

D. GBORBOE DWANYEN, JAMES DARN AND JULIUS ADIGHIBE,
Respondents/Appellants, v. **REPUBLIC OF LIBERIA and INSURANCE COMPANY**
OF AFRICA, represented by its Executive Vice President, GIZAW MARIAM, and
Claimant WANITA DAVIS COLAC, Informants/Appellees.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO
COUNTY.

Heard: November 4, 1986. Decided: January 22, 1987.

1. An insurance policy is not and cannot be considered as part of an estate; as such, an insurance policy does not fall within the scope or jurisdiction of the probate court.
2. The Monthly and Probate Court for Montserrado County cannot entertain a matter pending before a court of concurrent jurisdiction in another county.
3. The jurisdiction of a court over the subject cause may be raised at any time, and a court which renders judgment in a case over which the law gives no jurisdiction acts *ultra vires*. Any judgment rendered in such situation is a legal nullity.
4. Where a judge acts without jurisdiction, his judgment is a nullity and cannot be enforced.
5. The jurisdiction of a court is conferred by law and not by the consent of the parties to the suit.
6. Where a court lacks jurisdiction of the subject matter of a case, a judgment thereon is void regardless of the consent of the parties.
7. Although a court, in disposing of the law issues, may rule out the action, i.e. a complaint, for want of a triable issue, it cannot not legally enter judgment against the defendant.
8. Where a trial court dismisses an action because of the lack of jurisdiction over the subject matter, it cannot thereafter find the respondents liable as to the subject matter and require them to deposit proceeds from the subject matter with the court.
9. Where the acts of the court complained of by a party are reflected in the records and the trial judge approves of the bill of exceptions in its entirety, the court will accept the allegations as true.
10. While contempt proceedings are exclusively a matter of court discretion, such contempt matters cannot grow out of matters over which the court has no jurisdiction.

The informant, Insurance Company of Africa, filed a bill of information in the Monthly and Probate Court for Montserrado County, wherein it requested the court to issue a writ of summons on the respondents requiring them to appear and explain if they had delivered to the claimant Wanita Davis Colac one-third of the insurance proceeds, paid to them by the

informant under instructions from the Court, for the benefit of the claimant, one of the respondents, James Dahn, and his brother Moses Dahn, all of whom were named as beneficiaries under the policy. The informant requested that if the claimant's share of the proceeds had not been paid to her, that the respondents be mandated to do so.

Two of the respondents, D. Gborboe Dwanyen and James Dahn, who had been issued letters of administration by the Circuit Court for the Eighth Judicial Circuit to administer the estate of the late Harrison Dahn, had requested the informant to pay to them the insurance proceeds due under the insurance policy held by the late Harrison Dahn. When the informant refused to make the payment in the absence of a letter of authorization from the Monthly and Probate Court, the respondents, characterizing themselves as representatives of the beneficiaries of the insurance policy, applied to and secured from the Monthly and Probate Court for Montserrado County a letter of authorization, which they used to secure payment of the insurance proceeds. The respondents then proceeded to pay two of the beneficiaries, James and Moses Dahn, but refused to pay to the claimant, Wanita Davis Colac, her share of the proceeds. Whereupon her counsel wrote the informant demanding payment from the informant. It was based on this demand that the informant filed the bill of information with the Monthly and Probate Court for Montserrado County.

The respondents challenged the jurisdiction of the probate court, arguing that the court with competent jurisdiction was the Circuit Court for the Eighth Judicial Circuit. The court, conceding the arguments of the respondents, dismissed the information. However, shortly thereafter, the court cited the respondents for contempt, asserting that they had misled the court with regards to the insurance proceeds. It found them guilty of contempt, fined each of them \$50.00 and ordered them to pay to the officer of the sheriff of the court the one-third portion of the proceeds which was due Wanita Davis Colac, and which they had collected from the informant under the letter of authorization from the court. From this ruling, the respondents appealed to the Supreme Court.

