertinent to emphasize that perpetrators of corporate frauds (irrespective of the nature and scale of such frauds) can be motivated by personal benefits (such as maximization of compensation packages for directors), or by explicit or implied contractual obligations such as debt covenants, and the need to meet market projections and
expected economic growth as can been seen in the recent Cadbury financial statement scandal in Nigeria (see, Solanke, 2007; Okaro and Okafor, 2013). Irrespective of the perpetuators’ motivation, the ultimate goal is to hide the underlying performance of the entity by manipulating accounting figures and adversely selecting accounting methods that can enable the smooth implementation of their intentions. The mystery around these frauds and how they are implemented usually makes it difficult for the traditional statutory auditors to effectively prevent them. In addition, Jofre (2018) argues that, given their hidden dynamic characteristics, “book cooking” accounting practices are particularly hard to detect, thus the importance of more sophisticated tools to be used to assist the early identification of risk signs and to further expose complex fraudulent schemes cannot be over- emphasized.

2. LITERATURE REVIEW

2.1 Forensic Litigation Support

This is simply the application of forensic audit and investigation procedures such as fraud data collection, mining, analysis, interpretation and presentation to prepare reports that are acceptable in court proceedings relating to certain financial frauds. It involves the gathering of fraud data by forensic experts who apply various forensic techniques to analyze these data and prepare reports that can be used as evidence to support litigation claims relating to corporate financial frauds. Forensic accounting does not only entail the practice of fraud detection and prevention, but also the use of investigative and analytical skills designed and employed in order to resolve financial issues in a manner that is acceptable in courts of law. Forensic accounting provides an accounting analysis that will form a significant part of the basis for judicial discussions, legal debate and ultimately dispute resolution. It encompasses provision of litigation supports, expert witnessing and investigative accounting (Dada et al, 2013).

2.2 Theoretical Framework

2.2.1 Fraud Triangle Theory

This theory emphasizes the tendency to commit fraud from the area of “WHY...?” why do people perpetrate frauds and “HOW...?” how are these frauds perpetrated. In 1950, Donald Cressey, a criminologist, commenced the study of fraud with an argument that there must be an explanation in relation to fraudulent actions and decisions of people. Hence, questions like “Why do people commit fraud?” propelled Cressey to emphasize the drivers of trust violation in his study, and so, he developed three drivers or factors in this regards- pressure, opportunity, and rationalization which are usually present for a fraud to occur. However, Cressey states the following: “Trust violators, when they become mindful of their basic monetary issue that is non-shareable and have information that their concern can be essentially settled by an infringement of their situation of monetary trust, they basically put forth a concentrated effort planned reactions to such circumstances, and certain verbalizations which assist them with redesigning how they consider themselves as stewards with their originations of themselves as users of the assets or property entrusted to them”.

(See Crassey 1953, p. 742) In this study, the fraud triangle theory is employed to support the assumptions that corporate fraud prevention through the provision of forensic litigation supports goes beyond establishing that a fraud has committed. The whole process of forensic audits and investigations, fraud data collection, fraud data mining and fraud evidence presentation is geared towards providing acceptable evidence reports on such key areas that are necessary for drawing valid conclusions in legal proceedings, including establishing pressure or motive- i.e. why these frauds were perpetrated, while the remaining two elements appearing at the lower part of the triangle are perceived opportunity- i.e. how are these frauds perpetrated, and rationalization- i.e. what are the justifications for these frauds. Therefore, if enough evidence is presented by the forensic auditors to support the litigation claims in a court proceeding relating to corporate fraud, their reports can be used as “Expert Witness” to support further prosecutions.

