

LANCELOT HOLDER, Appellant, *v.* THE
LIBERIAN DEVELOPMENT BANK and
TILMAN DUNBAR, Circuit Court Judge presiding
by assignment in the Debt Court, Montserrado County,
Appellees.

APPEAL FROM JUSTICE'S RULING DENYING ISSUANCE OF WRIT OF
CERTIORARI.

Argued January 16, 1974. Decided February 1, 1974.

1. An identical action inadvertently instituted may be withdrawn by plaintiff upon payment of costs, at the time the initial action is assigned for trial.

On the date of assignment for trial of an action in debt, the plaintiff moved to withdraw a second and identical action inadvertently commenced two years after the inception of the first. The Debt Court Judge allowed the application, predicated upon payment of costs to defendant. An exception was taken and defendant thereafter applied for a writ of certiorari to the Justice presiding in chambers, who denied issuance. An appeal was taken to the full court. The Supreme Court *affirmed* the ruling which denied the petition.

Stephen Dunbar for appellant. *Joseph Williamson* for respondent.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On November 26, 1973, a petition was presented to the Justice in chambers, setting forth: (a) that Circuit Court Judge Tilman Dunbar took jurisdiction over the Debt Court, Montserrado County; (b) that on November 8, 1973, the date which the judge had assigned for the trial of *Liberian Development Bank v. Holder*, an action in

debt, plaintiff's counsel filed a submission, decided in favor of plaintiff and to which defendant excepted, giving notice that he would apply for a writ of certiorari; (c) that an action can be withdrawn only once, not twice as herein, and never without payment of costs to defendant.

The respondents contend, aside from the technical objections raised to form, that no issue presents itself for determination; that the plaintiff had begun an action in 1971 and inadvertently started an identical action in April, 1973, and it had moved to withdraw the second action and was allowed to by the lower court, upon paying costs to defendant; that a writ of certiorari was improperly sought as a result of the lower court's ruling.

The Justice in chambers denied the writ, relying in part on a certificate of the clerk of the Debt Court indicating the facts were as recited by respondents. Consequently, the ruling of the lower court was deemed correct. Petitioner is before us on appeal from the Justice's ruling.

As for the denial by petitioner in argument before us of the facts set forth in the clerk's certificate, a bare denial has been raised unsupported by affidavit or proof and cannot be given credence.

Having examined the record in this case and considered the ruling made by our distinguished colleague, we are of the opinion that the said ruling of the Justice should be and the same is hereby upheld.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment. It is so ordered.

Affirmed.