

78 A.D.3d 558

Supreme Court, Appellate Division,  
First Department, New York.

Austen UGWECHES, Plaintiff–Appellant,

v.

Tatjana Nehhozina UGWECHES,  
Defendant–Respondent.

Nov. 23, 2010.

### Synopsis

**Background:** The Supreme Court, New York County, [Laura E. Drager, J.](#), denied ex-husband's motion to vacate or modify a judgment of divorce following his default. Ex-husband appealed.

**[Holding:]** The Supreme Court, Appellate Division, held that decision to flee the country after being convicted of a felony was not excusable.

Affirmed.

West Headnotes (2)

**[1] Divorce** 🔑 Opening or setting aside

Ex-husband's decision to flee the country after being convicted of a felony, which resulted in default judgment in divorce proceedings, was not excusable, precluding vacating the default judgment.

**[2] Divorce** 🔑 Opening or setting aside

While a liberal approach toward vacating defaults in matrimonial proceedings is warranted because of the important public policy of

determining those actions on their merits, it is still incumbent upon a party seeking vacatur to establish both a reasonable excuse for the default and a meritorious defense.

### Attorneys and Law Firms

**\*\*351** [Austen Ugweches](#), appellant pro se.

Sanctuary for Families, Center for Battered Women's Legal Services, New York ([Kara M. Bellew](#) of counsel), for respondent.

[GONZALEZ, P.J.](#), [TOM, SWEENY, RICHTER, MANZANET–DANIELS, JJ.](#)

### Opinion

**\*558** Order, Supreme Court, New York County (Laura E. Drager, J.), entered January 21, 2010, which denied plaintiff's motion to **\*559** vacate or modify a judgment of divorce entered following his default, unanimously affirmed, without costs.

[1] [2] While a liberal approach toward vacating defaults in matrimonial proceedings is warranted because of the important public policy of determining those actions on their merits, “it is still incumbent upon a party seeking vacatur to establish both a reasonable excuse for the default and a meritorious defense” (*Estate of Allen v. Allen*, 258 A.D.2d 423, 685 N.Y.S.2d 732 [1999]; see also *Gass v. Gass*, 42 A.D.3d 393, 396, 840 N.Y.S.2d 58 [2007] ). Plaintiff's explanation for his decision to flee the country after being convicted of a felony, which resulted in his defaulting in the instant action, is not reasonable. Nor did he present a meritorious defense to defendant's counterclaim for divorce, or evidence otherwise warranting modification of the judgment. Accordingly, his motion was properly denied.

### All Citations

78 A.D.3d 558, 911 N.Y.S.2d 350, 2010 N.Y. Slip Op. 08622