

An Appraisal of the Concept of Accounts and Inquiries Under the Nigerian Adjectival Legal Jurisprudence

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Abstract

The topic an appraisal of the concept of accounts and inquiries under the Nigerian Adjectival Legal Jurisprudence examined on comparative basis the provisions of High Court of Lagos State (Civil Procedure) Rules, 2012 on one hand and the Kogi State High Court (Civil Procedure) Rules 2006 vis-a-vis the Rules of the High Court, Hong Kong. The issue of preliminary question as provided by the various rules of High Court stated above was examined especially as it was recently considered in the unreported case in Suit No. **AYHC/04/2014** between **Ugbede Gabriel Attah & 2ors v. Daniel Akoji Attah & 9 ors** delivered on 5/3/2015 by Hon. Justice R. O. Ayoola. The provisions of the Kogi State High Court Rules and Rules of the High Court, Hong Kong on the mode of application by summons and that of Lagos State High Court on mere application and the legal implications thereof was equally examined. The matter of ordering an account and conduct of inquiry as well as giving of Directions which could only be done by the judge under the Kogi State Rules and Rules of High Court, Hong Kong while the judge or a referee or an officer of the court could order for account and give directions under the Lagos State High Court Rules was equally examined. The provision of allowances and the effect of delay in prosecution for an account and the fact of distribution of fund completely absent in Lagos State Rules but applicable under the Kogi State Rules and Rules of High Court, Hong Kong examined. And the recommendation was made for the uniform, procedural Rules since the Nigerian legal system has unique characteristics of training the judges, the legal practitioners as well as those in academia in institutions under the supervision of the National Universities Commission (NUC), having same professional regulatory body, the Council of Legal Education.

Keywords: Appraisal, Accounts, Inquiries, Adjectival and Jurisprudence.

1. Introduction

In the Nigerian legal jurisprudence which is common with other jurisdictions, the legal system are broadly classified into two, namely, the substantive law and adjectival or the procedural law. The adjectival law consists of “the body of rules governing procedure and practice” which is otherwise referred to as “the procedural law”. Generally, the body of law in a state consists of two parts, substantive and adjective law. The former prescribes those rules of civil conduct which declare the rights and duties of all who are subjected to the law. The latter relates to the remedial agencies and procedure by which rights are maintained, their invasion redressed, and the methods by which such results are accomplished.¹

In the case of *Ojokolobo v. Alamu*² the court attempted to make a distinction between the substantive law and procedural law with respect to the retrospective effect in maintaining that retrospective effect in relation to legislation refers to the operation of an enactment that has the effect of impairing an existing right or obligation. Hence, the court applying the principle drew a line between legislation governing practice and procedure and one governing the substantive law. And that while the former is presumed to be retrospective, the latter is presumed to be prospective as one intended to have effect in future.³ Substantive law is the part of the law that creates, defines, and regulates the rights, duties and powers of parties. Therefore, “so far as the administration of justice is concerned with the application of remedies to violated rights, we may say that the substantive law defines the remedy and the right, while the law of procedure defines the modes and conditions of the application of the one to the other”.⁴

This paper is concerned with the adjectival aspect of the Nigerian legal system as it affects the concept of accounts and inquiries as provided specifically under the High Court of Lagos State (Civil Procedure) Rules, 2012⁵ hereinafter referred to as “the Lagos State Rules” and Kogi State High Court (Civil Procedure) Rules 2006⁶ hereinafter referred to as “the Kogi State Rules”. It is intended in this work, to do a comparative analysis of the Lagos State Rules and Kogi State Rules in order to jurisprudentially examine the concept of accounts and

¹ Bryant, E.E., “The Law of Pleading under the Codes of Civil Procedure,” 2nd edn., (1899) p. 1; Also Bryan, A. Garner, *Black's Law Dictionary*, 9th edn., (U.S.A: West Publishing Co., 2004) pp. 46-47.

² (1987) 3 NWLR (Pt 61) 377

³ *Ibid.*

⁴ *Ibid.* See also the case of Nigerian Educational Research Development Council v. Gonze Nigeria Ltd (2000) 9 NWLR(Pt 673) 532

⁵ Order 1 Rule 1 of the Lagos State Rules.

