

ANTHONY BARCLAY, Appellant, v.
- JAMES THOMPSON and JEMAIMA
THOMPSON PARKER, Administrators of the
Intestate Estate of LOUISE THOMPSON,
Appellees.

APPEAL FROM THE MONTHLY AND PROBATE COURT OF
MONTSERRADO COUNTY.

Argued March 21, 1966. Decided June 30, 1966.

1. The probate court lacks jurisdiction to try an unliquidated claim against the administrators of an intestate estate for damages for injury to property allegedly caused by the intestate prior to his death. 1956 CODE 18:530.
2. The defense of lack of jurisdiction of the subject matter may be asserted at any time until final judgment and regardless of a defendant's failure to file an answer. 1956 CODE 6:296.

On appeal, the probate court's *judgment* dismissing appellant's petition for lack of jurisdiction was *affirmed*.

Anthony Barclay pro se and *T. Gyibli Collins* for appellant. *Joseph W. Garber* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

A petition was filed before the Commissioner of Probate of the Monthly and Probate Court of Montserrat County by appellant in these proceedings, demanding damages for the alleged destruction of his vehicle, a taxicab, as the result of the collision with a Volkswagen owned and driven by Louise Thompson who, together with her daughter, Doris Rosser, died as a result of the above-mentioned collision on the Monrovia-Kakata highway.

The petition herein above referred to reads, in its body, as follows:

"1. The petition of Anthony Barclay, petitioner in the above entitled cause, respectfully shows that your petitioner has a valid claim against the estate of said decedent in the sum of \$2,500 as will more fully appear by statement of claim hereto annexed (see bill); and that your petitioner has duly filed said claim with the respondents round about the 5th day of February, 1965, and demanded payment of said claim from said respondents, but to no avail.

"All which the petitioner is ready to prove.

"2. And your petitioner further shows that said claim is justly due and owing to your petitioner; that no payment has been made thereon and there are no offsets against said claim to the knowledge of your petitioner.

"All which the petitioner is ready to prove.

"3. And your petitioner further shows, that he is informed and believes that there are ample assets available for the payment of said claim against said estate in the nature of rents from houses of said decedents, and/or personal property of said estate applicable to the payment or satisfaction of your petitioner's claim without adversely affecting the right of others entitled to priority or equality of payment or satisfaction.

"All which the petitioner is ready to prove.

"Wherefore, your petitioner prays that a decree be made directing the said respondents to pay petitioner's claim and that the said respondents may be cited to show cause why such a decree should not be made."

The present appellees moved the court to dismiss the above petition on grounds which were stated as follows.

"1. Because respondents say that an action of this kind, that is to say a claim based on alleged injuries, does not survive the death of either party and that since petitioner's claim for damages is based on an alleged destruction of his vehicle by one Louise Thompson, respondents' late sister, who is not only dead but

who, petitioner in this petition indicates, died as result of the alleged collision in which his vehicle allegedly sustained the alleged injuries for which he now claims damages, this Honorable Court cannot but dismiss petitioner's petition and respondents so pray.

"All which the respondents are ready to prove.

"2. And also because no such claims as petitioner's could have survived the death of either of the parties and such claim cannot be brought against the deceased's executors or administrators, and therefore petitioner is without a cause of action and this Honorable Court has no jurisdiction over this nonexistence cause of action.

"All which respondents are ready to prove.

"3. And also because petitioner's alleged claim which he refers to as damages could only have been fixed and awarded by a jury, which has not been done in this case, therefore, this court has no jurisdiction to determine and award damages.

"All which respondents are ready to prove.

"Wherefore, respondents pray the dismissal of petitioner's petition with costs against him."

To this motion to dismiss the petition, the present appellant filed a resistance consisting of seven counts. Said resistance, according to the tenor thereof, strongly contested said motion.

In ruling on the motion filed by appellees in the lower court against the petition of appellant, the probate commissioner sustained said motion, thereby dismissing appellant's petition, to which ruling appellant noted an exception and announced an appeal to this Court for review and final disposition of the said cause. Whereupon appellant has come up to this Court on a bill of exceptions containing five counts. We deem Counts 1 and 4 worthy of consideration; said counts read as follows.