2.2.2 Collectivity Fraud Theory

This is an original theory proposed in this study for the purpose of explaining how the tendency to commit fraud is conceived, planned and finally executed. The collectivity fraud theory as used in this study simply states that frauds- especially corporate frauds are usually a product of the collective efforts of two or more individuals who agree to implement an act of fraud in order to achieve a given objective. This theory simply states that fraud is an outcome of the collective efforts of individuals or a group with various tasks but with a common goal. The theory identifies three major players in corporate frauds or other fraudulent schemes, including the Fraud Initiators”, “Fraud Executors” and the “Smoothers”. The Fraud Initiators are the masterminds of the fraud- they conceive the act of fraud and are also responsible to drawing out the plan which may be further modified by other participants; the Fraud Executors are the fraud participants whose major responsibility is to execute the fraud following the plan as discussed and agreed upon with the group; while the Smoothers are fraud participants who are charged with the responsibility of ensuring that all necessary arrangements are made to cover up the fraudulent act or provide sufficient justifications within the whims and caprices of the law in the event of any unexpected occurrence. In this study, it is assumed that the provision of forensic litigation supports through forensic audits and investigations must consider the various participants of the financial fraud being investigated in order to ensure that
adequate prosecution is achieved. Hence, a reliable forensic examination report relating to financial frauds within any establishment must should not only provide assurance that fraud was committed, but should also provide adequate information about the various participants and their respective roles in the fraudulent scheme for the purpose of ensuring appropriate prosecution. The collectivity theory maintains that “pressure” (i.e. incentive) creates the need for the act to be carried out; “opportunity” opens the doorway to fraud; “rationalization” provide justifications for implementing financial anomalies via loopholes in the existing standards or regulation, and also an excuse for convincing others to participate; “collectivity” is the point where everyone involved in the fraud plays their various roles to ensure that the fraud is smoothly implemented.

2.2.3 Empirical Review

A number of studies have provided evidence on the benefits of forensic accounting in providing litigation support services. Bassey and Ahonkhai (2017) examined if the use of forensic accounting methods as well as subsequent provision of litigation supports have any significant effect on fraud detection. The data collected through questionnaire distribution were presented with the help of tables and interpreted with the help of inferential statistics using Analysis of Variance (ANOVA). Findings revealed that forensic accounting and litigation supports have no significant effect on fraud detection in Nigerian firms. It was therefore recommended that management and shareholders should be well enlightened on the benefits of the services of forensic accountants in litigation matters. Ejoh (2017) also provided evidence on “Forensic Accountants’ Expert Testimony in Litigation Support: A Case of Investigative Objectivity”. This study simply addressed the roles of forensic accountant’s sworn expert testimony in legal proceedings. The survey design was used in the study with a sample size of 100 consisting of accountants, auditors, and legal practitioners. The simple random technique was utilized in selecting the sample size, while the ANOVA (F-test) was employed in the data analysis. Findings revealed that the provision of sworn expert testimonies by forensic accountants is an integral part of forensic examinations because it reflects the objectivity and neutrality of forensic accountants.

Enofe, Ochei, Emecheta and Oyibo (2017) is a study on “Litigation Services and Fraud Cases: Perspective of the Forensic Accountant” which examined the role and effect of the forensic accountant’s litigation services in the adjudication of fraud cases. Data were obtained mainly by applying a structured questionnaire to a target sample for respondents, as well as obtaining responses from respondents via interviews. Hypotheses were tested using the T-Test, and the results simply indicate that the litigation services provided by forensic accountant usually affect the outcome of fraud cases. Hence, the recommendation that Nigeria should fully standardize, structure and encourage the use of forensic reports from accountants in fraud-related legal matters as a way of promoting conviction. In another study, Enofe, Dominic, Kifordu and Udoh (2017) provided evidence on “A Qualitative Review of Forensic Accounting and Effective Judicial System in Nigeria”. This study examined if forensic accountants make the judiciary more effective via the provision of credible and acceptable testimonies in legal proceedings. However, the results obtained from this study showed that to a great degree, there are basic acceptable thresholds for forensic accountants’ testimony. The authors also highlighted the key positive roles played in the area of assisting judges and the court to arrive at quality verdicts.

