Neutral Citation Number: [2020] EWHC 213 (Fam)

Case No: 2019/0154

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/02/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

Mohammed Sarfraz Ali	**Applicant**
- and -	
Anisha Taj	
Nazma Taj	
Sabrina Taj	
Zarah Taj	**Respondents**

- -
- -

Ms Clare Stanley QC (instructed by **Gentle Mathias LLP**) for the **Appellant**
Mr Thomas Dumont QC (instructed by **Ashfords LLP**) for the **Respondents**

Hearing date: 4 December 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with what has been listed as an application for permission to appeal, with appeal to follow if permission is granted against an order made by District Registrar Murphy on 7 August 2019 requiring the Appellant to exhibit on oath a true and perfect inventory of the estate of Mohammed Taj (hereafter 'the Deceased') and render a true and just account of the administration of the estate of the deceased. The Appellant, who is the younger brother of the deceased, acts as an Executor of the estate of the Deceased, along with Mohamed Arshad Khan, who is the brother in law of the Deceased's second wife. It would appear from the documents before the court that Mr Khan now asserts that the Appellant has been dealing with the Deceased's estate without his knowledge or approval and has raised concerns regarding the Appellant's administration of the estate.

2. The Respondents to the appeal are the persons entitled to a share in the residuary of the deceased estate under the terms of his will, namely the Deceased's widow and three children from his first marriage (the deceased also having a further child from his first marriage and two children from his relationship with the Second Respondent).

BACKGROUND

3. The Deceased died on 1 September 2007. On 7 May 2008, a Grant of Probate of the estate of the Deceased was made out of the London Probate Registry to the Appellant and Mr Khan. The executors swore a gross value of the estate of £18,573,258 with a net value of £8,761,708 (although it is now possible that the Estate may have a value of up to £118M).

4. Notwithstanding that a Grant of Probate was made nearly 11 years ago, the Respondents contend that the Appellant and Mr Khan have never provided an inventory of the property comprising the estate nor properly accounted to the beneficiaries for the administration of the Estate, notwithstanding what the Respondents contend is the fundamental duty of executors and trustees to stand ready with such an account. It is apparent that the Appellant contends that the administration of the Estate has been drawn out largely as the result of an extensive investigation by HMRC into the affairs of the Deceased and, latterly, by the discovery of offshore companies that significantly increase the value of the estate in the way I have described and raise the spectre of a possible fraud on HMRC.

5. The correspondence before the court commences on 15 January 2019 when the First, Third and Fourth Respondents and their sister, through Nean Wealth Advisors, wrote to the Appellant pointing out information to which the Respondents contended they were entitled but had not received, including a schedule of assets and details of any disposition of assets by the executors. No reply was received until 22 March 2019.

6. On 22 March 2019 the solicitors instructed by the Appellant and Mr Khan, Gelbergs LLP, refused a request by the Respondents for an account on the grounds that such an account would be "meaningless" and a waste of money given what they contended were continuing issues regarding the contents of the Estate. However, whilst the

letter asserted that until such time as the HMRC investigation had been completed the Executors did not want to pay for an estate account to be prepared, the letter did exhibit a "schedule of properties held by the Deceased" and stated that "The vast majority of these properties have been sold in order to pay the estate debts, including the mortgages on the properties".

7. Following a further exchange of correspondence between Nean Wealth Advisors and Gelbergs, the Respondents instructed their own solicitors, Ashfords LLP. A letter was sent to Gelbergs on 24 May 2019 pointing out the duties of the Executors under s 25 of the Administration of Estates Act 1925 (as amended by s 9 of the Administration of Estates Act 1971) and pressing the Appellant and Mr Khan for accounts for the Estate. Enclosed with that letter was a draft affidavit for an inventory and account. The letter gave notice to the Appellant and Mr Khan that a summons would be issued in 14 days if the estate account requested was not forthcoming and invited Gelbergs to confirm that they were authorised to accept service. No such confirmation regarding service ever appears to have been forthcoming.

8. On 7 June 2019 Gelbergs responded by promising interim estate accounts by the end of June 2019 "at the latest". This deadline was not met and on 28 June 2019 Gelbergs notified the Respondents that interim accounts could not be provided by the deadline originally stated but that they would be provided upon outstanding information becoming available "during the course of next week".

9. Within the foregoing context, the Respondents sought to issue their summons for an order for an inventory and account at the Principal Probate Registry on 3 July 2019. The letter to the Principal Registry of the Family Division enclosing the summons and supporting affidavit requested that the court "issue the Summons and return it to us or service at your earliest opportunity." There is a copy of the Summons before the court. The summons reads as follows:

> "LET ALL PARTIES concerned attend one of the District Judges at the Principal Registry of the Family Division of the High Court of Justice at First Avenue House, 42-49 High Holborn, London, WC1V 6NP at [...] on the [...] day of [...] 2019 at [... am/pm] for an Order that (1) Mohammed Safraz Ali and Mohamed Arshad Khan, the Executors of the Estate of Mohammed Taj Deceased to whom a Grant of Probate was issued on 19 January 2009 exhibit on oath in the Court a true inventory and account of the whole estate of the Deceased and (2) the costs of producing a true inventory and account and the costs of this application be paid by the Executors personally. Dated July 2019. This summons was taken out by ANISAH TAJ, NAZMA TAJ, SABRINA SADIQ and ZARAH TAJ c/o Ashfords of Grenadier Road, Exeter, Devon, EX1 3LH (Solicitors for the Applicants)"

10. The summons was supported by Affidavit sworn on 3 July 2019 by Anisah Taj, one of the beneficiaries and the daughter of the deceased, on behalf of the other beneficiaries. By that affidavit Ms Taj contended that the position in respect of the administration of the Deceased's Estate was unclear, that there had been a complete refusal by the Executors to disclose any information despite numerous requests and that when limited information had eventually been supplied it omitted important assets, including the Deceased's property portfolio. Ms Taj asserted that the

beneficiaries had real concerns that accounts were only now being attempted, some ten years after the Grant of Probate, and asserted that unless the Appellant and Mr Khan were ordered to give an inventory and account under oath they would continue to delay serving an account and risk further depleting the residuary estate.

11. It can be seen that the summons was not dated and did not provide details of the hearing. Moreover, it is common ground that the Summons was not sealed and issued by the court office nor was proper service of the summons effected on the Appellant or Mr Khan, who resides outside the jurisdiction of England and Wales.

12. On 5 July 2019 the Appellant produced, through Gelbergs, what he contends was an interim account. The documents provided to Ashfords under cover of a latter dated 5 July 2019 are described as "interim estate accounts". As will become apparent, the Respondents contend that this purported interim account is manifestly deficient.