⁶ Order 1 Rule 2 of the Kogi State Rules.

inquiries, its modes of application, its purposes or relevance to the just determination of disputes, as well as when or the conditions or circumstances under which the application for accounts and inquiries could be made and granted. The Nigerian legal system is Federal in nature¹ and to that extent it is provided to wit:

There shall be thirty six states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.²

In the same vein, the Constitution³ provides that:

There shall be seven hundred and sixty-eight Local Government Areas in Nigeria as shown in the Second Column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule.⁴

The adjectival jurisprudence of the Nigerian legal system by reason of the Federal nature gives room for the existence of Federal judicial system and state judicial system. The Constitution⁵ provides “the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation”. In the same vein, it is provided that “the judicial powers of a state shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a state”.⁶

The cumulative effect of the above constitutional provisions is that each state of the Federation of Nigeria has the constitutional powers to establish its courts. Each state has its own High Court while the Federation of Nigeria has its own High Court known as the Federal High Court. The Federal Capital Territory of Abuja has its own High Court.⁷

It is worthy of note that each of these courts is authorized or empowered by the constitutional provisions⁸ to make or enact its own adjectival laws (rules) which guides the practice and procedure of the court in the administration of justice. For the purpose of this paper, we shall be examining on comparative basis the Lagos State Rules and the Kogi State Rules vis-a-vis references made to other jurisdictions beyond the territory or jurisdictions of Nigeria.

2. Application for Account

The application for account(s) is provided for by most if not all the rules of the High Courts of the States of the Federation of Nigeria. The Kogi State Rules⁹ provides to wit:

Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the claimant may at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order for an account under this rule.¹⁰ An application under this rule shall be made by summons and supported by affidavit or other evidence.¹¹

¹ Section 2(2) of the FRN, 1999 as amended which provides “Nigeria shall be a Federation consisting of States and a Federal Capital Territory”.

² *Ibid*, section 3(1).

³ *Ibid*, section 3(6).

⁴ *Ibid*.

⁵ *Ibid*, section 6(1).

⁶ *Ibid*, section 6(2).

⁷ Section 6(5) of the Constitution provides “This section relates to (a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (d) the High Court of the Federal Capital Territory, Abuja; (e) a High Court of a State; (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja; (g) a Sharia Court of Appeal of a State; (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja; (i) a Customary Court of Appeal of a State; (j) such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and (k) such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make Law”.

⁸ See sections 236 (Supreme Court), 248 (Court of Appeal), 254 (Federal High Court), 259 (The High Court of the Federal Capital Territory, Abuja), 264 (The Sharia Court of Appeal of the Federal Capital Territory, Abuja), 269 (Customary Court of Appeal of the Federal Capital Territory, Abuja), 274 (The High Court of the State), 279 (Sharia Court of Appeal of the State), and 284 (Customary Court of Appeal of the State).

⁹ Order 20 rule 1(4) of the Kogi State Rules.

¹⁰ *Ibid*, Order 12 rule 1 of the Lagos State Rules provides “Where in an originating process a claimant seeks an account under Order 4 Rule 5 or where the claim involves taking an account if the defendant either fails to appear or after appearance fails to satisfy a Judge that there is a preliminary question to be tried the judge shall on application make an order for the proper accounts, with all necessary inquiries and directions”.

¹¹ Order 20 rule 1(2) of the Kogi State Rules; See Order 12 rule 2 of the Lagos State Rules which provides “An application for account shall be supported by an affidavit filed on a claimants behalf stating concisely the grounds of his claim to an account. The application may be made at any time after the time prescribed for defence”.

The Kogi State Rules expressly provides for the mode of the application for an account which is by way of summons. The phrase “shall be made by summons” suggest that the application must be made by summons and not by any other mode. Contrary to this specific provision and requirement by the Kogi State Rules, the Lagos State Rules does not make a specific requirement for summons, rather it merely state “An application for account shall be supported by an affidavit”.¹ Comparatively, while an application for an account under the Kogi State Rules shall be made by summons and supported by an affidavit or other evidence, such an application can be made in Lagos by either summons, motions or any other modes which amounts to an application and shall be supported by affidavit.