Gbegi and Habila (2017) also contain evidence on the link between forensic accounting evidence and litigation services in the Nigerian judicial system. For this study, primary data were sourced through questionnaires, a descriptive and causal (cause-and-effect) research design adopted while Chi Square test of significance was used for testing the hypotheses formulated. It was discovered through findings that forensic accounting evidence in such forms as documentary evidence, demonstrative evidence, physical evidence and oral evidence significantly influence litigation in the Nigerian judicial system. In Oyoye and Akamobi (2016), the authors argued through the data collected that forensic accounting is the specialized aspect of professional accounting that describes engagements resulting from actual or anticipated disputes or litigation claims relating to fraud. It presents a form of accounting analysis suitable for discussions, debates and fraud-related dispute resolutions. The study further demystified the roles of forensic accounting in fraud investigations and litigation supports in order to expose the importance of forensic services. Onodi, Okafor and Onyali (2015) is a study that investigated the link between forensic investigation methods and corporate fraud deterrence. Adopting the survey design as well as the primary source of data collection via interviews and administration of questionnaires, and the secondary source of data collection via reports on fraud and forgery in the banking sector, the authors combined such statistical tools as percentages, mean score, frequency tables, regression analysis and Z-test in analyzing the data proceeds. Findings showed that forensic investigation methods and significantly affects corporate fraud deterrence but in a positive light. However, the authors also emphasized the need for forensic expert services during fraud-related prosecutions while expressing absolute dissatisfaction with the poor perception and knowledge of forensic investigation methods in Nigeria.

Dada, Enyiand Owolabi (2013) also conducted a study on forensic accounting with regards to bribery cases in Nigeria”. In this study, the authors presented forensic accounting as useful for legal review, as it gives the highest level of assurance in a scientific fashion, as well as provides the required data for fraud-related disputes resolution.
3. RESEARCH METHODOLOGY

Given the objectives of this study, the survey research method was applied throughout the study. This was facilitated by the need to collect opinions sufficient for justifying the potential impact of promoting forensic litigation supports in Nigeria. To achieve this, a sample of 500 respondents consisting professional accountants and lawyers was drawn using the simple random sampling technique. These professionals were duly registered members of the Nigerian Bar Association NBA- for the Lawyers, and the Institute of Chartered Accountants of Nigeria (ICAN) - for the professional accountants. Primary data were obtained from the selected professionals through an online distribution of a questionnaire via the email.

4. RESULTS AND DISCUSSION

4.1 Summary of Questionnaire Distribution

For the purpose of this study, data were also obtained through questionnaire distribution by email. This has helped in generating responses from professional lawyers and accountants with regards to the impact of provision of litigation supports via financial fraud investigations on corporate fraud prevention in Nigeria. Further information on the questionnaire distribution is presented below.

Table 1: Analysis of Questionnaire Distribution

<table>
<thead>
<tr>
<th>Questionnaire</th>
<th>Accountants</th>
<th>Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total distribution</td>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td>Total mailed-in responses</td>
<td>267</td>
<td>285</td>
</tr>
<tr>
<td>Total invalid mails</td>
<td>15</td>
<td>37</td>
</tr>
<tr>
<td>Total valid responses</td>
<td>252</td>
<td>248</td>
</tr>
</tbody>
</table>

Source: Authors’ Field Survey, 2021

As indicated in table 1, an electronic questionnaire was distributed via email to 600 respondents consisting of professional accountants and lawyers. Following the stipulated study period, only 552 respondents submitted their responses, as 48 respondents never submitted their responses. However, of all 552 responses received, 52 responses were invalid due to factors ranging from files being corrupted to incomplete response to specific questions, hence placing the total valid questionnaires used at 500 after the selection and sorting process.

Table 2: Variables Entered/Removed*

<table>
<thead>
<tr>
<th>Model</th>
<th>Variables Entered</th>
<th>Variables Removed</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LSFA, LSDM, LSFC</td>
<td>.</td>
<td>Enter</td>
</tr>
</tbody>
</table>

a. Dependent Variable: CFPR
b. All requested variables entered.