13. On 23 July 2019 HMCTS wrote to Ashfords indicating that the summons had been considered by the District Registrar. That letter stated as follows:

> "The District Registrar has directed that:-
>
> The Solicitors to file a copy of the letter to the Executors Solicitors (*sic*) informing them that if the estate accounts not received by (date given) they will issue a summons for Inventory and Account
>
> Are you happy for this matter to be dealt with by paper directions then please file costs form N260 if claiming." (*sic*)

On 31 July 2019 Ashfords responded to this letter informing the court that the beneficiaries had served a Letter of Claim on the Executors and enclosing a copy of the letter to Gelbergs of 24 May 2019 as requested. They also confirmed that they were content for the matter to be dealt with by way of paper directions, enclosing a Statement of Costs in form B260.

14. On 23 July 2019 Ashfords wrote to Gelbergs informing them that the beneficiaries considered that the draft interim estate accounts to be incomplete and inaccurate, itemised in detail those aspects of the draft interim estate accounts that were disputed by the beneficiaries and placed Gelbergs on notice that the beneficiaries had now instructed them to apply to remove the Appellant and Mr Khan as executors pursuant to s 50 of the Administration of Justice Act 1985.

15. I note that the letter from Ashfords to Gelbergs of 23 July 2019 made reference to the summons for an Inventory and Account, and stated that "We are currently waiting for a listing date. Once received, the Summons will be served upon you, on behalf of your clients." This suggests that whilst Ashfords had agreed to the court dealing with *directions* on paper, they anticipated an oral hearing of the summons itself, the date of which would be notified to the Appellant and Mr Khan. By 1 August 2019 the Appellant had changed solicitors to Gentle Mathias LLP.

16. The Summons was heard by District Registrar Murphy sitting at the District Probate Registry at Manchester on 7 August 2019 without either side being in attendance. The order made by the District Registrar on that date provided as follows:

> "UPON reading the summons for inventory and account and affidavit in support sworn by the applicant on 3rd July 2019 (copies enclosed)
>
> AND UPON this summons being dealt with in the absence of the parties pursuant to Rule 61(5) NCPR 1987 (as amended)
>
> IT IS ORDERED that the said respondents shall within 28 days of service hereof exhibit on Oath a true and perfect inventory of the estate of Mohammed Taj deceased and render a true and just account of the administration of the estate of the said deceased.
>
> The costs of the applicant summarily assessed at £11,408.93 be paid by the respondents."

17. On 9 August HMCTS sent a sealed copy of the order to Ashfords and invited them to serve the sealed order and a copy of the Affidavit on the Appellant and Mr Khan in circumstances where the HMCTS noted that the summons contained no service for address. The order was served on the Appellant and Mr Khan on 14 August 2019.

18. On 19 August 2019 the Appellants issued an appeal summons pursuant to NCPR r 65 which provided as follows:

> "LET all parties attend one of the Judges of the Principle Registry of the Family Division at the High Court of Justice at ... on the ... day of ... 2019 at ... as follows that:
>
> (i) By way of an appeal against the order of District Registrar Murphy of the District Probate Registry at Manchester on 7th August 2019 and/or that the order be set aside;
>
> (ii) there by a stay on the enforcement of the Order until the hearing of this application;
>
> (iii) the costs of this appeal be provided for.
>
> DATED 19 August 2019
>
> This summons was taken out by Mohammed Sarfraz Ali c/o Gentle Mathias LLP of 59 Charlotte Street, London, W1T 4PE (Solicitor for the First Respondent)"

19. As with the summons for an order for inventory and account, it would appear that the appeal summons was not issued and sealed by the court office. Pursuant to an order of Williams J, Grounds of Appeal were filed and served on 25 October 2019. Those Grounds of Appeal provide, in summary, as follows:

    i) The District Registrar exceeded his jurisdiction in circumstances where, at the date of the order, the matter of an account of the administration was in dispute and therefore the District Registrar had no jurisdiction to make an order under s 25 of the Administration of Estates Act 1925 by reason of ss 61 and 128 and Schedule 1 of the Senior Courts Act 1981.

ii) In any event, the order was unjust by reason of serious procedural irregularity in circumstances where (a) the Appellant was never served with a sealed copy of the Summons, the sworn affidavit in support or the statement of costs, (b) consequently the Appellant had no opportunity to respond to the summons or be heard on the application before the District Registrar, (c) in circumstances where the matter was contested the District Registrar had no power to deal with the matter without notice having regard to r 61(2) of the Non-contentious Probate Rules 1987 (hereafter NCPR), (d) the District Registrar was under the false impression the Appellant had been properly served and (e) in dealing with the summons the Appellant's Art 6 rights were breached.

iii) The decision of the District Judge to grant the summons was wrong in circumstances where (a) the overall dispute between the parties was and is highly contentious and suitable only for resolution in the Chancery Division (in circumstances where maladministration is alleged, an application has been made to replace the Executors and where there is now an allegation that the will was not validly executed), (b) it was and is not possible for the Appellant to comply with the order for an inventory and account because of ongoing uncertainties with respect to the Estate and (c) the costs order was wrong in principle in circumstances where no costs statement had been served in accordance with CPR PD 44 para 9.5(4)(b)).

20. On 9 September 2019 Gentle Mathias provided Ashfords with further particulars regarding the allegation that the will had not been validly executed, contending that information that they had been gathering since the early part of August 2019 indicated that the Deceased's will "may well be invalid" by reason of it having been witnessed only following the death of the Deceased. Within this context, at this hearing the court was informed that the Appellant is in the process of preparing an application pursuant to CPR r 64.2 for directions in the Chancery Division as to what steps the Appellant should now take.

21. On 7 October 2019 the Respondents issued their Part 8 Claim in the Chancery Division under s 50 of the Administration of Justice Act 1985 for an order removing the Appellant and Mr Khan as personal representatives of the Estate of the Deceased. The grounds of the claim, which provide further particulars of the allegations of maladministration, are set out in the witness statement of Najma Taj and can be summarised as follows:

i) The administration has been ongoing for 12 years and is incomplete;

ii) The Appellant has displayed significant hostility, refused to provide information about the administration and assets of the estate and failed to comply with the order for an Inventory and Account;

iii) The Appellant has acted in breach of trust by causing assets to be transferred to himself;

iv) The interim estate account provided indicates the Appellant and Mr Khan have failed to account to the estate the full proceeds of sale received in respect of properties owned by the Deceased at the date of his death;

v) It is in the interests of the beneficiaries as a whole and the proper administration of the estate for the Appellant and Mr Khan to be replaced.

22. On 10 October 2019 Williams J listed the summons for appeal for an oral permission hearing with appeal to follow immediately if permission was granted. I have heard comprehensive oral submissions from Ms Clare Stanley, Queen's Counsel on behalf of the Appellant and from Mr Thomas Dumont, Queen's Counsel, on behalf of the Respondents, which oral submissions supplemented their extremely helpful Skeleton Arguments.

