

There are two affidavits in support deposed to by the Plaintiff. Before these present proceedings this Court had delivered a ruling on 24th February, 2011 and gave several consequential Orders. The Defendant filed an Affidavit in opposition sworn on the 17th April, 2011 by one Abioseh Griffin. An objection was made in respect of the use of that affidavit and another ruling was delivered on the 23rd May, 2011. Thereafter the Defendant filed another affidavit in opposition sworn on 24th May, 2011 and deposed to by the same deponent. Mr. S. Kabba Koroma Esq. of Counsel for the Plaintiff referred to Motion Paper and exhibits thereto. He relied on the entire affidavit in support and made this application pursuant to *Order 35 Rule 2(1) of the High Court Rules 2007 (hereinafter called "The Rules")*. Counsel referred to the supplemental affidavit sworn on 12th July, 2011 with particular reference to exhibit 'RG5'. He submitted that the amended writ was served on the 3rd Party on the 28th March, 2011. He urged the Court to grant orders on the face of the Motion.

Mr. L. Jenkins-Johnston Esq. of Counsel for the Defendant referred to the affidavit in opposition sworn on 24th May, 2011 and referred to the exhibits therein. He submitted that the Defendant has complied with the Order of Court though late and referred to "C" a letter written to Counsel for the Plaintiff, dated 29th March, 2011. But there was no reply. He further submitted that the Defendant has acted in good faith. He also referred to affidavit of Sheku Mansaray sworn on 11th April, 2011. He finally submitted that if the business is closed the Defendant will suffer and not Plaintiff.

The present application is in respect of preservation of property, that is, the res, pursuant to Order 35(2)(1) of the Rules. The Plaintiff in his affidavit in support deposes to fact that the Defendant has not complied with the Order of Court dated 24th February, 2011 particularly Orders 6 and 7 thereof. These Orders specifically provided that all accounts and profits accrued from December, 2008 to 2011 be made no later than one month from the date of that Order. By letter dated 25th March, 2011 the Defendant was duly informed of non compliance of the said Order. By letter dated 29th March, 2011 Counsel for the Defendant replied and stated inter alia that reason for non-compliance is due to the fact that his client is resident out of Sierra Leone and was seeking for an extension of time.

Hence the present application is dated 6th April, 2011. Counsel for the Defendant did file two affidavits in opposition and in neither did he aver that he is seeking for an extension of time to comply with the Order of Court. The Defendant by letter dated 8th April, 2011 mentioned dismay at this present application and noted that the Plaintiff has not complied with the Order of Court. I will at this stage refer to this note and will state that the Plaintiff's Solicitor has by a supplemental affidavit deposed to on 12th July, 2011 did state that the amended writ has been filed and served on the 3rd party. This was not controverted by Counsel for the Defendant either by affidavit or orally. I shall now refer to the 5th Order of this Court. By that Order ["either of the parties is at liberty to file Summons for Directions on the future conduct of the matter herein"]. Indeed by Summons dated 11th April, 2011 the Defendant is seeking directions from the Court on the future conduct of the matter. This Summons was filed after the Motion Paper dated 6th April, 2011 and so is still pending. I shall consider the affidavit in opposition deposed to by one Abioseh Griffin on 24th May, 2011. The averments in paragraphs 4 to 11 thereof are without merit. I refer to the said paragraphs 4 -11 to wit:

(4) That I am informed by my Solicitor that the Plaintiff has failed to comply with the Order of 24th February, 2011 in that he has not amended, filed and served the writ herein on us.

(5) That from all the documents shown to me by my Solicitor it would appear that the Plaintiff is not interested in progress of this matter but is primarily concerned with closing Aces Night Club.

(6) That I am informed by my accountant it was very difficult to do the accounts particularly due to the fact that Miss Campbell is in the United Kingdom and she had to go through all her expenses some of them over 2 years old.

(7) That I am told by Miss Campbell that she has been spending her money on Aces Night Club all this time without hesitation or she was of the view that this was her investment and so was not expecting to have to account to someone who did not invest anything in her business.

(8) *That the accountant has filed the said accounts notwithstanding the difficulty. A copy of the said accounts is exhibited and marked "D1-9".*

(9) *That I know that Aces Night Club has over 40 permanent staff and over 20 temporary staff and all of their lives depend on this business.*

(10) *That I am told by the Defendant that there was no question of her not complying with the Order as claimed.*

(11) *That I am informed by my solicitor that the Plaintiff has not complied himself with the Order of Court dated 24th February, 2011, and their said compliance will not only assist the Court but will enable the Defendant own case to be clearly and fairly presented. A copy of a letter written by our solicitor is exhibited hereto and marked "E".*

These averments have not strict senso opposed the application. Indeed the Defendant has not complied with Order of dated 24th February, 2011 and has not applied for an extension of time. But the Deponent in said affidavit is averring that the Plaintiff has defaulted implying that he too can default. The Defendant has also not applied to this Court for non-compliance with this Order of Court. The Defendants defence (if any) is that she is out of the jurisdiction and this is her investment and she need not give any account. I find this averment in paragraph 7 of the said affidavit in contempt and breach of my Order. This Defendant has been ordered by an Order of Court to submit accounts. This is expected as that is part of the Plaintiff claim in the 3rd Order of the statement of claim. That averment is out of place, scandalous and I shall order that it be expunged from the affidavit pursuant to Order 31 Rule 6 of the Rules.

I shall consider the affidavit of Sheku Mansaray sworn on 11th April, 2011 to which is exhibited the accounts marked "SM1-9". The affidavit is very scanty and it has not verified the accounts. In fact in paragraph 3 thereof it reads thus:

"3. That I am willing to provide any clarification if need be",

This clearly implies need for clarification. He has also deposed that the said premises is indebted to the Defendant in the sum of le 411,424,370/00 but has not shown evidence of that. From the totality of both affidavits it is inferred that the demised premises is running at huge loss. The question I pose then is, why operate a business at a loss? In the premises, the said accounts forwarded are not detailed/sufficient and is deemed not to be in compliance with my order.

For the foregoing reasons, I will grant the application and make the following orders for directions on the future conduct of this matter.

I hereby order as follows:

1. *The Sheriff is hereby ordered to take custody of the building the subject matter herein, namely Aces Night Club Aberdeen, Freetown pursuant to Order 35 Rule 2 of the High Court Rules 2007 as from today's date until a further Order from this Court.*
2. *The Plaintiff is to give an undertaking in damages in the event it turns out that the 1st Order Supra ought not to have been granted.*
3. *The Defendant is to submit within 10 days of this order a verified statement of Accounts from December, 2008 to February, 2011.*
4. *The Accountant Sheku Mansaray is hereby to attend on the 7th day of November, 2011 and on any further hearing to answer to all questions relating to the said accounts.*
5. *Each party is to serve on the other of a list and copies of all documents intended for use at the trial within 28 days from the date of this Order.*
6. *The Plaintiff is to lodge two Court bundles in the High Court Registry which shall comprise the following documents to wit:*
 - (a) Copies of all pleadings and any amendment thereto;*
 - (b) List of issues in dispute;*
 - (c) Admissions of fact if any arising out of those issues;*
 - (d) List of witnesses and their statements.*
7. *There shall be Liberty to restore these directions for further directions.*

8. *These directions are to be placed before the Trial Judge within 5 weeks of this Order.*
9. *Costs in the cause.*
10. *This matter stands adjourned to Monday the 7th day of November, 2011.*

V. M. Solomon
 HON. JUSTICE V. M. SOLOMON J.A.