

the court especially when the minutes of one day's session of court are not approved until the next succeeding day. This is to give attorneys opportunity to have such matters as pertain to their cases correctly placed upon the records of the court. And where they fail to follow up their cases as stated, they must suffer the consequences. It is familiarly known by all the legal profession that this court is bound by the records in all matters sent up to it on appeal. The records in this case as appear in the minutes of the court below show that verbal motion was made without reservation and the judge ordered the same recorded which was done.

The private knowledge gathered by the trial judge from Judge Russell who was not brought before the court in a legal manner was not sufficient to overturn the former ruling given. It further appears that the costs in the withdrawn case had not been fully paid by the plaintiff respondent. This is also made by the statute a ground for dismissing the case. (Lib. Stat., ch. 4, sec. 23: ch. 20, sec. 10.)

The judgment of the lower court is reversed and made of no effect and the clerk is commanded to send a mandate to the court below to the effect of this decision.

Arthur Barclay, for petitioner in certiorari.

H. L. Harmon, for respondent in certiorari.

W. H. WARNER, Appellant, *v.* A. K. SODJIE, Appellee.

HEARD NOVEMBER 4, 1922. DECIDED JANUARY 29, 1923.

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

If the costs shall not have been fully paid, and the appeal completed within sixty days after the rendition of final judgment the appeal will be dismissed.

Judgment affirmed.

Mr. Justice Witherspoon delivered the opinion of the court:

Action of Damages for Violation of a Contract. This case is before this court upon an appeal from the Circuit Court first judicial circuit at its February term, A. D. 1922. When the case was called for trial the appellant failed to answer either in person or by counsel. The appellee rose and by request offered the following motion: "A. K. Sodjie, appellee in the above entitled cause, most respectfully prays and moves this Honorable court to dismiss the said case and rule the appellant to pay all costs for the following reasons to wit:

"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.

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.