SUBMISSIONS

The Appellant

23. On behalf of the Appellant, Ms Stanley QC first submits that the District Registrar had no jurisdiction to make an order for Inventory and Account by reason of the fact that as at the date the order was made the administration of the estate was not non-contentious probate business for the purposes of s 128 of the Senior Courts Act 1981. In this regard, Ms Stanley relies on the Letter of Claim from the Respondents dated 23 July 2019 and claim subsequently issued in the Chancery Division on 7 October 2019. Within this context, Ms Stanley submits that as at 7 August 2019 there was a "contention" as to the right to an Inventory and Account and accordingly, the application for an Inventory and Account in this case cannot be said to be "business of a non-contentious nature in matters of testacy and intestacy" for the purposes of s 128(2)(b) of the 1981 Act, depriving the District Registrar of jurisdiction to make the order he did. Ms Stanley accepted that s 128(b) of the 1981 is non-exhaustive and that the NCPR apply not only to the grant of probate itself but to steps taken thereafter.

24. Ms Stanley's second submission is that the order for Inventory and Account cannot stand by reason of serious procedural irregularity and breach of natural justice. In this regard, Ms Stanley relies on the fact, not disputed by the Respondent, that at the time the District Registrar made the order for Inventory and Account:

i) The summons had not been sealed and therefore never issued by the court office contrary to the requirements of NCPR r 61(3) and RSC Ord 32 r 2(1) and RSC Ord 32 r 3(c) as applied by NCPR Rule 3, resulting in a fundamental procedural irregularity. Ms Stanley submits that a seal is a fundamental aspect of the process, indicating that the court's jurisdiction is now engaged on the issue articulated by the summons;

ii) The summons was not served on the Appellant (as plainly intended by the Respondents having regard to their letter to the Probate Registry requesting that the summons be returned for service) contrary to (a) the mandatory requirements of RSC Order 32 r 3(2), (b) the procedure described in Tristram and Cootes Probate Practice at para 25.234, (c) the ordinary meaning of the word 'summons' (and that fact that the rules retain the use of that word), (d) the ordinary terms of a summons that states "LET ALL PARTIES concerned attend...", (e) the requirements of Art 6 and (f) the principle that without notice applications are the exception and not the rule, particularly where the order sought is mandatory in nature. Within this context Ms Stanley submits that

NCPR r 66(2) (which permits the Registrar to dispenses with service on such terms, if any, as he may think fit) must be construed in accordance with the principle of natural justice and Art 6 of the ECHR, which Ms Stanley submits is engaged as soon as the court is asked to *order* the executor to take a particular action;

iii) The sworn affidavit in support of the summons was not served upon the Appellant, contrary to RSC Ord 32 r 3(2)(c);

iv) The Respondents had corresponded with the court on fundamental matters without copying in the Appellant and Mr Khan, contrary to the principle articulated by Kerr J in *Topping v Ralph Trustees Limited* [2017] 4 WLR 147 at [11];

v) The Appellant was not notified by the Court or the Respondents that the summons would be dealt with on paper.

25. Ms Stanley submits that these omissions had a number of adverse consequences for the fairness of the proceedings. First, in circumstances where the summons was not issued, no place, date and time for hearing was inserted in the summons and, in any event, it was not served. Second, the Appellant had no knowledge of the courts intention to make directions on paper. Third, in breach of the rule of natural justice and Art 6 of the ECHR the Appellant no opportunity to respond to the summons or affidavit in support and make submissions as to how the summons should be determined, including bringing to the attention of the court what Ms Stanley submits was the contentious nature of the proceedings, that the court accordingly had no jurisdiction to make the order and, in any event, that an order was not appropriate. Fourth, the court dealt with the matter on a without notice basis without informing the Respondent's that this was the intention, meaning the Respondents were unaware that they were under a duty of full and frank disclosure and the evidence before the District Registrar was out of date.

26. Within this context, on behalf of the Appellant, Ms Stanley goes further and submits that the Respondents in any event failed in their duty of full and frank disclosure as articulated in *Ghafoor v Cliff* at [46]-[47] and *Alliance Bank v Zhunus* [2015] EWHC 714 (Comm) by:

i) Failing to reveal the information that had been provided by the Appellant and Mr Khan prior to the application made to the District Registrar for an inventory and account and that Anisah Taj had been kept updated throughout the administration and had, in fact, been heavily involved;

ii) Failing to disclose correspondence that indicated that the Appellant intended to assist and fully cooperate with reasonable requests for information, that the Estate accountants had offered to prepare an interim report;

iii) Failing to disclose the fact that Gelbergs provided the Respondents with interim estate accounts on 5 July 2019.

27. Ms Stanley's third submission is that the order made by the District Registrar was, in the particular circumstances of this case, premature and an order that no reasonable

tribunal, properly directed on the facts and law, could have made, particularly in the unlimited terms chosen by the District Registrar. Within this context, on behalf of the Appellant Ms Stanley submits that given the uncertainties that attach to the administration of the estate (in particular the ongoing HMRC investigation, the difficulties in identifying the extent of the estate upon the discovery of offshore assets, the alleged refusal of Gelbergs and the Estate's accountants to release their files and the allegations now raised by Mr Khan against the Appellant, Gelbergs and the Estate accountants), the Appellant's duty to provide a "true and fair" account could not extend beyond the interim estate account provided on 5 July 2019 and, in any event, it would now be *impossible* for the Appellant to swear on oath as to the truth and justice of *any* account at this stage. Further, Ms Stanley submits that, in any event, given the highly contentious nature of the matter, it is only suitable for determination in the Chancery Division, particularly in circumstances where an application is proposed to be issued by the Appellant under CPR Part 64.

28. Within this context Ms Stanley further submits that, in light of the proceedings now issued in the Chancery Division, to allow the order for Inventory and Account to stand could lead to inconsistent decisions as between the Family Division and Chancery Division. In this regard, Ms Stanley prays in aid the fact that an Inventory and Account is a process not an event. Relying on Williams, Mortimer and Sunnucks on Executors, Administrators and Probate (21st Edn.) at para [42-28], Ms Stanley submits that once an inventory and account has been rendered by the Executors pursuant to the order of the court and the court has investigated it and pronounced for its validity, the Executor cannot be subject to further suits in that regard, opening up the possibility of inconsistent decisions if the action in the Chancery Division came to a different decision as to the true account.

29. Finally, Ms Stanley submits that the costs order made by the District Registrar was wrong (a) because the substantive order was wrong, (b) because no Statement of Costs was served pursuant to CPR PD44 para 9.5(4)(b) and (c) because the sum of £11,408.93 awarded was excessive in light of the work done.

