

persuaded that there has been a good reason for the continuing failure to comply with Court orders.”

2. The above extract of the Court’s Minute in substance, is clearly an Unless Order even though it is not formally labelled as such. While the Court does not use the formal term “Unless Order,” the language and legal effect of the Minute clearly indicate that this is an Unless Order. It puts the parties on notice that non-compliance with the discovery deadline will likely result in the striking out of pleadings, subject only to judicial discretion in exceptional circumstances.
3. The brief chronology of this matter shows that prior to the Unless Order, Justice Lawry had issued three Directions for the parties to complete the discovery process. First, on 4th October 2024, where the Court directed both parties to file their sworn lists of disclosures and complete the discovery process by 17th October 2024. Neither party complied. Second, on 6th November 2024 by extending the time for the parties to complete the discovery process and as well as for parties to file sworn statements for use at trial by 31st January 2025. Both parties did not comply with this Direction. On 14th February 2025, the matter was called and Court gave the parties two weeks to enter into negotiations to settle the matter without trial which was unsuccessful. On 27th February 2025 upon hearing from the parties of the unsuccessful attempt to resolve the matter, the Court issued the third Direction, giving both parties to complete the tasks required in the Direction Order issued on 6th November 2024 before 13th March 2025. The matter was not called on 13th March but on 15th May 2025 for pretrial conference. On that occasion, the Court noted that parties did not comply with the previous Direction made on 27th February 2025, and accordingly issued the Unless Order referred to above in paragraph 1 of this ruling.
4. Upon reallocation, I mentioned the matter on 30th June 2025. The Defendant did not comply with the Unless Order and this was conceded at paragraph 3 of the Defendant’s written submission filed on 25th August 2025. Only the Claimant had complied with the Directions. The issue is whether the Unless Order should be enforced.

5. I understand that according to the Order, the Court stated the following "*It is now too late to do so unless a judge can be persuaded that there has been a good reason for the continuing failure to comply with Court orders.*" There is no sworn statement filed by the Defendant's counsel explaining the noncompliance of the Unless Order.
6. It should be noted that counsel for the Defendant should file a sworn statement as evidence to explain the noncompliance of the Unless Order. The explanations in the Defendant's written submissions for not complying with the Unless Order due to, inter alia, the Defendant has been living overseas all along and there is merit in the Defence, are improper and not evidence taken on oath. They are at best own counsel's utterance or perceptions made without oath. Counsel for the Defendant should know better that any explanations for the noncompliance must be supported by evidence through the filing of a sworn statement despite there is no directions for the filing of the evidence. This is a rule of thumb in civil litigation that should be easily known by counsel.
7. Now, should the order which is a self-executing order be enforced? Rule 23.4 of the *Solomon Islands Courts (Civil Procedure Rules) 2007* ("the Civil Procedure Rules 2007") provides that where a party to a proceeding has deliberately or sustainedly failed to comply with an order made in the proceeding, the Court can exercise its power to either strike out the pleadings of the non-complying party, or extend the time for complying with the order, or give further directions, or make another order.
8. I have considered the respective submissions of the parties to this proceeding. The Unless Order issued by Justice Lawry, although not formally labelled as such, clearly meets the substantive criteria of an Unless Order. It imposed a conditional requirement on the parties, specifically, that the discovery process must be completed before the end of May 2025. The Court further warned that failure to comply may result in the striking out of pleadings. The language of the Unless Order as issued by the Court was unequivocal in its intent to compel compliance and to attach consequences to continued default. Such orders are inherently self-executing in nature. That is, once the condition is not met, the consequence will follow unless the defaulting party can persuade the Court why it should not be enforced.

9. The Defendant's noncompliance with the Unless Order is not in dispute. It was conceded in the Defendant's own written submissions filed on 25th August 2025. Moreover, the Defendant has failed to provide any sworn evidence explaining or justifying his noncompliance.
10. The Court had expressly stated that it was "*too late to do so unless a judge can be persuaded that there has been a good reason for the continuing failure to comply with Court orders.*" No such persuasive reason has been offered on oath which is unfortunate. The explanations contained in counsel's submissions are not evidence, and cannot be relied upon to excuse the noncompliance. As emphasised in *Marcan Shipping (London) Ltd v. Kefalas* [2007] EWCA Civ 463, the Court must act on evidence, not on unsworn assertions or arguments of counsel.
11. The history of the case in my view further supports the enforcement of the Unless Order. The Defendant has repeatedly failed to comply with multiple procedural directions issued by the Court since October 2024. These include deadlines for discovery and the filing of sworn statements. Despite being given several opportunities and extensions, the Defendant has shown a sustained pattern of disregard for the Court's orders. This cumulative noncompliance demonstrates not mere oversight but a sustained failure to engage with the litigation process in accordance with the rules.
12. Rule 23.4 of the *Civil Procedure Rules 2007* empowers the Court to strike out pleadings where a party has deliberately or sustainedly failed to comply with an order. The rule also allows the Court to extend time or give further directions, but such discretion must be exercised judicially and only where there is a compelling justification. In this case, there is no proper evidence provided by the Defendant for such justification. The Defendant has not provided any admissible evidence to explain or rectify the default, nor has it demonstrated any intention to comply with the Court's procedural framework.
13. The overriding objective of the *Civil Procedure Rules 2007* is to enable the Court to deal with cases justly, including ensuring that parties comply with orders and that cases are


resolved efficiently and fairly. Allowing the Defendant to continue in the proceedings despite repeated and unexplained breaches would undermine the authority of the Court and prejudice the Claimant, who has complied with the directions.

14. In *Biguzzi v. Rank Leisure plc* [1999] 1 WLR 1926 and *Ches Investment Ltd v Seketala* [2023] SBHC 89, the Court emphasized that striking out is a proportionate response where a party has failed to comply with orders and no adequate explanation is provided. That principle applies squarely here. Accordingly, the Unless Order should be enforced. The Defendant's pleadings should be struck out, and the Claimant should be permitted to proceed accordingly. This outcome reflects the principle that court orders are not mere suggestions, but binding directives, and that parties who fail to comply without good reason must face the consequences.

Orders of the Court

1. The Defendant's pleadings are struck out pursuant to Rule 23.4(a) of the Solomon Islands Courts (Civil Procedure Rules) 2007.
2. The Claimant is granted leave to proceed with the claim.
3. Costs of this application are awarded to the Claimant on a standard basis.

BY THE COURT



Hon. Justice Augustine S. Gulanga
PUISNE JUDGE