

3. *An order that the Defendant should deposit the said Letters of Administration in the Registry of the Honourable Court.*
4. *Another Order upon the Defendant to account for the estate of the said deceased person.*
5. *A further order removing the Defendant as executor and trustee of the estate of the said deceased person.*
6. *An order of perpetual injunction restraining the Defendant, her agents, servants, privies, assigns, representatives, and all persons of whatever description claiming through or under her from administering the estate or intermeddling in the said estate."*

After completion of trial, Judgment was delivered on 21st March 2022 and among the reliefs granted was the order for the Defendant to render accounts in respect of the Estate of the deceased Testatrix and file same in Court.

The Defendant caused her Accountants John Kwesi Hagan Jnr to prepare accounts for the period 2016 to 2022 on 12th June 2023.

The Plaintiffs/Judgment-Creditor filed a motion on notice on 5th October 2023 for an order to cross-examine the Accountant on the Statement of Accounts. The 2nd Plaintiff deposed that they have studied the statement of accounts and found it necessary to cross-examine the Accountant.

It is the case of the 2nd Plaintiff that they sought to cross-examine the Accountant in respect of properties which were not included in the Statement of Account and on the various properties contained in the Report.

The Defendant/Judgment/Debtor though served has not filed any affidavit in opposition.

2 I shall proceed to examine the rule the application founded on.

[2] Court's Analysis and Opinion

I shall proceed to examine the rule the application is anchored on
Order 29 of CI 47 provides as follows:

ORDER 29

Accounts

1. Summary order for account

“(1) Where a writ indorsed with a claim includes a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has filed appearance or after the time limited for filing appearance, apply for an order for account under this rule.

(2) An application under this rule shall be supported by affidavit or other evidence if the Court so directs.

(3) On the hearing of the application the Court may, unless satisfied by the defendant by affidavit or otherwise, that there is some preliminary question to be tried, order that an account be taken, and may also order that any amount certified on taking the account to be due to either party be paid to that party within a time specified in the order.

2. Court may direct taking of account

(1) The Court may, on an application made at any stage in the cause or matter, direct any necessary accounts to be taken.

(2) Every direction for the taking of an account shall be numbered in the judgment or order so that each distinct account may be designated by a number.

3. Directions as to manner of taking account

(1) Where the Court orders an account to be taken it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or verified.

(2) Notwithstanding subrule (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained in them with liberty to the parties interested in them to take such objections as they think fit.

4. Accounts to be verified

(1) Where an account has been ordered to be taken, the accounting party shall make out an account and, unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall file the account with the Court with notice to the other parties."

In the case of **GLADYS ANANE ADDO & 9 VS. KUMASI METROPOLITAN ASSEMBLY, KEJETIA TRADERS ASSOCIATION, [SUPREME COURT] Civil Appeal No. J4/19/2006 DATE: 28th November, 2007** the Supreme Court delivered itself thus on the issue of accounts:

"Consequently, on the Plaintiffs' claim against the Appellants for accounts, the court invoked Order 33 Rule 3 of the erstwhile High Court (Civil Procedure) Rules, 1954 (LN 140A) (hereinafter referred to as the High Court Rules) and ordered that:- The executives of the Association account for all monies collected or paid to them and The accounts should be audited by the Serious Fraud Office.

In sum, therefore, the Appellant's case appears to be that, before arriving at his judgement, the learned High Court judge ought to have ordered the taking and verification of the accounts. Thus, whilst the Appellant appreciates, and acknowledges, the need for accounts to be taken and verified, its complaint seems to be that the learned Judge ought to have made the appropriate orders much earlier in the trial of the matter. Hence the core issue in this matter is of a very narrow compass and is, simply, whether or not the learned High Court Judge did misapply

Order 33 Rule 3 and, if so, whether or not such misapplication has indeed resulted in 'a substantial miscarriage of justice' to the Appellant.

Order 33.3 of the erstwhile High Court Rules, provided as follows:- "The Court or a Judge may either by the judgement or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised."

...It is noteworthy that, whilst the provisions of Rules 1 and 2 of Order 33 of the said High Court Rules were substantially amended by the High Court (Civil Procedure) (Amendment) (No.2) Rules 1977 (L.I. 1129), those amendments left rule 3 and the remaining Rules of the Order, intact. Although amended Rule 1 gave a Plaintiff the power to apply to the court for a summary order for accounts at any time after the Defendant has entered an appearance, we do not read this provision to mean that, should such a Plaintiff fail to make such an application at all, (as happened in this case) the court has no power to include such an order for accounting in the judgment. In any event, the Plaintiffs herein, having, in their Writ of Summons, specifically claimed an order for accounts, given the state of the law as at the time, the learned High Court judge would have failed in his duty in the matter had he failed to make some specific dispositions on that claim. Hence, in view of the evidence on hand, the Court could do no wise than grant the claim for accounting and order the modalities for taking and verifying the same accordingly. Consequently, when the learned High Court judge, in the light of the evidence, particularly that of DW2 (the Appellant's treasurer) ordered, as part of the judgement in the matter, that the Executives of the Appellants render an account to the Plaintiffs and that those accounts be audited by the Serious Fraud Office, he was acting within his statutory powers."

In the instant case, the relief was for accounts to be rendered and accounts has been filed albeit unsatisfactory.

Reading Order 29 and the need for verification of the Accounts, the nature of this Account if it had been taken during the course of the trial it would have afforded the Parties and the Court the opportunity for verification to be done.

The Court is presently functus officio and if the present application is granted, upon conclusion of the cross-examination of the Accountant the Court lacks jurisdiction to make any further orders.

It is for this reason that the motion filed on 25th October 2023 is refused and accordingly dismissed.

(SGD.)

**H/L EUDORA CHRISTINA DADSON (MRS.)
JUSTICE OF THE HIGH COURT**