MARIE PEAL-GOE,Petitioner, v. **HIS HONOUR E. S. KOROMA,**Assigned Circuit Judge for the Sixth Judicial Circuit, Montserrado County, June Term, A. D. 1982, and **LUCRETIA GIBSON,**Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE ISSUANCE OF A WRIT OF PROHIBITION.

Heard: December 9-13, 1982. Decided: February 4, 1983.

1. The Supreme Court can hear and determine an appeal from petition for remedial process in and out of term and is not controlled by the term to which the appeal was announced.

2. The proper party respondents to a remedial process in the Supreme Court are the trial judge and the party in whose favor the ruling or act sought to be executed or prohibited, was rendered. Persons not parties to the proceedings in the trial court cannot be made respondents.

These prohibition proceedings were commenced after the jury returned a verdict in favor of petitioner's husband, Daniel Goe, in an action of divorce, to prevent the judge from rendering final judgment on the verdict. Petitioner's main contentions are that she was denied her day in court in that she was not served with notices of assignment for the disposition of law issues and the trial; and that the Government of Liberia should have been served with notice of the trial, divorce being tripartite in nature. From a ruling denying the writ of prohibition, petitioner appealed to the Full Bench.

The Supreme Court held that if petitioner was not satisfied with the returns of the notices of

Robert G. W. Azango appeared for petitioner. S. Benoni Dunbar, Sr. and Raymond A. Hoggard appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

These prohibition proceedings allegedly grew out of a divorce case filed by Daniel Goe for incompatibility of temper against his wife Marie Peal Goe, the petitioner herein. Law issues having been disposed of, trial was had and the jury returned a verdict in favour of plaintiff, Daniel Goe. However, before the judge could render a final judgment, petitioner's counsel fled to the Chambers of Mr. Justice Ceapar A. Mabande with a petition for the writ of prohibition to prevent the judge from rendering final judgment in the case. The alternative writ of prohibition was then issued upon orders of Mr. Justice Mabande.

When we called the case for hearing, petitioner/appellant brought to our attention that she had filed a motion contesting our jurisdiction to hear this appeal during the October 1982 Term because her appeal was taken to the March 1982 Term of Court. The motion was resisted, argued and denied as in keeping with statute

"A final decision by a Supreme Court Justice in a proceeding in certiorari, mandamus, or prohibition may be appealed to the Supreme Court en banc. The appeal shall be heard and determined immediately, in or out of term time." Civil Procedure Law, Rev. Code 1:16.26.

The petitioner’s counsel adopted a course very strange in this jurisdiction and which course or method, is not supported by law. The parties in the divorce case are Daniel Goe, plaintiff and

rights are adversely affected, he may apply for the writ of prohibition. This is the relevant statute:

"The party commencing a special proceeding shall be styled the petitioner and any adverse party the respondent. After a proceeding has commenced, no party shall be joined or interpleaded and no intervention shall be allowed except by leave of court." Civil Procedure Law, Rev. Code 1: 16.2.

There is no evidence in the records before us that Lucretia Gibson is an adverse party or the trial judge except the inclusion of her name as co-respondent. Count one of the returns is sustained and Lucretia Gibson's name ordered deleted.

Count two of the petition refers to the pendency of the action of divorce for desertion and alimony pendente lite in the Sixth Judicial Circuit Court. Respondents in count two of their returns admit that these cases are pending but contend that they were filed one month and 18 days after the filing of the action of divorce for incompatibility of temper which has not been denied by petitioner. The petitioner has not invoked the doctrine of lis pendens, maybe because she knows very well that the two cases were not pending when the case out of which these proceedings grew was filed. Count two of the returns is sustained and count two of the petition overruled.

