

**DASIA MASSAQUOI**, Appellant, v. **ESTHER M. MASSAQUOI**, Executrix of the Last Will and Testament of the Late A. MOMOLU MASSAQUOI, Appellee.

APPEAL FROM THE PROVISIONAL MONTHLY AND PROBATE COURT  
FOR THE STATUTORY DISTRICT OF CAREYSBURG.

Heard: January 26, 1995. Decided: July 27, 1995.

1. As a general rule, letters of administration should be taken out in the county where the decedent was domiciled at the time of his death, and the court first assuming jurisdiction for that purpose must be allowed to pursue and exercise its jurisdiction over all coordinate tribunals.
2. A probate court has jurisdiction, exclusive of every other court, over the estate of any person who, at the time of his death or disappearance, was domiciled within the area over which the court has territorial jurisdiction.
3. Jurisdiction is considered as limited to causes arising out of or related to persons residing within a defined territory, such as a county or a judicial district; and the authority of any court is limited by the boundaries thus fixed.
4. Territorial jurisdiction is given by law and cannot be conferred by consent of the parties.
5. Where a judge acts without jurisdiction, his judgment is a nullity and cannot be enforced.
6. Where a court lacks territorial jurisdiction, its judgment is void.
7. When an estate or other probate matter is within the jurisdiction of two or more probate courts, by virtue of personal or real property of a nondomiciliary decedent or absentee being within two or more areas over which separate probate courts have territorial jurisdiction, the court which first assumes jurisdiction thereto, by the commencement of the proceeding, shall retain jurisdiction thereafter to the exclusion of all coordinate judicial forums.

After the death of A. Momolu Massaquoi, of the City of Monrovia, Montserrado County, his widow, Esther Massaquoi, proceeded to have his Will probated in the Provisional Monthly and Probate Court for the Statutory District of Careysburg. Following the probation of the Will, the court granted the widow Letters

Testamentary to administer the estate of her late husband. Upon the return from medical leave of appellant, Dasia Massaquoi, alleged to be the legal heir of the late A. Momolu Massaquoi by virtue of a decree of legitimization, petitioned the Provisional Monthly and Probate Court for the District of Careysburg, seeking the revocation of the decree admitting the Will of his late father into probate, on the ground that the court lacked territorial jurisdiction since the decedent was a resident of Monrovia and not Careysburg. The court, holding that it had concurrent jurisdiction with that of the Monthly and Probate Court for Montserrado County to probate wills and grant letters testamentary, denied and dismissed the petition. From this dismissal, appellant noted his exceptions and announced an appeal to the Supreme Court of Liberia. Upon review of the records, the Supreme Court held that the Provisional Monthly and Probate Court for the District of Careysburg had exclusive original jurisdiction only of matters arising within the Statutory District of Careysburg and not beyond. The judgment of the lower court was therefore *reversed*.

*Joseph P. H. Findley* for appellant. *James D. Gordon* for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal emanates from the Provisional Monthly & Probate Court for the Statutory District of Careysburg in Montserrado County on a five-count bill of exceptions against the ruling of Her Honour Julia F. Barclay, judge of the aforesaid Provisional Monthly & Probate Court. The records in the case file show that the Last Will and Testament of the late A. Momolu Massaquoi of Monrovia, in which the appellee, Esther Massaquoi, was named as the sole executrix, was probated in the Provisional Monthly and Probate Court for the District of Careysburg. According to the desire of the testator, as expressed in the Will, the widow of the decedent, Esther Massaquoi, was granted letters testamentary to administer the estate of her late husband.

Following the granting of the letters testamentary to the appellee, the appellant, Dasia Massaquoi, who was previously out of the country for health reasons, and who claimed to be a legal heir of the late A. Momolu Massaquoi, by virtue of a decree of legitimization, petitioned the Provisional Monthly & Probate Court for the District of Careysburg, praying the court to revoke the letters testamentary granted to the widow of the late A. Momolu Massaquoi on the ground that the court lacked territorial jurisdiction. He contended in the petition that the Provisional Monthly & Probate Court for the District of Careysburg lacked territorial jurisdiction to probate the Will of his late father, who was a resident of Monrovia at the time of his death, and that the decree admitting the Will into probate was therefore *ultra vires*, illegal, and

subject to revocation. The petitioner, appellant herein, further contended in his petition that since his father was a resident of Monrovia, the Will should have been offered for probate in the Monthly and Probate Court for Montserrado County, at the Temple of Justice, Monrovia, and not in the Provisional Monthly & Probate Court for Careysburg District. The petition was resisted by the appellee and the court, after entertaining arguments, ruled that it had jurisdiction to probate the Will and grant the letters testamentary. For the benefit of this opinion, we quote the relevant portions of the judge's ruling with respect to the court's jurisdiction:

"Taking the issues in the order they appear, this court says that being a probate court in Montserrado County, and having general jurisdiction, concurrent with that of the Monthly & Probate Court of Montserrado County, over matters relating to the affairs of decedents domiciled in Montserrado County, and the testator being a domiciliary of Montserrado County, it was within the power of this court to admit his Will into probate and to issue letters testamentary in accordance with his Will. As a general rule, letters of administration should be taken out in the county where the decedent was domiciled at the time of his death, and the court first assuming jurisdiction for the purpose must be allowed to pursue and exercise its jurisdiction to the exclusion of all coordinate tribunals. Decedents Estates Law, Rev. Code 8: 102.1, 102.3; Judiciary Law, Rev. Code 17:5.2 ".

The principal question raised in the bill of exceptions and argued in the briefs, which this Court considers important to the fair determination of this case is, whether the territorial jurisdiction of the Provisional Monthly & Probate Court of the District of Careysburg includes authority to probate a will of a testator who, prior to his death, was a resident of the City of Monrovia and not a resident of Careysburg District. The other issues raised and argued are premature and are not deemed worthy of consideration.

To fairly decide the question of the testator's residence, we must first take recourse to the Will itself and the law controlling on the point. For the benefit of this opinion, we quote word for word the preamble of the subject Will. It reads thus:

"Mr. A. Momolu Massaquoi, of the City of Monrovia, County of Montserrado, and Republic of Liberia, do hereby make, publish and testament, in the manner and form stated below, that is to say:"

The power and authority to create counties, territories, statutory districts and other political sub-divisions, and to establish judicial tribunals therein, and define their

jurisdiction and power, is vested in the Legislative Branch of the government. This is done for the purpose of effective administration of the affairs of government and for the convenience of the people residing in each of the areas. With this in mind, and in the exercise of its power, the National Legislature, by an Act, created the District of Careysburg in Montserrado County and therein established the Provisional Monthly and Probate Court, giving it exclusive original jurisdiction over specific matters arising within the area of jurisdiction of the Statutory. District, as provided by said Act. Our Judiciary Law provides that the Monthly and Probate Court for Montserrado County, the Provisional Monthly and Probate Courts, and the Probate Divisions of Circuit Courts shall have exclusive original jurisdiction over matters arising within their respective territorial jurisdictions. One of these matters is to grant letters testamentary and of administration. Judiciary Law, Rev. Code 17:5.2.

In her ruling, the trial judge maintained that the Provisional Monthly Probate Court for the District of Careysburg, being in Montserrado County, had concurrent jurisdiction with the Monthly and Probate Court for Montserrado County over matters relating to the affairs of decedents domiciled in Montserrado County, and that A. Momolu Massaquoi, the testator, being a domiciliary of Montserrado County, it was within the jurisdiction and power of the Probate Court in Careysburg to admit his Will into probate and to issue letters testamentary. She added that: "As a general rule, letters should be taken out in the county where decedent was domiciled at the time of his death, and the court first assuming jurisdiction for the purpose must be allowed to pursue and exercise its jurisdiction to the exclusion of all coordinate tribunals." She cited as legal authority the Decedents Estates Law, Rev. Code 8:102.2 and 102.3.

While it is true that the court over which the judge presided and admitted the Will into probate exercises full and complete general jurisdiction in law and equity to administer justice in all matters relating to the affairs of decedents, as provided in sections 102.1 and 102.3 of the Decedents Estates Law, we hold that the exercise of such power is limited to the territorial jurisdiction of the court. Section 102.4 of the Decedents Estates Law provides that: (1) a probate court has jurisdiction exclusive of every other court over (1) the estate of any person who at the time of his death or disappearance was domiciled within the area over which the court has territorial jurisdiction and in no other area in Liberia; (2) a non-domiciliary who left property at the time of his death or disappearance within the area which the court has territorial jurisdiction and in no other area in Liberia; (3) a nondomiciliary who left personal property which, since his death or disappearance, has come into that area and to no other area in Liberia; and (4) a non-domiciliary who left a cause of action against a

domiciliary of that area for damages for the wrongful death of the non-domiciliary defendant and left no property in any other area in Liberia. Decedents Estates Law, Rev. Code 8 :102.4, *Exclusive Territorial Jurisdiction of Individual Courts*.