The question for determination is whether there is a difference between a summons and an application? While summons qualifies as an application, not all applications qualifies as summons. Then what is summons? Summons is a writ or process commencing the plaintiff’s or claimant’s action and requiring the defendant to appear and answer. It is also a notice requiring a person to appear in a court as a juror or a witness.² It is interesting to note that summons is a writ directing a sheriff to summon a defendant to appear in court and under the English law, it means an application to a common law judge upon which an order is made.³

On the other hand, just as stated above, an application may not necessarily mean summons, as it could be a motion. Motion is a written or oral application requesting a court to make a specified ruling or order.⁴ While summons in itself is an order requesting an obedience or a compliance with the contents therein, a motion is a written or an oral application by a party to the court requesting the court to grant same by making an order in terms of the contents of the prayer. In other words, summons is mandatory while motion is optional and depending on the discretion of the judge or the court. It is interesting to note that the rules of the High Court, Hong Kong⁵ provides for summons to wit: “An application under this rule must be made by summons and if the court so directs, must be supported by affidavit or other evidence”.⁶

Apart from the fact that the application for an account is by summon under the Hong Kong Rules of the High Court, it is further supported by affidavit or any other evidence as the court may direct. The affidavit in support or other evidence is necessary to the extent that the court needs to satisfy itself in the first place that there are *prima facie* facts that necessitates granting the order. Where there is disobedience to a summons, such disobedience party can be compelled by the instrumentality of the order of the court compelling the respondent to make it right.

3. Preliminary Question

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 any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.⁷ Comparatively, the above rules have a similar provision under the Lagos State Rules to the extent that “...if the defendant either fails to appear or after appearance fails to satisfy a judge that there is a preliminary question to be tried the judge shall on application make an order for the proper accounts, with all necessary inquiries and direction”.⁸

By the above provisions, at the hearing of the application for an account, there is a duty placed upon the defendant to demonstrate by affidavit or evidence and to the satisfaction of the court why the order should not be made or granted by way of preliminary question. What amount to a preliminary question is a question of fact to be ascertained or deduced from the peculiar facts and circumstances of each case. Where the defendant succeeds in satisfying the court that there is some preliminary question to settle, the court would stay action or proceedings on the granting of an order, first hear and determine the preliminary question. After hearing the defendant’s preliminary question, and the defendant fails to satisfy the judge on the preliminary question, the judge shall make the order for the proper accounts with all necessary inquiries and directions.

However, where the defendant succeeds on his preliminary question, the judge would dismiss the application for an order for account. In the unreported case Suit No AYHC/04/2014, between *Ugbede Gabriel Attah & 2 Ors v. Daniel Akoji Attah & 9 Ors* at the Kogi State High Court of Justice held at Anyigba, Her Lordship Hon. Justice R.O. Ayoola-Judge, was confronted with an interlocutory summons brought under Order 5 Rules 5 and Order 20 of the Kogi State Rules, praying for *inter alia* “an order directing the defendants/respondents and the 1st defendant/respondent in particular, to account for, and give complete details

¹ *Ibid.*

² Bryan, A. Garner, *op. cit.*, p. 1574.

³ *Ibid.*

⁴ *Ibid.*, p. 1106.

⁵ <http://www.legislation.gov.hk/blispdf.nsf/67991651s2FEE3FA94825755E0033E532/600IDD4CD77C2F14482575EE002ABDB6/SFILE/CAP4Aeb5.pdf-hongkong>. Visited on 15/04/2015.

⁶ Order 43 Rule 1(2) of the Rules of the High Court, Gazette No. 25 of 1998, Hong Kong.

⁷ Order 20 rule 1(3) of the Kogi State Rules; Also, Order 43 rule 1(3) of the Rules of the High Court, Hong Kong.

⁸ Order 12 Rule 1 of the Lagos State Rules.

of the estate of Gabriel Egbunu Attah (deceased)....”. The applicants in the affidavit in support of the summons among others deposed to the fact that the cause of action borders on the wrongful exclusion of the claimant’s beneficiary rights in the estate of their deceased father. He further deposed that neither the claimant nor the Honourable Court is aware of the state of the deceased’s estate in terms of the details requested vide this application. And that the parties to this suit are all children of late Gabriel Egbunu Attah and are entitled to at least know the state of their deceased father’s estate. Furthermore, the applicant deposed that it is just and tidier that the details of properties subject matter of this suit be ascertained before judgment is delivered.

