J. JENKINS PEAL, Minister of Labor, Youth and Sports, et al., Petitioner, *v.* ALFRED B. FLOMO, Assigned Circuit Judge, presiding over the March 1974 Term of the Sixth Judicial Circuit Court, Montserrado County, Respondent.

PETITION FOR A WRIT OF PROHIBITION TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided April 19, 1974.

1. When a writ of prohibition is applied for, the body or officer and all parties litigant against whom the writ is to be directed must be joined as respondents in the prohibition proceedings.
2. The Supreme Court, or a Justice thereof in chambers, takes cognizance only of those matters and issues contained in the record certified to the Court or the Justice.

An action for a preliminary injunction was instituted by the National Mine Workers Union and a local union thereof, which sought to enjoin the Ministry of Labor, Youth and Sports from conducting an election of union officers. A restraining order was issued and the petitioner herein was ordered by the Circuit Court to show cause why the relief sought should not be granted.

The Ministry, through the Solicitor General, moved the Circuit Court to vacate the preliminary injunction on technical grounds. The judge denied the motion, issued the preliminary writ, and ordered the Ministry to show cause why the injunction should not be made permanent. Exception to the ruling was taken, and the Ministry applied for a writ of prohibition to the Justice.

All issues raised before the Justice had to be subordinated by him to the controlling issue raised by the respondent, which contended that plaintiffs in the action for an injunction had not been joined as respondents with the judge who had made the ruling and had been named as

the sole respondent in these proceedings. The petitioner argued that such joinder of parties claimed to be necessary could be implied from the petition.

The Justice found the petitioner's contention invalid and ruled that where parties plaintiff have not been joined with the tribunal sought to be restrained by a writ of prohibition, the petition must fail. The petition was *denied*.

HENRIES, J., presiding in chambers.

These proceedings grow out of a motion for a preliminary injunction filed on March 8, 1974, in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, by the National Mine Workers Union, Local No. 4, to enjoin the Ministry of Labor, Youth and Sports, from conducting an election of officers of Local No. 4 at the Bong Mining Company. A restraining order was issued and the Ministry, the petitioner herein, was ordered to show cause why the motion should not be granted.

The Solicitor General of Liberia appeared for the Ministry and filed a motion to vacate the preliminary injunction on the ground that the affidavit annexed to the motion for a preliminary injunction was signed by counsel for plaintiffs and not by the plaintiffs themselves. The Court denied the motion to vacate, granted the motion for a preliminary injunction, issued the preliminary writ and ordered the Ministry to show cause why the injunction should not be perpetuated. The Ministry excepted to this ruling and applied for a writ of prohibition.

We observe, however, that the petition for the writ of prohibition makes no mention whatsoever of the issues raised in the motion to vacate, which was denied by the lower court, and which was the basis for seeking a writ of prohibition. Instead, the petitioner contends that the lower court lacked jurisdiction to hear and determine the matter. We must state here in fairness to the judge

of the lower court that since this issue was never raised before him, he had no opportunity to rule on it. We regret that we are unable to consider the issue on which the lower court ruled because the issue was neither raised in the petition nor in the returns, and the record before us does not contain the motions filed in the court below. This Court has always held that it takes cognizance only of those matters contained in the record certified to it.

The petitioner alleges that the Sixth Judicial Circuit, Montserrado County, did not have jurisdiction over the matter because according to statute the action should have been brought in the Ninth Judicial Circuit, Bong County, where the Union, Local No. 4, has its principal office. It is also argued that the issue of jurisdiction over the subject matter and territorial jurisdiction can be raised at any time.

The respondents raised the following contentions:

(1) that the petitioner neglected to join the parties plaintiff, in whose favor the injunction was granted, as co-respondents;

(2) that prohibition will not lie when the acts sought to be prohibited have been completed; hence, the injunction having been granted, nothing remained to be done;

(3) that the principal office of the Union, Local No. 4, is located in Monrovia, Montserrado County and, therefore, the action was properly brought in the Sixth Judicial Circuit, Montserrado County; and

(4) that the petitioner having submitted to the jurisdiction of the court, the Ministry was estopped from contesting jurisdiction in the petition.