"1. Because, notwithstanding petitioner's claim of \$2,500 was duly presented to the above respondent-

administrators for payment in keeping with their duties under the statute, and notwithstanding it is one of the fundamental duties of the probate judge to enforce payment of all claims against estates, yet still Your Honor disallowed said claim to be paid because of the contrary opinion that the claim is founded in damages and not a debt and therefore Your Honor has no authority to enforce payment thereof. To which said ruling of Your Honor the petitioner excepts.

"4. And also because Your Honor overruled the contention of the petitioner that the counsel for the respondent administrators should have filed an answer before filing a motion to dismiss for want of jurisdiction over the subject matter, even if at all said application had merits, by way of giving notice of the facts intended to be proved, but which was not so done in this case. To which said ruling of Your Honor the petitioner excepts."

Taking recourse to the relevant statute in vogue for guidance to determine whether or not the probate court had jurisdiction to determine claims in damages, we observe that the said statute provides the following.

"The Monthly and Probate Court of Montserrado County shall have jurisdiction in the following matters:

"(a) To probate any will of real and personal estate, or any writing which shall possess the general features of a will, which shall appear on its face to be intended for a will;

"(b) To grant letters testamentary and of administration;

"(c) To direct and control the conduct and settle the accounts of executors and administrators;

"(d) To enforce the payment of the debts and legacies of intestates, and to direct the distribution of their estates;

“(e) To order the sale and distribution of the real estate of deceased persons;

“(f) To appoint and remove guardians for minors, to direct and control their conduct, and to settle their accounts;

“(g) To cause the admeasurement of dower to widows;

“(h) To have general supervision and direction of the estates of deceased persons, and of incompetents and all affairs connected with them;

“(i) To hear and determine applications for the adoption of children;

“(j) To hear and determine proceedings to legitimize illegitimate children.” 1956 CODE 18:530.

It is obvious from the above-cited statute that the probate court is not empowered in the first instance to determine claims for damages.

It is our considered opinion that appellant should have first sought to establish his claim for damages by jury trial. Whatever damages were awarded in such an action could have formed the basis of his claim against the estate of the intestate. In view of the foregoing, Count 1 of appellant's bill of exceptions is not sustained.

Reverting to Count 4 of appellant's bill of exceptions which complains that the probate commissioner overruled the contention of the petitioner that counsel for the respondent-administrators should have filed an answer before filing the motion to dismiss for want of jurisdiction over the subject matter, we shall resort to the provisions of the controlling statute, which provides that:

“If the defendant appears but fails to file and serve an answer, he is presumed to deny the truth of the facts in the complaint and to rest on that ground only. Any averments which are not denied in the answer filed and served by the defendant are deemed to be admitted by him.

“But the defense that the court lacks jurisdiction over the subject matter may be made at any time in the action until final judgment (on appeal if an appeal is taken), and the court may at any time dismiss the action on that ground.” 1956 CODE 6:296

Moreover, this Court has held that:

“Where want of jurisdiction over the cause appears upon the records, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceedings; for any act of a court beyond the jurisdiction conferred upon it by law is null and void.” *Hill v. Republic*, 2 L.L.R. 517 (1925) Syllabus 4.

Appellees contended in Count 1 of their motion to dismiss petitioner's petition that the claim based on alleged injuries does not survive the death of either party since petitioner's claim is based on an alleged destruction of his vehicle by one Louise Thompson, who is not only dead but who, as petitioner admitted in his petition, died as result of a collision in which petitioner's vehicle allegedly sustained the injuries for which damages were claimed. It is our view that the contention of the appellees revealed in their motion hereinabove referred to was well founded in law. See Section 100 of the Civil Procedure Law (1956 CODE 6:100).

In view of the foregoing citation of law, it is crystal clear that failure to file an answer in proceedings where the lack of jurisdiction of the court is apparent does not preclude the party affected thereby from attacking the lack of jurisdiction of the court at any stage of the case.

Therefore it is our considered opinion that the ruling of the trial court is well founded in law. This Court hereby affirms and sustains the judgment of the court below with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.