Naturally, the defendant/respondents in response to the application filed a counter-affidavit and deposed to the fact *inter alia* that he is not in a position to give account of the properties of late Dr Egbunu Gabriel Attah to the applicants. That the elders of the deceased family took charge of the deceased’s properties according to the native law and custom applicable to the deceased. That the applicants were challenged by the elders of the deceased family for demanding for the declaration of assets as same was a taboo especially as the applicants were not in the picture of scheme of things during the lifetime of the deceased. The defendant further deposed that the deceased when alive openly and clearly told some elders/leaders and members of the deceased’s family on how his properties should be administered, managed, and/or controlled after his death. That the deceased maintained clearly in his lifetime that on no account should his properties be shared or distributed but must remain in a common pool and managed accordingly as instructed by the elders of the deceased family. And that the applicants have not been denied or excluded from their beneficiary rights in the estate of the deceased as they have not requested or made a demand to the elders of the deceased family.

The judge having considered the facts deposed to by the claimants and defendants and the arguments of counsel held that the defendants have joined issues on whether or not the claimants are entitled to be given account of the estate of their deceased father. The judge having examined the hitherto Kogi State Rules¹ held to wit:

In any further case, this court is of the opinion that “there is some preliminary question to be tried” in this case between the parties. I therefore agree with the defendant’s learned counsel in his submission that granting the application of the claimants will amount to jumping the guns, and will amount to granting in the interlocutory stage a relief of account which is ancillary to the reliefs of declaration in the suit.

By reason of the decision of the court in the above case and the express provisions of the rules examined above, preliminary question, where it is successfully raised constitute a defence to the application for an account.

4. Ordering for Account

On the other hand, where preliminary question, fails, the court is entitled to make or grant an order for account. In the case of Kogi State Rules² the court may “order that an account be taken as in Form 18 and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order”.³ In the case of Lagos State Rules it shall be in Form 22 which is *pari material* with Form 18. For the clarity of purpose and mission of the order of the court, the Form 18 is hereunder produced.

¹ Order 20 Rule 1(1)(3) of Kogi State Rules.

² Order 20 Rule 1(3), Kogi State Rules.

³ *Ibid*, Also Order 2721 Rule 1(2), Volume 2 of Court Procedure Rules, 2006, Australian Capital Territory.

FORM 18
(Order 20, Rule 1(3))
Form of Order to Account and Inquiries
In the High Court of Kogi State
In the.....Judicial Division

Suit No.....

BETWEEN:

A.B.:.....**Claimant**

And

C.D. and E.F and G.H......**Defendants**

This Court hereby orders, that the following accounts and inquiry be taken and made; that is to say:

- 1.
- 2.
- 3.
- 4.

And it is ordered, that the following further inquiries and accounts be made and taken; that is to say,

- 5.
- 6.
- 7.
- 8.

And it is ordered, that the further consideration of this cause be adjourned and any of the parties are to be at liberty to apply as they may be advised.

Dated this.....day of.....20.....

.....
Judge

However, in the case of Lagos State Rules,¹ where an order is made for account under this order, the account may be taken by a judge or a Referee appointed by the judge. Where the court choose to refer the matter to a referee, and the matter is referred to a Referee, the court shall furnish the Referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties if necessary to attend before the Referee during the inquiry.² The appointment of a Referee under the Lagos State Rule is an innovation which is meant to assist the judge obviously considering the workload of the judges in the Lagos State jurisdiction vis-a-vis the workload of judges in other jurisdictions. It is interesting to note that the appointed Referee is not giving a license for freewill or independent performance whatsoever. The steps of the Referee in the subsequent proceedings is as directed by the order of the judge. Hence, it is provided:

The Referee may, subject to the order of the judge, hold the inquiry at or adjourn it to any place, and or have any inspection or view which he may deem expedient for the disposal of the controversy before him. He shall so far as practicable, proceed with the inquiry from day to day.³

The evidence to be taken by the Referee in the conduct of inquiry for account is as directed by the judge in the order. In other words, the proceedings of the Referee is as provided to wit:

Subject to any order made by the judge ordering the inquiry, evidence shall be taken at any inquiry before a Referee and the attendance of witnesses to give evidence before a Referee may be enforced by the judge in the same manner as such attendance may be enforced before the court; and every such inquiry shall be conducted in the same manner or as nearly as circumstances will admits as trials before a court.⁴

A careful examination of the provision of the Rules shows that the power of the Referee is subject to the overriding power of the judge to the extent that even though the Referee shall have the same authority in the conduct of any inquiry as a judge when presiding at any trial,⁵ there is nothing in the rules that shall authorize any Referee to commit any person to prison or to enforce any order by attachment or otherwise; but the judge may in respect of matters before a Referee, make such order of attachment or commitment as he may consider

¹ Order 12 Rule 3 of the Lagos State Rules.