table 3: Model Summary

<table>
<thead>
<tr>
<th>Model</th>
<th>R</th>
<th>R Square</th>
<th>Adjusted R Square</th>
<th>Std. Error of the Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>.791*</td>
<td>.626</td>
<td>.619</td>
<td>.23651</td>
</tr>
</tbody>
</table>

a. Predictors: (Constant), LSFA, LSDM, LSFC

Table 4: ANOVAa

<table>
<thead>
<tr>
<th>Model</th>
<th>Sum of Squares</th>
<th>df</th>
<th>Mean Square</th>
<th>F</th>
<th>Sig.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regression</td>
<td>16.644</td>
<td>3</td>
<td>5.548</td>
<td>99.186</td>
<td>.000*</td>
</tr>
<tr>
<td>Residual</td>
<td>9.957</td>
<td>178</td>
<td>.056</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>26.601</td>
<td>181</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a. Dependent Variable: CFPR
b. Predictors: (Constant), LSFA, LSDM, LSFC

table 4: Coefficientsa

<table>
<thead>
<tr>
<th>Model</th>
<th>Unstandardized Coefficients</th>
<th>Standardized Coefficients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Std. Error</td>
</tr>
<tr>
<td>1</td>
<td>(Constant)</td>
<td>.250</td>
</tr>
<tr>
<td></td>
<td>LSFA</td>
<td>.617</td>
</tr>
<tr>
<td></td>
<td>LSDM</td>
<td>.654</td>
</tr>
<tr>
<td></td>
<td>LTGS</td>
<td>.431</td>
</tr>
</tbody>
</table>

a. Dependent Variable: CFPR
4.2 Testing Hypotheses One (HO₁)

The first hypothesis of this study states that “The provision of litigation supports through forensic audit and investigation has no significant impact on corporate fraud prevention in Nigeria”. However, from the regression result obtained as shown on Table 5.0, the coefficient for provision of litigation supports through forensic audit and investigation as denoted by LSFAIs 0.647, indicating that the provision of litigation supports through forensic audit and investigation has a positive impact on corporate fraud prevention in Nigeria. Furthermore, the p-value of 0.0000 shows that the positive impact of provision of litigation supports through forensic audit and investigation is significant at 5%, leading to the rejection of the null hypothesis which states that the provision of litigation supports through forensic audit and investigation has no significant impact on corporate fraud prevention in Nigeria.

4.3 Testing Hypotheses Two (HO₂)

The second hypothesis of this study states that “The provision of litigation supports through fraud data mining has no significant impact on corporate fraud prevention in Nigeria”. However, from the regression result obtained as shown on Table 5.0, the coefficient for provision of litigation supports through fraud data mining as denoted by LSDM is 0.701, indicating that the provision of litigation supports through fraud data mining has a positive impact on corporate fraud prevention in Nigeria. Furthermore, the p-value of 0.0000 shows that the positive impact of provision of litigation supports through fraud data mining is significant at 5%, leading to the rejection of the null hypothesis which states that the provision of litigation supports through fraud data mining has no significant impact on corporate fraud prevention in Nigeria.

4.4 Testing Hypotheses Three (HO₃)

The third hypothesis of this study states that “The provision of litigation supports through fraud data collection and presentation has no significant impact on corporate fraud prevention in Nigeria”. However, from the regression result obtained as shown on Table 5.0, the coefficient for provision of litigation supports through fraud data collection and presentation as denoted by LSFC is 0.512, indicating that the provision of litigation supports through fraud data collection and presentation has a positive impact on corporate fraud prevention in Nigeria. Furthermore, the p-value of 0.0000 shows that the positive impact of provision of litigation supports through fraud data collection and presentation is significant at 5%, leading to the rejection of the null hypothesis which states that the provision of litigation supports through fraud data collection and presentation has no significant impact on corporate fraud prevention in Nigeria.

5. DISCUSSION OF FINDINGS

The overall result showed that provision of forensic litigation supports has a positive and significant impact on corporate fraud prevention in Nigeria. The implication is that forensic audit and investigation services go beyond the use of specialized techniques to detect frauds or fraud tendencies, as it has been established in this study and in a number of prior empirical studies that forensic investigations can also be conducted to provide litigation supports in court proceedings relating to corporate financial crimes. This aspect of forensic accounting is usually the final stage of the investigation, and it depends on the nature of the forensic engagement. It is provided at the request of the court as evidence from the forensic investigation to support litigation claims.