30. In the circumstances, Ms Stanley submits that this court should now direct that the summons for an inventory and account be transferred to the Chancery Division to be heard with the proceedings on foot in that Division or direct the summons be remitted to the District Registrar but stayed pending the outcome of the proceedings in the Chancery Division.

The Respondents

31. On behalf of the Respondents, Mr Dumont QC submits that the conduct of the Appellant constitutes an *extreme* case of failure by executors to account to their beneficiaries for the administration of an estate, the Executors never having accounted to their beneficiaries over a period of nearly 11 years, nor paid any sums out of the Estate and thus, submits Mr Dumont, failing in the fundamental duty of executors and trustees to be ready with their accounts. Within this context, Mr Dumont reminds the court that the Appellant has sworn an oath as executor to accept the obligations of that station, one of which is to produce an account if required by the court.

32. In answer to the first ground of appeal, Mr Dumont submits on behalf of the Respondents that on the proper construction of s 128 of the Senior Courts Act 1981

the District Registrar plainly had jurisdiction. Specifically, Mr Dumont highlights the wording of s 128 of the 1981 Act which provides that "non-contentious business" is "the business of obtaining probate and administration where there is no contention *as to the right thereto*" (emphasis added). Within this context, on behalf of the Respondents it is submitted that:

i) The Appellant has sworn an oath as an executor of the Deceased's Estate.

ii) In the circumstances, there was no contention as to the right of the Appellant (and Mr Khan) to obtain probate and administer the Estate pursuant to the terms of the will;

iii) The beneficiaries have a common law right to an account, enshrined in statute in s 25 of the Administration of Estates Act 1925 and accordingly there can be no contention as to the right to receive an inventory and account and, in any event, such a contention would not concern the *Executors* right to probate and to administer the Estate.

33. Within this context, Mr Dumont relies on the decision of *Ghafoor v Cliff* [2006] 1 WLR 3020 at [3] as authority for the proposition that merely because matters are contentious between the parties does not mean that the NCPR cease to apply.

34. Mr Dumont further submits that the fact that the Respondents sent a letter before claim seeking the removal of the Appellant and Mr Khan does not affect the non-contentious nature of a summons for inventory and account in circumstances where, following *Re Thomas' Estate* [1956] 1 WLR 1516, an executor remains subject to the jurisdiction of the court even after revocation of the grant of probate. Within this context, Mr Dumont submits that the Appellant remains liable to account whether or not he is removed as an executor. Ms Stanley did not dispute this contention.

35. Mr Dumont makes the same point regarding the effect of the Appellant's anticipated application to the Chancery Division pursuant to CPR Part 64 for directions. In this latter context, Mr Dumont points out that the Respondents would, by virtue of the relationship to the Deceased, remain beneficiaries of the estate on an intestacy, and equally entitled to an account were the will to be invalid (Mr Dumont submitting that it is a matter of concern that the validity of the will is only *now* being questioned and in the context of the summons for an order for inventory and account).

36. In the circumstances, Mr Dumont submits that it is clear that the summons for an inventory and account to the District Registrar was non-contentious business within the meaning of the 1981 Act and, accordingly, the jurisdiction to grant relief was that of the Family Division of the High Court.

37. With respect to the second ground of appeal, Mr Dumont's fundamental point on the Appellant's submission regarding procedural fairness is that this appeal is by way of a re-hearing, of which all parties are on notice and represented. Within this context, whatever the previous procedural defaults, Mr Dumont submits that this court is now in a position fairly to determine the question of an inventory and account having heard full argument, on the summons for appeal, on the question of whether such relief should be ordered.

38. Further, and in any event, on behalf of the Respondents Mr Dumont submits that the application by summons, which was sent to the Principal Registry with a request for a sealed summons for service, was made in accordance with NCPR r 61(2) and is, essentially, an administrative process. As to the absence of a seal on the summons, Mr Dumont submitted the seal is relevant for calculating from when time runs but does not define the effectiveness of the summons.

39. With respect to the manner in which the summons was dealt with by the District Registrar, Mr Dumont points out that the District Registrar could have required the summons to be served under NCPR r 66(2) but did not do so and that he had a discretion under NCPR r 61(5)(b) to dispense with a hearing, and did so under the revised provisions of the NCPR introduced in November 2018. With respect to the Art 6 rights of the executor in this context, Mr Dumont submits that the Appellant's civil rights and obligations must be considered in the context of his having taken an oath to provide an account when called upon to do so. Mr Dumont rejects the allegation that the beneficiaries failed in their duty of full and frank disclosure, relying on the fact of the purported interim estate account was disclosed to the court by the Respondents by way of letter on 31 July 2019.

40. With respect to the third ground of appeal, Mr Dumont submits that the contention that it is not possible for the Appellant to swear an oath as to the truth and justice of any account given the contended for uncertainties regarding the Estate stems from a misunderstanding of what the order requires. In circumstances where what the law demands is a "true and just account", Mr Dumont submits that there is no difficulty in dealing with such uncertainties, which the estate account can, where necessary, account for by indicating that the relevant items are estimated, provisional or uncertain. This, submits Mr Dumont, would not offend against the account being "true and just". Likewise, whilst the inventory must be "true and perfect", it is submitted on behalf of the Respondents that, some 12 years after death, the provision of such a list should not cause difficulty and if any item is still the subject of doubt it can be expressed as such.

41. With respect to any offshore assets, Mr Dumont submits that what is required is what is on the face of the Grant of Probate and that the Grant of Probate in this jurisdiction would not entitle the Appellant to collect in those foreign assets, which would require a further grant, and accordingly they do not prevent the Appellant dealing with the assets in the United Kingdom. Mr Dumont further points out that the Appellant has already accepted the obligation to provide an account and had attempted, albeit inadequately to do so. Within this context, Mr Dumont submits that the contention of the Appellant that this is now not possible is, accordingly, non-sensical.

42. Mr Dumont further submits that any other outcome would *wholly* undermine the process of providing an inventory and account pursuant to s 25 of the Administration of Estates Act 1925, allowing any executor to avoid their fundamental duty to provide an inventory and account by reason of mere uncertainty over one or more aspects of the Estate. Mr Dumont submits that the proposition that uncertainty is no bar to an executor providing an account pursuant to his or her duty is reinforced by the fact that such an account can even be ordered within the first year of death, during which period an executor is under no obligation to distribute the estate.

