

"1. Because the said appellee says that the judgment in this case was rendered by the court on the 27th day of February, A. D. 1922, and that the cost in this action was not fully paid until May, A. D. 1922, eleven days after the time for the completion of his appeal.

"2. And also because a writ of execution has already been issued against the appellant below in consequence of the appellant's having failed to complete his appeal within sixty days from the day of final judgment; wherefore appellee prays that the said appeal be dismissed and appellant ruled to pay all costs, and the judgment of the court below be affirmed."

This court after inspecting the records is satisfied that the facts stated in the motion are true and correct, therefore the motion is sustained and the appellee is entitled to recover.

This court further adjudges that the judgment of the court below is affirmed with costs for appellee.

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JOHN CONSTANT NYEMA, Plaintiff in Error, v. NORA  
CONSTANT NYEMA, Defendant in Error.

ARGUED NOVEMBER 11, 1922. DECIDED JANUARY 29, 1923.

*Dossen, C. J., Johnson and Witherspoon, JJ.*

Mr. Justice Witherspoon delivered the opinion of the court:

Action of Divorce. The defendant in error having failed to answer at the call of this case by the marshal; the plaintiff in error by his counsel rose and motioned this court for judgment by default which reads as follows: "The defendant in error not having appeared in person nor by counsel, the plaintiff in error respectfully motions this Honorable Court to render judgment in his favor for said default, citing the 11th Rule, note 2 of the court." The court regards the act of defendant in error as an abandonment of the cause. The motion is therefore allowed.

This court further adjudges that the judgment of the court below is hereby reversed and made of no effect whatever, plaintiff in error to recover all costs. The clerk of this court shall issue a mandate to the court below to the effect of this decision.

*Arthur Barclay*, for plaintiff in error.

No one appeared for the defendant in error.