Petitioner contends in count three of her petition that she was never served with notices of assignment for the disposition of the law issues and the trial of the case. Therefore, she was denied her day in court, because according to her, the co-respondent judge relied on the false returns of the sheriff. She also argues that the Government of Liberia should have been served with notice for the trial through the Ministry of Justice since a divorce proceeding is tripartite in nature. She further maintains that the co-respondent judge should have conducted an

Petitioner further alleges that the co-respondent judge directed the jury to bring a verdict in favor of Co-respondent Daniel Goe. In counter arguing this count, respondents maintain that it is the returns of the sheriff that confer jurisdiction of the court over a party, and if petitioner thought that the returns of the sheriff were not true or were questionable, she had every right to have challenged the same and the judge would have instituted an investigation. They maintained that the co-respondent judge could have only instituted an investigation if the returns of the sheriff were challenged and that the failure of the petitioner to challenge the returns of the sheriff in the trial court was a waiver on the part of petitioner. She therefore cannot raise the issue now. They categorically denied that petitioner did not have her day in court and that the co-respondent judge proceeded by wrong rules, because petitioner was regularly summoned, pleadings progressed to reply, notices for disposition of law issues and trial were issued, served and returned served, but counsel for petitioner elected to absent himself without any excuse. Respondents denied the allegation that the co-respondent judge instructed the jury to bring a verdict in favour of plaintiff, Daniel Goe. Relative to sending a notice to the Minister of Justice, respondents say that this is not the practice in this jurisdiction.

During the arguments before us, we asked counsel for petitioner, whether he challenged the return of the sheriff and the judge refused to conduct an investigation. He answered in the affirmative but said he told the judge verbally. We also asked whether the verbal approach made to the judge according to him was made in the presence of both parties. He answered in the negative and intimated that when he came to court the other party was not in court but he walked to the judge and told him. Asked further if he ever reduced his request to writing and served his adversary a copy, he said no. The records before us is void of any challenge made against the sheriff returns to the notices of assignment for the disposition of the law issues and trial and we quote the two returns:

SHERIFF'S RETURN TO NOTICE OF ASSIGN-MENT FOR THE DISPOSITION OF LAW ISSUE:

Dated this 5th day of August, A. D. 1982.
Sgd. Demer Bracewell
DEPUTY SHERIFF FOR MO. CO., R. L.
SHERIFF'S RETURN TO THE NOTICE OF ASSIGNMENT FOR THE TRIAL:

"On the 16th day of August A. D. 1982, Alfred Boymah a bailiff of the People's Criminal Court AA" for the First Judicial Circuit, Montserrado County, served the within notice of assignment on the counsel for the within named plaintiff. The bailiff has reported to the sheriff that the counsel for the defendant refused to sign and receive his copy. And I now make this as my official returns to the office of the clerk of this honourable court.

Dated this 16th day of August A. D. 1982.
Sgd. P. Edward Nelson II
SHERIFF, MONTSERRADO COUNTY, R. L."

Recourse to the records indicate that petitioner never chal-lenged the returns of the sheriff as being false or questionable. It is our opinion that petitioner should have challenged the truthfulness of the returns so as to warrant the institution of an investigation by the trial judge, since the trial judge could not have conducted an investigation into an issue not raised. A sheriff's return is presumed correct. Perry and Azango v. Ammons, [1965] LRSC 11; 16 LLR 268(1965). The Supreme Court will take cognizance of all matters appearing in the records made in the lower court and certified by the clerk and where the trial court's certified records show the act to have been done, the court will always and in every such case, be governed by the records regardless of any allegations or statements to the contrary, no matter how positive or by whom made. Donzoe v. Thorpe, [1978] LRSC 32; 27 LLR 166, 172 (1978). It has not been the practice to serve the Minister of Justice with notice in divorce cases instituted by party litigants. Counts three and five of the petition must therefore crumble to counts 3, 4, 5, 6, 7, 8 and 9 of the returns and said counts 3 and 5 of the petition are overruled. Counts 1 and 4 of the petition are not grounds relevant to the granting or denial of a petition for the writ of

neither exceeded its jurisdiction nor proceeded by wrong rules. Bryant v. Morris, [1954] LRSC 41; 12 LLR 198 (1954); Richards v. Parker et al.[1954] LRSC 6; , 11 LLR 396 (1954).

In view of the facts, circumstances and the laws cited, we have no other choice but to affirm the ruling of the Justice in Chambers and said ruling is therefore affirmed and confirmed with the modification that the fine of $50.00 imposed on Counsellor Robert G. W. Azango for contempt is reduced to $25.00. And it is so ordered.

Ruling affirmed.