43. Within this context, Mr Dumont submits that the decision made by the District Registrar was the *only* decision available him on the facts of the case in circumstances where, within the context of the background set out above:

    i) The Appellant and Mr Khan had failed to provide an account of the substantial Estate of the Deceased for a period of nearly 10 years;

    ii) The Appellant and Mr Khan had refused to provide an account when initially requested to do so;

    iii) After thereafter promising to render an account, the Appellant and Mr Khan then failed to do so within the time asked of them by the beneficiaries;

    iv) Thereafter the Appellant and Mr Khan failed to render an account within the time they had promised to do so;

    v) The interim estate account ultimately provided failed to give a true and just account of the Estate (Mr Dumont describes them as "hopeless"), the provision of interim estate accounts accordingly being no answer to the prosecution of the summons. By way of example *only* the interim accounts leave £815,000 and £580,000 respectively unaccounted. It is also said that the Appellant is the owner of two properties formerly owned by the Deceased and not referred to in the interim account. Whilst the Appellant claims to have been owed a substantial sum of money, that debt appears nowhere in the account. Accordingly, Mr Dumont submits that the interim account in no way provided the beneficiaries with the information the absence of which the summons was designed to remedy

44. In the circumstances, Mr Dumont submits that the District Registrar was right to make an order when requested to invoke a process designed to provide a beneficiary with a summary method of knowing what is happening to their inheritance by extracting an account from an executor who refuses to provide one. The beneficiaries now need to know what is happening with their inheritance. Mr Dumont further submits that the costs order was properly made having regard to the need for Ashfords to analyse the purported interim estate account and to identify the errors and omissions therein.

THE LAW

45. Prior to 1858, the jurisdiction with respect to the granting or revocation of probate of wills and letters of administration was spread among some three hundred and seventy ecclesiastical or secular courts or persons, in addition to the Prerogative Courts of Canterbury and York. On 11 January 1858 the Court of Probate Act came into force and vested the voluntary and contentious probate jurisdiction in the Court of Probate. The Supreme Court of Judicature Act 1873 resulted in all cases in the province of the Court of Probate being assigned to the Probate, Divorce and Admiralty Division of the High Court, renamed the Family Division by s 1 of the Administration of Justice Act 1970 from 1 October 1971. Non-contentious (or 'common form') probate business was assigned to the Family Division. Contentious (or 'solemn form') probate business was assigned to the Chancery Division. With effect from 1 January 1982, s 1 of the Administration of Justice Act 1970 was repealed and re-enacted by s 61 and Sch. 1 of the Senior Courts Act 1981, which continued to reflect this division

in probate business, under the overarching probate jurisdiction provided by s 25 of the 1981 Act.

46. Section 128 of the Senior Courts Act 1981 provides the definition of non-contentious or common form probate business as follows:

> "**128 Interpretation of Part V and other probate provisions.**
>
> In this part, and in the other provisions of this Act relating to probate causes and matters, unless the context otherwise requires—
>
> "administration" includes all letters of administration of the effects of deceased persons, whether with or without a will annexed, and whether granted for general, special or limited purposes;
>
> "estate" means real and personal estate, and "real estate" includes—
>
> (a) chattels real and land in possession, remainder or reversion and every interest in or over land to which the deceased person was entitled at the time of his death, and
>
> (b) real estate held on trust or by way of mortgage or security, but not money secured or charged on land;
>
> "grant" means a grant of probate or administration;
>
> "non-contentious or common form probate business" means the business of obtaining probate and administration where there is no contention as to the right thereto, including—
>
> (a) the passing of probates and administrations through the High Court in contentious cases where the contest has been terminated,
>
> (b) all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action, and
>
> (c) the business of lodging caveats against the grant of probate or administration;
>
> "Principal Registry" means the Principal Registry of the Family Division;
>
> "probate rules" means rules of court made under section 127;
>
> "trust corporation" means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or authorised by rules made under section 4(3) of the Public Trustee Act 1906 to act as a custodian trustee;
>
> "will" includes a nuncupative will and any testamentary document of which probate may be granted."

47. Whilst perhaps counterintuitive in the context of the ordinary meaning of the term 'non-contentious', non-contentious probate business does not become contentious simply by reason of a dispute between the parties involved. Pursuant to s 128 of the 1981 Act, the definition of 'non-contentious business' is a legal one and, accordingly, the fact that an issue is contested does not necessarily mean that it will be treated as contentious business. The authorities make this clear.

48. *In re Clore, Decd (No.1)* [1982] Fam 113 concerned an appeal by executors to a Judge of the Family Division against an order of the Senior Registrar passing over the executors under the will and giving a grant *ad colligenda bona* to the Official Solicitor. As Ewbank J observed (in a decision affirmed by the Court of Appeal in *IRC v Stype Investments (Jersey) Ltd; In re Clore, Decd* [1982] Ch 456) the matter could hardly be more contentious. Sir Charles Clore had left two wills, there was a dispute with the Inland Revenue Commissioners regarding his domicile, an ongoing dispute as to the payment of capital transfer tax that was preventing a grant of probate in England and a dispute as to the liability of the personal representatives under the Finance Act 1975. Ewbank J was nonetheless satisfied that jurisdiction to determine the appeal lay with the Family Division:

> "An appeal from a registrar to a judge is a rehearing. The senior registrar considered the matter in a careful judgment, but some of the points which were taken before him were not taken before me, and some of the points which were not taken before him have been taken before me. So I approach the matter afresh. It might be wondered why such an application is dealt with in the Family Division of the High Court. The answer is that non-contentious probate is part of the jurisdiction of the Family Division, and although this matter could hardly be more contentious, it is, nevertheless, categorised as a non-contentious matter."

49. More recently, in *Ghafoor v Cliff* at [3] the court reiterated that the Non-Contentious Probate Rules 1987 will continue to apply to the matters with which those rules are concerned even though, in the context of ordinary language, the issues between the parties can be described as being highly contentious.

50. Within this context, I further note the obiter view expressed by Baron J in *CI v NS* [2004] EWHC 659 (Fam) that a summons for inventory and account is not an administration action, but rather simply a method of seeking information as a necessary step in the non-contentious administration of an estate by which a beneficiary simply seeks information to which he or she is entitled under Statute, and which the executor is under a duty to supply.

51. Throughout the jurisdictional history I have summarised above it has been a cardinal duty of an executor to provide an inventory of the estate and to render an account of his or her the administration of the estate. To this end the Appellant (prior to the changes effected by amendments to the NCPR in 2018 requiring a statement of truth rather than an oath) swore an oath to collect, get in and administer according to law the real and personal estate of the deceased, when required to do so by the Court, exhibit in the Court a full inventory of the estate and when so required render an account thereof to the Court and when required to do so by the High Court, deliver up the grant of probate to that Court. Within this context, executors are under a duty to

keep accounts and records relating to the administration of the estate and a beneficiary has a right to inspect these.