² Order 27 Rule 3 of the Lagos State Rules.

³ Order 27 Rule 4 of the Lagos State Rules.

⁴ Order 27 Rule 5 of the Lagos State Rules.

⁵ Order 27 Rule 5(2) of the Lagos State Rules.

necessary.¹

While it is obvious that a Referee may not be able to commit any person to prison or to enforce any order by attachment but the judge may in respect of any matter before a Referee make such order of attachment. Consequently, the jurisdictional power of a judge over a matter does not cease under this rule by the judge ordering that the whole cause or matter or any other question or issue of facts arising therein in such a legal proceedings be tried by a Referee.² The appointment of a Referee under this rule for an account to be taken or carrying out an inquiries amount to a principal delegating authority to an agent wherein the principal monitors the exercise of such delegated authority by the agent. In such a situation the agent (Referee) is not left at large to exercise the authority unguarded whatsoever.

It is on this note that a Referee is under an obligation in pursuance of a reference to make a report to the judge and notice of such a report is served on the parties to the reference.³ A Referee may by his report submit any question therein for the decision of the judge or make a special statement of facts from which the judge may draw such inferences which he deems or considers fit.⁴ In as much as the Referee's report may not be regarded as an interlocutory order or ruling since the Referee may not have an opportunity to re-visit or come back to work or develop on the report on its own accord as of right, it is worthy of note that the judge on the receipt of a Referee's report, retains the jurisdiction to do any of the following:

First, adopt the report in whole or in part.

Secondly, vary the report.

Thirdly, require an explanation from him (a Referee).

Fourthly, remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other Referee.

Fifthly, decide the question or issue originally referred to him on the evidence taken before him either with or without additional evidence.⁵

At the resumed hearing of the report by the judge, an application can be made either to vary the report or merit the whole or any part of the question or issue originally referred and notice of such an application must be given for not less than 4 days to the hearing of the report.⁶

5. Giving of Directions

Where the court orders an account to be taken, it may by the same or subsequent order give directions with regard to the manner in which the account is to be taken or vouched.⁷ In addition to the above, the court is at liberty to further order that in taking the account the relevant books of account shall be evidence of the matters contained therein and of course with liberty to the parties interested to take such objections thereto as they think or consider fit.⁸ The power of the court/judge under these rules is to give room for documentary evidence in addition to the *viva voce* evidence. Generally, documentary evidence is more direct, perfect and more certain than *viva voce* evidence. It is regarded as the best evidence⁹ in adjudicatory jurisprudence.

Where an account has been ordered to be taken, the accounting party must make out his account and unless the court otherwise directs, verify by an affidavit to which the account shall be exhibited. And the items on each side of the account shall be numbered consecutively.¹⁰ In line with the doctrine of fair hearing which demands putting the other party on notice, unless the order for the taking of the account otherwise directs, the accounting party on lodging the account with the court, shall proceed to notify the other parties that he has done so and of the filing of affidavit verifying the account and of any supporting affidavit.¹¹ The wisdom of the verifying affidavit is to enable the accounting party to be caution and everyone that there is no room for perjury.

It is interesting to note that the Kogi State Rules and the Rules of the High Court, Hong Kong made a provision for what should be done in a situation of an alleged error to the extent that any party who seeks to charge an accounting party with an amount beyond that which has been admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect, shall give him notice

¹ Order 27 Rule 5(3) of the Lagos State Rules.

² Order 27 Rule 2 of the Lagos State Rules.

³ Order 27 Rule 6(1) of the Lagos State Rules.

⁴ Order 27 Rule 6(2) of the Lagos State Rules.

⁵ Order 27 Rule 6(3) of the Lagos State Rules.

⁶ Order 27 Rule 6(4) of the Lagos State Rules.

⁷ Order 20 rule 3(1) of the Kogi State Rules; Also, Order 43 rule 2(1) of the Rules of the High Court, Hong Kong.

⁸ Order 20 rule 3(2) of the Kogi State Rules; Order 43 rule 4(2) of the Rules of the High Court, Hong Kong; Order 27 rule 7 of the Lagos State Rules.