The Supreme Court reversed the trial judge, holding that insurance policies are not part of an estate, and that as such the trial court had no jurisdiction over matters involving such policies. Moreover, the Court said that as the administrators had gotten their letters of administration from the Circuit Court for the Eighth Judicial Circuit, it was from that court that they should have obtained the letter of authorization and it should have been that court before whom any proceedings relating to the estate should have been venued. The Court further opined that as the lower court itself had held earlier in the information proceedings that it had no jurisdiction over the subject matter of the case, that same court could not later rule that the portion of the insurance proceeds to which Wanita Davis Colac was entitled be turned over to the office of the sheriff of the court. That ruling, the Court said, was ultra vires and a nullity; as such, the ruling was unenforceable. The Court observed that jurisdiction over a subject matter of a case is conferred by law and not by the parties and that

a judgment in such situation is void regardless of the consent of the parties. In that respect, the Court said, the claimant had adequate remedies available to her, both in civil and criminal proceedings.

The Court therefore *reversed* the judgment of contempt ordered by the lower court.

Boimah K Morris, Sr. and *D. Gborboe Dwanyen* appeared for respondents/appellants. *Nelson Broderick* and *Seward Montgomery Cooper* of the Tubman Law Firm appeared for informant and claimant/appellees.

MR. JUSTICE TULAY delivered the opinion of the Court.

One Harrison Dahn, originally of Nimba County, but who resided in Montserrado County at the time he met his tragic death by motor accident, died intestate. The respondents/appellants applied to and procured letters of administration from the Circuit Court for the Eighth Judicial Circuit, Nimba County, to administer the intestate estate of Mr. Dahn. Their persistent search had its reward when they finally came across one of the decedent's check stubs showing deduction for insurance premium with the Insurance Company of Africa. The insurance certificate was given them by the Ministry of Agriculture where the decedent had worked prior to his death. The administrators then applied to the Insurance Company of Africa for payment of the sum stated in the policy but failed to get it. Their counsel, Counsellor Julius Adighibe, then advised them to procure court authorization to enable them to collect the amount. Accordingly, they applied to and obtained authorization from the Monthly and Probate Court for Montserrado County. Upon presentation of the letter of authorization to the Insurance Company of Africa, they were permitted to collect the policy amount in the total sum of \$99,000 - the \$30,000.00 insured for having been doubled by reason of the accidental death of Harrison Dahn, and interest having accrued thereon. Upon receipt of the mentioned amount, the administrators issued a clearance therefor to the Insurance Company of Africa.

Two men or boys, James and Moses Dahn, named as brothers, and one woman, Wanita Davis Colac, named as wife, were named as the beneficiaries of the policy. The respondents paid off the counsel fee and the shares of the two men but kept back the woman's share. Her counsel therefore filed a claim on the insurance company for her share of the proceeds. The claim led the informant/appellee insurance company to file this information before the Monthly and Probate Court for Montserrado County.

The respondents and their counsel appeared and moved that the court abate the action on the ground that it had no jurisdiction over the subject matter - insurance policy. The motion having been dismissed, trial of the information commenced. However, counsel for Wanita Davis Colac, predicated upon whose claim the information was filed, made record that he

was not participating in the trial as he believed the court lacked jurisdiction over the subject matter.

The trial ended with the dismissal of the information. The appeal from that ruling/judgment, as well as that on the contempt proceeding brought the cases up for our review.

The determination of these cases hinges on the question of whether or not "the Monthly and Probate Court of Montserrado County had jurisdiction over the subject matter?"