52. Historically, the obligation to provide an inventory and render an account of the administration of the estate was mandatory and fell to be discharged without being called for (see the statute of Henry VIII 21 H. 8, c 5, s.4). This mandatory form of inventory and accounting fell out of practice and in *Burgess v Marriott* (1843) 3 Curt. 425 at 779 Sir Herbert Jenner Furst observed as follows in a case where there had been a 27 year delay between the grant of probate and calling for an account:

> "The question arises with respect to the property of a gentleman who died so long ago as July 1815, and whose will was proved in the same year, very shortly after his death: now, in the year 1842, his surviving executor is called upon to exhibit an inventory and render an account; to see portions allotted and distribution made according to the Act of Parliament. The executor has appeared under protest, denying the right of the party citing him to call for the inventory, and denying that this court has jurisdiction in this case, as being one involving a question of construction. This court must sometimes of necessity enter into points of construction before it can decide whether a party, who calls for an inventory, is entitled to require one. The statute (21H. 8, c.5, s.4) enacts that an inventory shall be exhibited in every case without being called for; but this is not done, according the practice of this court, at the present time; the Court now always exercised a discretion whether or not to compel an inventory, and in cases where there has been a great lapse of time between the death of the party and the citation calling for the inventory has frequently refused to enforce the exhibition of an inventory. In this case the Court must necessarily enter into the question of construction, for if it were to hold that the party is not entitled to call for an inventory, it would in effect be deciding he is not entitled to any part of the property of the deceased. I am bound to see that a party called for an inventory has an interest to the extent of the citation."

53. Within the context of the provision of an inventory and the giving of an account evolving from a mandatory requirement to one that involved, where an inventory was not forthcoming, recourse to the court, s 25 of the Administration of Estates Act 1925 (as amended) provides as follows:

> "**25 Duty of personal representatives**
>
> The personal representative of a deceased person shall be under a duty to—
>
> (a) collect and get in the real and personal estate of the deceased and administer it according to law;
>
> (b) when required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court;
>
> (c) when required to do so by the High Court, deliver up the grant of probate or administration to that court."

54. The purpose of s 25(b) of the 1925 Act is to allow beneficiary a remedy where the beneficiary seeks to understand the nature and extent of the property comprised by the estate and the manner in which the estate is being administered by the executor and provides protection for the beneficiary against a lazy, negligent, recalcitrant or malign personal representative.

55. Within this context, the cardinal importance of the obligation on the executor to provide an inventory and render an account of the administration when called upon to do so is demonstrated by the fact that:

    i) An order requiring the executor to provide an inventory and render an account of the administration can be enforced by means of committal proceedings (see *Marshman v Brookes* (1863) 32 LJPM & A 95 and *Baker v Baker* (1860) 2 Sw & Tr 380).

    ii) Any person interested in an estate may call on the executor to exhibit and inventory and render an account of his or her administration of the estate (see *Myddleton v Rushout* (1797) 1 Phillim 244).

    iii) An order that the executor provide an inventory of the estate and account of his or her administration of the estate can be sought at any time, even in first year following the grant of probate, during which year the executor is not bound to distribute the estate of the deceased (see Administration of Estates Act 1925 s 44) and that mere lapse of time is no bar to the discharge of the obligation (see *Jickling v Bircham* (1843) 2 Notes of Cases 463 and *Scurrah v Scurrah* (1841) 2 Curt 919 at 921).

    iv) An executor will remain liable to provide an account of his administration of the estate even after he has been removed as an executor or his administration has expired. In *In the Estate of Thomas, Deceased* [1956] 1 WLR 1516 in which the court made clear that an order under s 25 of the Administration of Estates Act 1925 can be made against an executor even though he is no longer a personal representative, whether by reason of the grant having been terminated by order of the court or by a cessate grant (see also *Taylor v Newton* (1752) 1 Lee 15).

    v) The obligation to exhibit an inventory and provide an account is not confined to the original executors, but may continue to be enforced against the executor of one of several executors, even if there is an executor of the original testator still surviving (see *Pitt v Woodham* (1828) 1 Hag Ecc 247 at 250).

    vi) Practical or logistical difficulties in producing an account will *not* prevent an account being ordered. In *Freeman and Fairlee* (1812) 3 Mer. 44 an executor coming from India and, after 21 years, being asked to account claimed that he had left the information behind on the Indian Subcontinent. Nonetheless, the executor was ordered to produce and account within six months notwithstanding the challenges in doing so and the court recognising the likelihood that the executor would need to apply for an extension, subject to producing evidence that he was using due diligence to seek to comply with the order.

56. Within the latter context, the executors can take their own action, if necessary, to resolve difficulties in securing the required information. For example, in *Taylor v Rundell* (1841) Cr. & Ph. 104 the executors of the estate of the Duke of York sought the intercession of the court with respect to information from the lessees of certain mines who had claimed that they could not produce that information. I note that in dismissing the appeal of the lessees against an order requiring the production of the required information, the Lord Chancellor made the following observations pertinent to this matter:

> "Suppose a Defendant should say his documents are in the hands of his own solicitor, but his solicitor refuses him access to them. The Court would give him time to take such proceedings as might be necessary to compel the solicitor to give him the means of making the discovery. So, if the Defendant should say, I cannot answer, because the documents are in a distant part of the world. That may be a very good reason why you should ask for time to answer, but no reason why you should not answer; and, therefore, you cannot resist exceptions for want of an answer on any such ground. If it is in your power to give the discovery, you must give it; if not, you must shew that you have done your best to procure the means of giving it."

57. With respect to information that is not yet available to the executor, or information that may change, I also note that in *Payne v Little* (1856) 22 Beav 69 Lord Romilly MR made clear, albeit in the context of admission of assets rather than the provision of an inventory and the rendering of an account, that the court does not bind executors by an admission of assets if new claims on the estate afterwards arise:

> "But every admission of assets made by an executor, whether it be made by his acts or by an express admission in words, must have reference to the circumstances which he was then acquainted with, and if "the circumstances on which he built his admission fail" him (which is an expression used by Sir John Strange, in *Horsley v. Chaloner* (2 Ves. sen. 83)), then the admission fails also, and he cannot be bound by an admission made under circumstances with which he was not acquainted. He might have known nothing whatever of a debt due by the testator; a liability might exist against the estate of the testator in respect of which a debt had not even arisen, as under a covenant entered into by the testator, where no breach might have taken place until long after his death; so, for instance, if the testator had become surety for another person for the performing the covenants in a lease and the like. Under such circumstances, if a debt afterwards arose, which the executor was not previously aware of, his admission of assets before that time cannot in any respect bind him, or amount to this declaration on his part: 'That whatever liability may hereafter arise against the testator's estate, and of which I now know nothing, I am content to be bound personally to pay everything which was left by the testator's will.'"