With respect to the issue of concurrent jurisdiction, referred to by Her Honour, Judge Barclay, the statute on that point provides that when an estate or other probate matters is within the jurisdiction of two or more probate courts, by virtue of personal or real property of a non-domiciliary decedent or absentee being within two or more areas over which separate probate courts have territorial jurisdiction, the court which first assumes jurisdiction thereto by the commencement of the proceeding shall retain jurisdiction thereafter. Decedents Estates Law, Rev. Code 8:102.5. In this case, there was no question or any allegation that the late A. Momolu Massaquoi had personal or real property in the area which the Provisional Monthly and Pro-bate Court for Careysburg exercised territorial jurisdiction. In fact, count 8 of the answer to the appellant's petition for revocation of the letters testamentary clearly stated that the property of the testator was not listed or known and, as shown in the ruling appealed from, the testator was not known to own any property, personal or real, within the territorial jurisdiction of the Provisional Monthly and Probate Court for Careysburg.

For the benefit of this opinion, we quote count 8 of the answer of the appellee, Esther Massaquoi:

"Respondent says that under our law, not because a testator states his place of residence at the time of the execution of the Will, the Will must be offered for probation in that identical city. It must be noted that testator, A. Momolu Massaquoi, did not list his real properties he died seized of in the Will so as to know their locations within the Republic of Liberia. It must also be noted that the late A. Momolu Massaquoi was not a poor man but a man of means and acquired properties wherever he deemed necessary, including Bong County and other places."

We also quote for the benefit of this opinion, the third clause of the Will with respect to the testator's property:

"Third: I give, devise and bequeath all my property, real and personal, of whatever kind the same may be, to my dear wife, Esther Ethel Massaquoi, to have and to hold the same to my aforesaid wife forever; she has the sole right to devise, bequeath and sell as she may see fit."

From the clause quoted *supra*, it is clear that the testator was neither a domiciliary of the Statutory District of Careysburg nor did he leave any property, real and personal, within the area over which the trial court had territorial jurisdiction, as would have vested authority in that court to probate the will of the non-domiciliary decedent and issue the letters testamentary. As already pointed out, the question which we are called upon to determine is whether or not the Provisional Monthly and Probate Court for the District of Careysburg had jurisdiction and was vested with the power to admit into probate the Last Will and Testament of the late A. Momolu Massaquoi, who was a resident of Monrovia, and not whether the Will is genuine. We are also not concerned with whether or not the appellee, widow of the testator, is entitled to letters testamentary, or whether the testator left any heirs of his natural body, or whether the appellant, Dasia Massaquoi, is the legitimized son of the late A. Momolu Massaquoi. Our concern is whether the Monthly and Probate Court for the District of Careysburg had jurisdiction to probate the subject Will and to grant letters testamentary thereunder.

Our Judiciary Law, Rev. Code 17, contains no provisions to the effect that the jurisdiction of probate courts and probate divisions of the circuit courts extends beyond their territorial limits. Instead the law provides that: "A monthly and probate court is hereby established in each of the counties and territories of the Republic and may include such provisional courts as may be deemed necessary; accordingly, a monthly and probate court is hereby established in and for the County of Montserrat, except for those where provisional courts are established therein:..." Judiciary Law, Rev. Code 17:1.5.

The Judiciary Law further provides that "the Monthly and Probate Court for Montserrat County, the provisional monthly and probate courts, and the probate divisions of the circuit courts shall have exclusive original jurisdiction of matters arising within their respective territorial jurisdictions." *Ibid.* 17:5.2

We are talking about territorial jurisdiction of the Provisional Monthly and Probate Court of the Statutory District of Careysburg and not jurisdiction of the person or of the subject matter. Territorial jurisdiction is defined as the territory over which a government or a sub-division thereof has jurisdiction. Jurisdiction is considered as limited to a cause arising or to persons residing within a defined territory, such as a county, a judicial district, etc. The authority of any court is limited by the boundaries thus fixed. BLACK'S LAW DICTIONARY 1642 (4 th ed).

This Court held in *Hill v. Republic*, 2 LLR 517 (1925), and *Phillips v. Nelson and*

*Freeman*, 10 LLR 134 (1949), that territorial jurisdiction is given by law and cannot be conferred by consent of the parties. This Court has also held that where a judge acts without jurisdiction, his judgment is a nullity and cannot be enforced. In confirming this position, this Court held in *Morris v. Phillips*, 14 LLR 588 (1961), that where a court lacks territorial jurisdiction, its judgment is void.

In view of all we have narrated herein and the laws cited in support thereof, we are convinced that the Provisional Monthly and Probate Court for the District of Careysburg was without territorial jurisdiction to admit into probate the Last Will and Testament of the late A. Momolu Massaquoi who, at the time of his death, was not a domiciliary within the territorial limits of the Provisional Monthly and Probate Court for the District of Careysburg. We also hold that the lower court was without authority to grant letters testamentary relative to the mentioned Will. The judgment is therefore reversed with costs against the appellee. The said Last Will and Testament may be offered for probation in the appropriate court *nunc pro tunc* and letters testamentary may there be granted upon proving of the will in keeping with law. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge therein presiding to give effect to this judgment. And it is hereby so ordered.

*Ruling reversed.*