⁹ Bryan, A. Garner, *op. cit.*, p. 635.

¹⁰ Order 20 rule 4(1) & (2) of the Kogi State Rules; Order 43 rule 4(1) & (2) of the Rules of the High Court, Hong Kong & Order 27 rule 8 of the Lagos Rules.

¹¹ Order 20 rule 4(3) of the Kogi State Rules; Order 43 rule 4(3) of the Rules of the High Court, Hong Kong, *ibid.*

thereof stating so far as he is able, the amount sought to be charged with brief particulars thereof or as the case may be, the grounds for alleging that the item is erroneous.¹

On comparative basis, the Lagos State Rule did not make any provision for the steps to be taken or what to do in the case of the other party challenging erroneous accounting by the accounting party. There are likely two options or theories on the part of the Lagos State Rules. First, that there should be no room for erroneous accounting since the accounting party is under an obligation to support the account with verifying affidavit. Secondly, that the other party on noticing an erroneous accounting should not inform or notify the accounting party of the error but that the other party could straightaway take the necessary steps under the law to enforce perjury against the accounting party, same having been given on verifying affidavit. Furthermore, the Lagos State Rules provides the steps to take in vouching accounts as follows:

Upon the taking of any account the judge may direct that the voucher be produced at the chambers of the accounting party's legal practitioner or at any other convenient place and that only such items as may be contested or surcharged shall be brought before the judge.²

The Kogi State Rules and the Rules of the High Court, Hong Kong, does not make a similar provision to the above provisions of the Lagos State Rule.

6. Allowances and Delay in Prosecutions

The saying, 'a labourer deserves his wages' seems to be applicable under the jurisprudence of the concept of accounts and inquiry to the extent that "in taking any account directed by any judgment or order, all just allowances shall be made without any direction to that effect".³ In the case of Lagos state, where the judge choose to direct or refer the matter of taking account to an official Referee or an officer of the court for trial, it is doubtful as to who determines the allowances, could it be the judge or Referee or an officer of the court?

Delay defeats equity is one of the maxims of Equity. However, for the purpose of taking an account and conduct of inquiry under the adjectival jurisprudence of the Nigerian legal system, it is doubtful whether the maxim is applicable and or relevant in its full implication. If it appears to the court, that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for conduct thereof and for costs as the circumstances require.⁴ Consequent upon the above, the court may direct any party or legal practitioner to take over the conduct of proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of the legal practitioner's costs.⁵ Where the court decides to stay the proceedings because of the delay, does that amount to the end of the proceeding? Would the stay of proceeding amount to the court refusing the taking of an account? The panacea of staying the proceeding seems to be an inconclusive solution to the problem of delay in the prosecution of an account or conduct of inquiry. The remedies of expediting the proceedings and for costs for the delay as the circumstances may require are obvious to the extent that the proceedings would be hastened to conclusion.

7. Distribution of Fund

The distribution of the fund for which an account has been given by the accounting party to those entitled to the fund is the last procedural steps expected in the law of giving an account and conduct of inquiry. Who are entitled to the fund and in what ratio in the distribution? The rules of court⁶ provides to the extent that where some of the persons entitled to share in a fund are ascertained and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the court may order or allow immediate payment of their shares to the person ascertained and reserving the remainder of the fund to meet the subsequent cost of ascertaining those other persons and their shares.⁷ Strangely, the Lagos State Rule did not provide for the steps in the distribution of the fund. Whether the non-provision for the steps to be taken for the distribution amount to non-distribution of the fund at all or leaving the steps to be taken to the discretion of the judge are issues for consideration by the court. It may not be correct to assume or contend that the non-provision for the steps to be taken for the distribution under the Lagos State Rules amount to non-distribution of the fund to the extent that

¹ Order 20 rule 5 of the Kogi State Rules; Order 43 rule 5 of the Rules of the High Court, Hong Kong.

² Order 27 rule 9 of the Lagos State Rules.

³ Order 20 rule 6 of the Kogi State Rules; Order 43 rule 6 of the Rules of the High Court, Hong Kong and Order 27 rule 12 of the Lagos State Rules.

⁴ Order 20 rule 7(1) of the Kogi State Rules; Order 43 rule 2 of the Rules of the High Court, Hong Kong and Order 27 rule 13 of the Lagos State Rules.