58. The procedure for seeking an inventory and account is set out in NCPR r 61(2), which requires the application shall be made by summons to a District Judge or Registrar, issued out of the Registry in which the summons is to be heard pursuant to r 61(3). The summons must be drawn up in duplicate with one copy retained by the court and

one sealed and a hearing date and time inserted and returned to the applicant. Service must be effected at least two clear days before the return day unless the district judge or registrar dispenses with service pursuant to r.66(2) on such terms, if any, as the judge or registrar may think fit. The evidence in support of the summons must be served with the summons unless otherwise ordered. In *Ghafoor v Cliff* [2006] 1 WLR 3020 the court observed that the majority of applications under the NCPR can be made without notice but that the principles of full and frank disclosure will apply and that the giving notice may be appropriate where an issue is heavily contested or allegations of dishonesty of misappropriation are being made. Pursuant to r 61(5) the District Judge or Registrar *may* give directions and *may* hold a hearing of the application. The Civil Procedure Rules do not apply to non-contentious or common form probate proceedings except to the extent that they are applied to those proceedings by another enactment (CPR 2.1(2)). The Rules of the Supreme Court 1965 apply to non-contentious probate subject to the provisions of the probate rules and any enactment.

59. The terms of s 25(b) of the 1925 Act suggest that with respect to a summons issued pursuant to NCPR r 61(2), the court has a discretion whether to require an inventory and account. However, whilst a beneficiary does not have an absolute entitlement to an account in common form, the court will ordinarily exercise its discretion in favour of ordering an inventory and account and the circumstances in which it will not do so will be limited (see *Henchley v Thompson* [2017] EWHC 225 (Ch) in the context of beneficiaries of a trust). The inventory should ordinarily contain a true and perfect description and valuation of all the estate, real and personal, in possession and in action, to which the representative is entitled. However, the court has a discretion as to the sort of inventory it will accept from a representative (see *Reeves v Freeling* (1812) 2 Phil. 56). It is important to note that an application for an inventory of the estate of the deceased and an account of the executors administration of the estate is a process. Once the account has been made available the court will investigate the account and, if the court finds that it is true and perfect, will pronounce for its validity.

60. An appeal against an order for an inventory and account made by a Registrar is governed by NCPR r 65 which provides as follows:

> "**65 Appeals from district judges or registrars**
>
> (1) An appeal against a decision or requirement of a district judge or registrar shall be made by summons to a judge.
>
> (2) If, in the case of an appeal under the last foregoing paragraph, any person besides the appellant appeared or was represented before the district judge or registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person as aforesaid.
>
> (3) This rule does not apply to an appeal against a decision in proceedings for the assessment of costs."

61. The position regarding whether permission to appeal is required is somewhat unclear. Whilst CPR r 52.3(1) provides that where the appeal is from a decision of a judge in

the High Court permission to appeal is required and CPR r 2.3(1) defines 'judge' as including a Master or District Judge, CPR r 2.1(2) provides that the CPR does not apply to non-contentious probate proceedings. Within this context, I have proceeded on the basis that permission to appeal is *not* required. In this regard, I also note that r 73 of the Draft Probate Rules seeks to make explicit that the requirement under CPR r 52.3 to apply for permission to appeal does not apply to the appeal of a decision of a district judge or registrar.

62. No party disputes that the appeal is by way of rehearing. Where a discretionary jurisdiction is given to the court, the judge is not fettered by the previous exercise of the district judge's or registrar's discretion. The judge is entitled to exercise his discretion as though the matter came before him for the first time (see *Cooper v Cooper* [1936] 2 All ER 542 and *Practice Note* [1949] WN 475).

DISCUSSION

63. Having considered carefully the comprehensive and eloquent submissions of Ms Stanley and Mr Dumont, and having approached this matter, as I must, as a re-hearing, I am satisfied that the Appellant's appeal summons should be dismissed (save as to the ground concerning the costs ordered by the District Registrar below, which ground will be dealt with by way of further written submissions). My reasons for so deciding are as follows.

64. Without an inventory, the Respondent beneficiaries do not know the content of the Deceased's Estate nor the precise extent of their inheritance. Without an account of the administration of the Deceased's Estate, the beneficiaries are not able to see that the Estate is being properly administered to their benefit. Within this context a *cardinal* duty of an executor is to keep accounts and records relating to the administration of the estate and to be ready with an inventory and account when called for. The Appellant has sworn an oath as executor accepting the obligations of an executor. Within this context, the Appellant does not dispute he is under a duty to exhibit an inventory and render an account of his administration of the estate to the Respondent beneficiaries when they require one. Mr Khan has not appealed the order of the District Registrar that he now do so.

65. The Deceased died on 1 September 2007. A grant of probate was made on 7 May 2008. Some *11 years* have now passed without any adequate inventory of the Estate of the Deceased being provided by the Appellant and Mr Khan and no adequate account of the administration of the Estate over the past decade has been provided. A decade on from the death of the Deceased and the beneficiaries still do not have a reliable inventory of the content of the Deceased's Estate, and hence a clear idea of the extent of their inheritance or any account of the conduct of the administration of the Deceased's Estate over that period. This represents an unconscionable delay for the beneficiaries and a dereliction of duty on the part of the executors.

66. I do not accept the submission of the Appellant that the Family Division had and has no jurisdiction to remedy this situation by granting an order for an inventory and account pursuant to s 25 of the Administration of Estates Act 1925. There is no contention between the parties as to the Executors' right to probate and to administer the Estate pursuant to the terms of the will for the purposes of s 128 of the Senior Courts Act 1981. There can be no dispute that the beneficiaries have a common law

right to an inventory and account, enshrined in statute in s 25 of the Administration of Estates Act 1925. Within this context, on the evidence before the court the key point of contention between the Appellant and the beneficiaries was whether, as a matter of *practicality*, it was possible for the Appellant and Mr Khan to produce an inventory and an account of his administration of the estate. The authorities are clear that such disagreements do not result in non-contentious, or common form, probate business becoming contentious, or solemn form, business simply by reason of the dispute between the parties involved. Likewise, the existence of an HMRC investigation does not result in non-contentious, or common form, probate business becoming contentious, or solemn form, business. Not least because it has no bearing on the Executors right to probate and to administer the Estate pursuant to the terms of the will.

67. In the circumstances I am satisfied that this remains a non-contentious matter over which the Family Division of the High Court had and has jurisdiction and that, accordingly, the District Registrar could, and I can exercise the power to require the Appellant to exhibit an inventory and to account for his administration of the Estate of the Deceased pursuant to s 25 of the Administration of Estates Act 1925.