The respondents/appellants herein, being residents of Nimba County, got their letters of administration from the Probate Division of the Circuit Court for the Eighth Judicial Circuit, Nimba County. It was before that court that they took their oaths and tendered a bond for the faithful administration of the estate. When they were informed by their counsel that the Insurance Company required court authorization for the payment of the policy, the respondents, instead of returning to the court which granted the letters of administration, applied to a strange court in Monrovia. The Court in Monrovia, knowing that it had concurrent jurisdiction with the probate division of the granting court at Sanniquellie, for the respondents must have displayed their letters of administration before it, undertook to issue the letter of authorization to the insurance company. Certainly, this cannot be considered inadvertence. The court, being knowledgeable in the law, since the judge is assumed to at least know the law, should have advised the respondents that not only do insurance policies fall without the scope of the Probate Court, but also that the Monthly and Probate Court for Montserrado County could not entertain a matter pending before the court of concurrent jurisdiction in Nimba County.

Having paid the insurance policy to and received clearance from the respondents/appellants who posed themselves as representatives of the three beneficiaries, the informant/appellee insurance company was absolved from all claims growing out of the insurance contract. It was pointless for the informant/appellee/insurance company to involve itself in the matter, as Madam Wanita Davis Colac whose share of the policy was withheld by the respondents had adequate remedies at law, both civilly and criminally.

The respondents/appellants had moved the court to abate the trial of the information filed against them because it lacked jurisdiction over the subject matter involved. This motion was augmented by counsel for Madam Wanita Davis Colac who disassociated himself from the trial, citing as reason a want of jurisdiction by the trial court over the cause. Like a gift (money) deposited in a trust with the name of the beneficiary attached to it, an insurance policy is not and cannot be considered a part and parcel of an estate, and as such, it is outside the jurisdictional category of the Probate Court. The court below should therefore have given ears to respondents/ appellants' motion to vacate the trial ". . . . Jurisdiction to the cause may be raised at any time, and a court which renders judgment in a case over which the law gives no jurisdiction acts *ultra vires* and its judgment is a nullity." *Koffah v.*

Republic, 6LLR 336 (1939). Also in *Phillips v. Nelson and Freeman*, 10 LLR 134 (1949), this Court said: "Where a judge acts without jurisdiction his judgments are a nullity and cannot be enforced."

The appellee's counsel, in arguing before this Court and in an effort to justify the action of the court below, contended that the appellants/respondents, having invoked the intervention of the court, they were thereafter *estopped* from questioning its jurisdiction. This argument is far fetched, for jurisdiction over the cause is conferred by law and not by the consent of the parties to the suit. *Tompo et al. v. Republic*: "Where a court lacks jurisdiction of the subject matter, a judgment thereon is void regardless of the consent of the parties." *Phillips v. Nelson and Freeman*, 10 LLR 134 (1949).

The court, upon the receipt of the bill of information, should have refused to entertain it since the subject matter involved was outside its jurisdiction. *Richards v. Commercial Bank of Liberia*, 20 LLR 349 (1971).

We have gone through a long line of opinions of this Court, and have found only one case in which this Court, speaking through Mr. Chief Justice Wilson, said: "one who has invoked the intervention of the court may not challenge its jurisdiction later." *Gemayel v. Almassian and Azango*, 16 LLR 290 (1965). But that case is not analogous to the one now under review. In that case, a regular summons was issued at the behest of Joseph A Gemayel who later on sought to challenge the court's jurisdiction. The summons was regularly served and returned serve, and pleadings were exchanged. Also, the challenge was not for lack of jurisdiction over the subject matter involved, but that the judge was out of jurisdiction when the writ was issued. In the instant case, the informant/appellee/insurance company was never brought under the jurisdiction of the court by a writ of summons; it never appeared and pleaded. In addition, the respondents/ appellants were never before the court as plaintiffs or petitioners. Certainly, the letter of request from the respondents to the court and the letter of authorization from the court to the insurance company, and which we incorporate immediately below, can in no way amount to a writ of summons.

Here is the respondents' letter of request to the court:

"Her Honour Luvenia Ash-Thompson
Probate Court Judge
Monthly & Probate Court for Montserrado County
Temple of Justice
Monrovia, Liberia

May It Please Your Honour:

I have the honor to attach a copy of a self-explanatory letter dated March 11, 1985 which I received from our counsel, Counsellor Julius Adighibe.