⁵ Order 20 rule 7(2) of the Kogi State Rules; Order 43 rule 7(2) of the Rules of the High Court, Hong Kong.

⁶ Order 20 rule 8 of the Kogi State Rules; Order 43 rule 8 of the Rules of the High Court, Hong Kong.

⁷ Order 20 Rule 8 of the Kogi State Rules; Order 43 Rule 8 of the Rules of the High Court, Hong Kong.

the essence of ordering for the account and conduct of inquiry in the first place would have been defeated.

The rules of court are handmaids of justice and to that extent it is assumed that the non-provision of the steps to be taken for distribution under the Lagos State Rules amount to leaving the steps and the mode of distribution to the discretionary power of the court. In the case of *Anthony Tippi v. Sylvester Notani*¹ the Court of Appeal, Nigeria commenting on the status of the rules of court held to wit:

I am aware and as contended rightly too by learned counsel to the respondent that rules of court are ordinarily and clearly handmaids of justice geared in its use towards the attainment of substantial justice and thus should not be allowed to either becloud or stultify the doing of substantial or real justice to the parties.²

The provisions of Kogi State Rules³ and the Rules of the High Court, Hong Kong,⁴ are similar as both provisions suggest that where some persons entitled to share of the fund are not found, their absence should not in any way impair the distribution of the fund. In other words, the shares of those that are identified and available should be paid to them immediately and the remainder of the fund should be reserved to meet the subsequent cost of ascertaining those other persons and their shares.

8. Conclusion

In this paper, we have examined the concepts of accounts and inquiry under the Nigerian adjectival jurisprudence with respect to an application for an account, the issue of some preliminary question, the ordering for account and the fact that in Lagos State Rules, the court could take an account and conduct inquiry or refer the taking of an account and conduct of inquiry to a special Referee or an officer of the court while in Kogi State Rules, and the Rules of High Court, Hong Kong, it is only the judge that take an account and conduct inquiry. The giving of directions with regards to the manner in which the account is to be taken or vouched, the allowances entitled to by the judge, or the Referee or those involved in the taking of an account, and the management of the undue delay in the prosecutions of any accounts or inquiry was equally examined.

We also examined the matter of distribution which incidentally no provision was made for it under the Lagos State Rules while the Kogi State Rules and the Rules of High Court, Hong Kong thereon are similar generally and specifically with respect to the distribution of the fund. It is also discovered that the distribution of the fund is the last procedural steps to be taken in taking an account and conduct of inquiry, and how those who are entitled to the fund both the ascertained persons and those not ascertained are entitled to their respective shares of the fund. The doctrine of Equity in action was shown to be demonstrated to the extent that those who are entitled to the shares of the fund are not denied of their shares simply because they are not immediately ascertained.

9. Recommendations

In this research, it is revealed that on a general note the most if not all the adjectival law (rules of court) of the various High Courts of each states of the Federation of Nigeria under the Nigerian legal system made provisions for the concepts of accounts and inquiry. The essence of taking an accounts and conduct of inquiry under the Nigerian legal jurisprudence is to ensure that persons who are entitled to an account and inquiry are not denied of the knowledge of the accounts and their respective shares as knowledge is power.

The research also reveals that on a general note the specific provisions in the various adjectival laws (rules of the High Court) of the various states of the Federation are similar though not exactly the same. These arises from the comparative study (analysis) carried out on the Kogi State Rules *vis-a-vis* the Rules of the High Court, Hong Kong and the Lagos State Rules. Consequent upon the above and considering the peculiar nature of the Nigerian legal system wherein the Judges, the Barristers, Solicitors and Advocates are exposed to the same legal education even at the University level under the supervision of the same body, the National University Commission (NUC), the same professional regulatory body, the Council of Legal Education and the Body of Benchers, it is highly recommended that there should be a uniform adjectival law in Nigeria.

Furthermore, there should be definite and specific provision in the Rules to guide the judges with respect to each step to be taken especially with distribution of the fund among the parties and the persons that are entitled to what amount by way of allowances to avoid judges applying an unguarded exercise of discretion on these matters.

¹ (2014)37 WRN 154 at 185

² *Ibi*, See also *Ogunsakin v. Ajidera* (2010)10 WRN 98, *Buhari v. Obasanjo* (2003)47 WRN 44.

³ *Ibid.*

⁴ *Ibid.*

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