

# **Sabadia v Dowset Engineering Ltd (1985) 11 MLR 417**

## **Summary**

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<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	His Honourable Justice L Unyolo
<b>Cause Number:</b>	11 MLR 417
<b>Date of Judgment:</b>	March 21, 1986
<b>Bar:</b>	Mr. Osman, for the Plaintiff Mr. Msisha, for the first Defendant

The Plaintiff appealed to the High Court against an order of the Registrar dismissing her action against the First Defendant for want of prosecution. The dispute arose from a road accident on April 22nd, 1979, which resulted in the death of the Plaintiff's husband. The Plaintiff, on her own behalf and on behalf of her five children, initiated two separate actions on April 21st, 1982, the last day of the limitation period. These were later consolidated. The procedural history was marked by protracted exchanges between the parties, including several requests for further and better particulars, a summons for directions, and mutual non-compliance with court orders. The parties also attempted an out-of-court

settlement which failed. On March 21st, 1985, the First Defendant applied for and was granted an order to dismiss the action for want of prosecution.

The principal issues for the Court were whether there had been inordinate and inexcusable delay on the part of the Plaintiff in prosecuting her action, and if so, whether this delay had caused serious prejudice to the First Defendant. A subsidiary question was whether the time elapsed before the issue of the writ, while still within the limitation period, could be considered in assessing whether subsequent delay was inordinate. The Court considered the precedents on this point and affirmed that pre-writ delay is a relevant factor.

The appeal was allowed. The Court found that while the Plaintiff was not entirely blameless, the overall pace of the litigation did not constitute an inordinate and inexcusable delay, particularly given that the First Defendant had contributed to the delays by making several requests for further particulars and consenting to adjournments. Additionally, the Court held that the First Defendant had failed to prove serious prejudice, finding its claim that key witnesses had disappeared unconvincing as it had not made sufficient efforts to locate them. The Court ordered each party to bear its own costs of the appeal, noting that the Plaintiff was fortunate to have her action reinstated and was not entitled to costs given her partial responsibility for the delays.