In this connection, please be good enough to issue me a letter of identification and authorization to sign and receive from the Insurance Company of Africa the amount of \$90,748.62 (Ninety Thousand Seven Hundred Forty-Eight Dollars and Sixty Two cents) in favor of the Intestate Estate of the late Harrison G. Dahn. Please address the letter to:

Mr Gizaw H. Mariam
Executive Vice President
The Insurance Company of Africa
Pan African Plaza
Monrovia, Liberia

Kind regards and best wishes

Very truly yours,

D. Gborboe Dwanyen /Sgd/

ADMINISTRATOR-INTESTATE ESTATE
OF LATE HARRISON G. DAHN"

Here is the court' s letter of authorization to the Insurance Company of Africa:

"Monrovia

March 12, 1986

Mr. Gizaw Mariam
Executive Vice President
Insurance Company of Africa
Pan African Plaza
Monrovia, Liberia

IN RE:

INTESTATE ESTATE OF THE LATE
HARRISON G. DAHN Mr.

Executive Vice President:

You are hereby directed and authorized to pay to the administrators of the intestate estate of the late Harrison G. Dahn, representatives of James Dahn, Moses Dahn and Wanita Davis who are named beneficiaries of the Life Insurance Policy of the said Harrison J. Dahn, the proceeds of the life insurance policy and all funds stated thereto. This letter supersedes our letter of March 12, 1985. And for so doing this shall constitute your legal authority.

Very truly yours,

Sgd. Mary M. Howe

CLERK, MONTHLY & PROBATE COURT
MONTSERRADO COUNTY"

Respondents collected the \$90,059.43, which was paid to them by check No. B8192-01-00-950152 dated March 26, 1985, drawn on the International Trust Company of Liberia, Monrovia, Liberia. They paid off beneficiaries James and Moses Dahn, but withheld the share of Wanita Davis. She therefore, through her counsel, addressed the letter quoted below (caption omitted) to the Insurance Company of Africa. "June 28, 1985 Mr. Vice President:

On the '6-8-80', the late Harrison J. Dahn obtained insurance policy from Insurance Company of Africa through you as agent. He named his wife, Wanita Davis Colac as one of the beneficiaries. We are enclosing photo copy of the slip containing the particulars of the policy for your easy reference.

The purpose of this letter is to collect the benefits from you in the amount of \$30,000.00 (Thirty Thousand Dollars), in keeping with the terms and conditions of the policy, and in behalf of Mrs. Wanita Davis Colac, my client.

With kind regards.

Yours truly,

Sgd. M. Kron Yangbe

COUNSELLOR-AT-LAW"

Enclosure as above stated.

On the 5th of August 1985, informant/appellee filed a six count bill of information before the Monthly and Probate Court for Montserrado County, wherein it complained that the respondents, by virtue of the directive of the court, had collected the policy money from it, but had withheld beneficiary Wanita Davis Colac's share from her and that Wanita David Colac had demanded same from the informant. The informant prayed the court to issue a writ of summons on the respondents, together with claimant Wanita Davis Colac, to appear before the court for an investigation into the matter; to the end that informant would be exonerated, since it had, upon the directive of the court, paid the money to the respondents. The informant also prayed that the respondents be made to state whether the proceeds from the policy had been paid to Wanita Davis Colac, and if not, that same be paid forthwith.

The summons prayed for was served on the respondents who subsequently filed returns thereto. In addition, the respondents — Adighibe, Dahn and Dwanyen — asked the court to dismiss the information on the ground that the court lacked jurisdiction over the subject matter of the information, i.e. the insurance policy, which was not a part of the decedent estate. Wanita Davis Colac also challenged the jurisdiction of the Monthly and Probate Court for Montserrado County over the subject matter of the information, noting that an action of damages had already been filed before the Circuit Court for the Sixth Judicial

Circuit, Montserrado County, for the recovery of her share of the proceeds from the insurance policy.