Forensic audits and investigations unlike the normal statutory audit consists application of investigative and analytical procedures specially designed for financial fraud examination, and employed in order to resolve financial issues in a manner that meets the standards required by courts. Forensic accounting helps to provide suitable accounting analyses that will form the basis for discussion, debate and ultimately dispute resolution. In agreement with the findings of this study, Owolabi et al. (2013) provided early arguments that forensic accounting encompasses litigation supports, expert witnessing and investigatory accounting among other legally acceptable services that are geared towards establishing whether or not a financial fraud has been committed, or is about to be committed. Enofe, Ochei, Emecheta and Oyibo (2017) revealed that the forensic accountant’s litigation services do affect the adjudication of fraud cases. Here, the authors also argued that the outcomes of forensic investigations are usually considered with high value in court proceedings, hence, its ability to determine the outcome of such proceedings. If this be the case, then it is safe to say that forensic accounting is a significant aspect of financial fraud investigations.

It is however pertinent to state that the contribution of forensic litigation supports is not without certain constraints that defines its acceptance in court proceedings, as Enofe, Dominic, Kifordu and Udoh (2017) argued to a large extent that there are basic acceptable standards established for admissibility of forensic accountants’ testimony. The whole purpose of forensic auditing and investigation is not complete if it the outcome does not answer two basic questions; is there a fraud? and what are the evidences? As the former focuses of on establishing whether a fraud has been committed or about to be committed (i.e. the litigation claim), the latter presents forensic evidences to support the earlier claim, in forms that are acceptable in the court of law (i.e. the litigation supports). Finally, forensic accountants can serve as expert witnesses, expert consultants, lay witnesses, percipient witnesses and neutral in Nigeria as described by the Evidence Act 2011. However, where a witness or expert provides a written testimony, such witness or expert is, by practice, only subjected to cross-
examination by the adverse party. The trial commences with the claimant calling its witnesses, examination in chief takes place, afterwards such witnesses are cross-examined by the defendant and the claimant has the option to re-examine the witness where there may be any ambiguities during the cross-examination. Evidence in court is always conducted in accordance with the Evidence Act 2011 (see also Preber, 2014).

6. CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Following the results obtained and discussed in the previous section and in relation to the critical review of past literatures, it is pertinent to state in conclusion of this study that the provision of forensic litigation supports a positive and significant impact on corporate fraud prevention in Nigeria. The provision of litigation supports through forensic audit and investigation, and fraud data collection and presentation has a positive and significant impact on corporate fraud prevention in Nigeria.

6.2 Recommendations

It is expedient that stakeholders in Nigeria demand more accountability and transparency by employing these independent forensic services to investigate specific fraud or non-fraud related cases. It is also recommended that stakeholders and management should embrace forensic audits and investigations as part of the drive towards curbing corporate financial fraud in Nigeria. This study also recommends the provision of litigation supports through forensic audits and investigations for strengthening the Nigerian legal system; lending credibility to the financial statements and increasing confidence in the legal system. Professional Accountants and Auditors There is need for existing and aspiring professional accountants and auditors to acquire the necessary forensic investigation skills to improve their professional capabilities in financial analysis and fraud detection for the purpose of supporting the litigation process, thereby making their sworn expert testimony invaluable to the litigation process. For the purpose of achieving more effective results during fraud examination, auditors must ensure that forensic investigation experts are included in every audit engagement teams. This expert(s) will focus independently on detecting existing or potential frauds in the financial statements and may be required to work with separate audit strategies in order to achieve this objective.

7. GOVERNMENT AND REGULATORS

This study recommends especially for developing countries like Nigeria, that the SEC alongside other regulators should promote the use of forensic audits and investigation to investigate existing and potential fraud cases in publicly listed firms in Nigeria, in order to provide reports that are acceptable in court proceedings relating to corporate frauds. The Nigerian government should also provide the enabling environment for forensic audits and investigation services to thrive by strengthening the legal, educational and political framework of the field. Forensic accounting should become a critical part of the field of accounting in Nigeria, as this will complement the efforts of statutory auditors.

REFERENCES