68. With regard to the second ground of appeal, it is clear that the procedural course of the application before the District Registrar was sub-optimal. The summons was not sealed, issued or served on the Appellant. The Appellant had no notice of the hearing and the order was made without hearing from him or Mr Khan. Whilst the District Registrar had power both to dispense with service on the Appellant, pursuant to r 66(2) of the NCPR and to proceed without an oral hearing, pursuant to r 61(5) of the NCPR, it is not clear that these steps were taken as the result of a reasoned decision as opposed to procedural confusion. However, as regrettable as these procedural lapses were, I agree with Mr Dumont that the short point is that this appeal proceeds by way of a re-hearing, with this court looking at the matter afresh. Within that context, the Appellant has had notice of this hearing, has been represented by leading counsel, has had a full opportunity over the course a one day hearing to make each of the points he wishes in opposition to the grant of an order for inventory and account. In the circumstances, the procedural deficits that afflicted the application before the District Registrar have not afflicted my re-hearing of that application. In the circumstances, it is not necessary for me to consider those aspects of Ms Stanley's submissions further.

69. Turning to the third ground of the appeal, consideration of which encompasses a review of the Appellant's substantive submissions as to the merits of the summons for an inventory and account, I am not able to accept Ms Stanley's submission that it is not appropriate for the court to exercise its discretion to order an inventory and account in this case. In reaching this conclusion, I bear in mind that the ambit of the discretion afforded the court under s 25 of the Administration of Justice Act 1925 is relatively narrow and that the court will ordinarily exercise its discretion in favour of ordering an inventory and account, the circumstances in which it will not do so being limited

70. Ms Stanley's primary submission as to the merits is, in effect, that it is simply not *practicable* at this time for the Appellant to provide an inventory and to render an account given the particular circumstances of the Deceased's Estate. However, having regard to the cardinal nature of the obligation on the executor to exhibit an inventory and render an account when called upon, and the importance for the

beneficiaries of those steps, it is difficult to see how mere practical difficulties in providing the required inventory and rendering an account can amount to one of the limited circumstances in which the court will refuse to exercise its discretion to order the same under s 25 of the 1925 Act. Indeed, the authorities to which I have referred above make clear that even in the face of *very* considerable practical difficulties, such as leaving all relevant paperwork on another continent, will not prevent the court from ordering an account to be rendered, albeit the court may make allowances for the difficulty of the task by way of the timescale within which it requires to the task to be completed. Further, in this case, the Appellant has had over a decade to resolve any practical difficulties in compiling an inventory and rendering an account.

71. Within this context, court has discretion as to what is required by way of an inventory. In so far as there remain doubts as to whether a particular asset should be included in the inventory of the estate, this can be made clear by the Appellant. This would not offend against the requirement for the inventory to be a true and perfect reflection of the position. With respect to the rendering of an account of the administration of the estate, the terms of s 25(b) of the 1925 Act make clear that the Appellant's task in this regard is to render an account of the administration of the estate to the court. This requires no more of the Appellant than he provide to the court an account of what the Appellant himself has (with Mr Khan) been doing by way of administration of the estate over the course of the past decade. As executor with conduct of the administration, that information is within his control and where it is not, for example because former solicitors retain files, he can take steps to recover it. In addition to not being persuaded that the practical difficulties prayed in aid by the Appellant amount to a reason for refusing to exercise the discretion under s 25 of the 1925 Act in principle, I am not persuaded that the practical difficulties that the Appellant advances *in fact* prevent him from giving the court an account of his administration of the estate. Further, and once again, the law demands a true and just account. Within this context, I am satisfied that the estate account can, where necessary, indicate that information is provisional or uncertain. This would not offend against the account being true and just account of the position. The court can have regard to the contended for uncertainties in the inventory and/or account in determining whether to vouch for that inventory and account.

72. The fact that the Respondents have now started an administration action in the Chancery Division to remove the Appellant and Mr Khan as an executor and the Appellant is considering seeking directions from the Chancery Division in light of what he contends are recent developments regarding the validity of the Deceased's will does not change my conclusions. Whilst it is correct that the Respondents now seek to remove the executors by way of an administration action in the Chancery Division, this does not act to absolve the Appellant of his obligation to provide an inventory and render an account of his administration of the estate. Again, the authorities are clear that executor will remain liable to provide an inventory and an account of his administration of the estate even after he has been removed as an executor or his administration has expired. Whilst I also accept that it is the stated intention of the Appellant to seek directions in the Chancery Division in circumstances where he contends the validity of the will is now in question, I cannot but be sceptical regarding the timing of that development. In any event, notwithstanding the application for directions, the Appellant will remain under an

obligation to provide an inventory and account for the reasons I have set out pursuant to his cardinal obligations as an executor.

73. Within the foregoing context, I further pause to note that in *In Re Tharp* (1878) 3 PD 76, Sir George Jessel MR expressed the view that, where the relevant parties are before the probate court, the court should decide the questions which are ready to be, and can be conveniently and properly decided between the parties to the pending suit, leaving those other questions which cannot then be conveniently decided to be decided at a future period.

CONCLUSION

74. The court will ordinarily exercise its discretion in favour of ordering an inventory and account and the circumstances in which it will not do so will be limited. The Respondent beneficiaries, the Deceased's widow and three children from his first marriage, have now been without a proper understanding of the extent of and the administration of their inheritance for over a decade. It would be unconscionable for this situation to pertain any longer. It is high time that the Appellant discharged his cardinal duty to provide when called upon an inventory of the estate and an account of his administration of that estate. This court now expects him to do so in accordance with the order it has made.

75. Within this context, having reheard the matter afresh and for the reasons I have given, I am satisfied that an order for an inventory an account pursuant to s 25 of the Administration of Justice Act 1925 is appropriate in this case. Where the order made by the District Registrar was made in circumstances that were less than procedurally rigorous, and where the time limit for compliance with that order has in any event now passed, it seems to me appropriate now to make a further order setting a new deadline for the inventory and account. In the circumstances, I make the following order:

    i) The Appellant's appeal summons is dismissed save as to the ground concerning the costs ordered by the District Registrar, which ground will be deal with by way of written submissions.

    ii) The Appellant and Mr Khan shall, by 4pm on 23 March 2020 exhibit on Oath a true and perfect inventory of the Estate of Mohammed Taj, the Deceased and render a true and just account of the administration of the estate of the said Deceased.

    iii) Any application to the Registrar to extend the time for complying with Paragraph (i) of this order shall be made on no less than seven days written notice to the Respondent beneficiaries.

76. I will ask leading counsel to draw the order in those terms. With respect to the Appellant's ground of appeal against the costs order made by the District Registrar, during the course of the hearing leading counsel agreed that the sensible course would be for the court to deal with that question following judgment. Within this context, I am content to receive, within 14 days of the handing down of judgment, such written submissions as the parties wish to make on (a) the Appellant's ground of appeal dealing with the costs order made by the District Registrar and (b) the costs

statements that have been served in this appeal in accordance with CPR PD 44 para 9.5(4)(b)).

77. That is my judgment.