We would like to go into all of the issues raised, but before doing so we must first direct our attention to that count of the return which raises the issue of non-joinder of parties plaintiff as co-respondents and see the legal effect the argument has upon these proceedings. The respondent relied on our Civil Procedure Law.

"1. Citation or alternative writ. When a petition

for a writ of mandamus or prohibition is made to a justice of the Supreme Court, such justice shall issue or cause the clerk to issue a citation to the parties named as respondents." Rev. Code 1:16.22(i).

The petitioner contended that although it did not join the parties plaintiff as co-respondents, yet it can be implied from count one of the petition.

In our opinion, all that count one says is that the petitioners filed a motion to vacate the plaintiffs' motion for a preliminary injunction and it was denied. This count neither expressly nor by implication joined the plaintiffs as co-respondents. Furthermore, in the prayer of the petition, the court is asked to "grant a writ of prohibition ordering Judge Alfred B. Flomo to desist from any further hearing of these proceedings, and to show cause why this writ of prohibition should not lie." Again, this does not include all parties plaintiff.

We have been able to find only two instances in which the issue of non-joinder of parties litigant was raised before this Court in prohibition proceedings.

The first case is *Republic* v. *Harmon,* 5 LLR 300, 308 (1936). In its opinion the Court relied solely on the common law and quoted the following: "The common-law writ may be directed to the judges of the inferior tribunal, or the parties to a cause pending therein, or both conjointly. It has been held, however, that the only necessary defendant is the tribunal whose proceedings are sought to be restrained."

In *Younis* v. *Davies,* 10 LLR 435, 438 (1951), there were four parties plaintiff, yet only one of them was joined with the Justice of the Peace as respondents. The issue of non-joinder of the other three parties plaintiff was raised. The Court at page 438 observed that "Reference to our statutes on Prohibition reveals the following provision as being recorded on page 262 of our Revised Statutes.

"Sec. 1399. Prohibition—A writ of prohibition is

> a writ commanding the Court and party to whom it shall be directed to desist and refrain from any further proceedings in the suit, or matter specified therein until the matter can be disposed of by the Court to which the writ is made returnable, and to show cause why they should not be absolutely restrained from any further proceedings in such suit or matter."

After considering the common law rule that prohibition is directed to the judge of the inferior tribunal where proceedings are being held which are sought to be restrained, the Court held that failure to join all parties litigant is fatal to the petition.

In two other instances the issue was not raised but the Court commented on the question in passing. In *Parker* v. *Worrell,* 2 LLR 525 (1925), the Court declared that a writ of prohibition is directed to the judge and parties litigant in a suit in an inferior court.

In *Dweh* v. *Findley,* 15 LLR 638 (1964), the issue was not raised because the parties litigant were joined as respondents, but the Court cited *Republic* v. *Harmon, supra.* We might mention here that this case was decided on the basis of the Liberian Code of Laws of 1956, and our Civil Procedure Law provided at that time in Tit. 6:1220 that: "A writ of prohibition shall be issued by the Supreme Court or a Justice thereof sitting in chambers to an inferior court and to a party to an action or proceeding before it." We are certain that had the parties litigant not been joined and had the issue been raised, by virtue of the Court's reasoning, the writ would have been denied.

Under our present Civil Procedure Law, the same requirements are applicable.

> "Joinder of person in whose favor a body or officer has exceeded jurisdiction. Where a proceeding under this subchapter is brought to restrain a body or officer from proceeding without or in excess of jurisdiction

in favor of another person, the latter shall be joined as a party." Rev. Code 1:16.25(1).

We would like very much to pass upon the other interesting issues involved in this case, but we find ourselves barred from doing so. Having reviewed the cases and the law cited herein, it is our holding that where a statute provides for the joinder of parties litigant in a proceeding, as in this case, the statute must be strictly followed, and where a petitioner fails to join them as parties respondent in applying for a writ of prohibition we have no alternative except to dismiss the petition. It is so ordered.

Petition denied.