At the call of the case for disposition of law issues, Counsellor Yangbe, counsel for Wanita Davis Colac, spread on the minutes of court that his client claimed no part in the information proceedings and that as such, she was only present in the capacity of an observer.

In the ten-page ruling, which also embodied the final judgment on the information, the trial court consistently sought to establish the court's jurisdiction over the cause, but agreed that it could not exercise jurisdiction over an insurance policy matter where the beneficiaries are in their majority. We quote, verbatim, the last sentence of the ruling/judgment: "The court does not concede that the gravamen of the information is fraud and therefore that the court lacks jurisdiction to entertain the matter."

In the instant case, the gravamen of the matter is misrepresentation perpetrated upon the court — an act of contempt. Hence, the amount secured by this misrepresentation should be returned through this court, said amount being the one-third ('A) share received by respondents for and on behalf of Wanita Davis Colac.

This new ruling or judgment was entered on the 16th day of September 1985, 12 days after the court ruled on the information in favor of the respondents/appellants and had dismissed the information for want of jurisdiction over the subject matter, i.e. the insurance policy.

With the September 4th ruling still ringing in the ears of the court, it called up the contempt case against the respondents/ appellants and brought them down liable in contempt for misleading the court. The court imposed a fine of \$50.00 on each of them and ordered that the share of Wanita Davis Colac, being 1/3 of the policy, be deposited by them with the sheriff. The respondents appealed from the judgment and had brought the case up for our review on a seven-count bill of exceptions.

Count one of the bill of exceptions is sustained since the case that was being ruled upon was the information. We hold that it was error for the court to impose a fine upon the respondents/appellants for contempt when it had determined that it had no jurisdiction over the information.

Count three of the bill of exceptions is also sustained as the quotation referred to herein is not reflected on the minutes of trial court in the trial of the information proceedings.

Count five of the bill of exceptions is likewise sustained. In that connection, we hold that although in the disposition of issues of law the court may rule out the action - i.e. complaint for want of a triable issue, it cannot legally enter judgment against the defendants/respondents.

As count six of the bill of exceptions complains of the same act stated in count one thereof, and as we have already sustained the contention in that count, we believe that it is unnecessary for us to traverse count six.

We sustain count seven of the bill of exceptions because, as the trial in its ruling entered on the 4th of September, had dismissed the information on the ground that it lacked jurisdiction over the subject matter, it could not thereafter require the respondents/appellants to deposit one third of the proceeds of the insurance policy (the subject matter) with the court. *See* sheet 10 of the ruling.

We do not hesitate also to sustain counts 8 to 14 of the bill of exceptions as the acts of the judge complained of in the said counts are reflected in the minutes of the court and as the bill of exceptions was approved in its entirety by the trial judge.

The trial of the two cases, i.e. the information and contempt cases, is likened unto a story told by a child: It is full of words but means nothing.

The information was called up for hearing on the issues of law but the hearing continued and culminated in an entry of final judgment in which the court consistently maintained that it had jurisdiction but finally dismissed the cause for want of jurisdiction over the insurance matters.

In its September 4, 1986 judgment, the trial court dismissed the information because it grew out of an insurance matter-Wanita Davis Colac's share of the insurance money — for lack of jurisdiction. Yet, twelve days thereafter, it entered judgment in the contempt proceedings, in which it held the respondents liable and ordered them to make immediate payment of the V's of the \$90,000 from the insurance policy to the office of the court's sheriff. Indeed, notwithstanding the court had dismissed the action, it still ruled that the amount sued for be paid. An innovation indeed!

It is admitted that contempt proceedings are exclusively a matter of discretion for the court, but can contempt proceedings, growing out of a cause over which the court has no jurisdiction, obtain?

For the want of jurisdiction over the cause, coupled with the unprofessional manner in which the court handled the cases, we must reverse its judgment in the contempt case - as the information was properly dismissed in the September 4th ruling/judgment, and discharge respondents without a day. And it is so ordered.

Judgment reversed