



**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: KWACH, BOSIRE & KEIWUA JJ.A)**  
**CIVIL APPEAL NO. 240 OF 1999**

**BETWEEN**  
**DOVER INSURANCE AGENCY LTD.....APPELLANT**  
**AND**  
**UAP PROVINCIAL INSURANCE COMPANY LTD .....RESPONDENT**

**(An appeal against the ruling of the High Court of Kenya at Nairobi by her Ladyship Jeanne W. Gacheche (Miss)**

**Commissioner of Assize dated 24th September 1999**

**in**

**H.C.C.C. 611 of 1999**

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**JUDGMENT OF THE COURT**

The appellant as defendant in Nairobi High Court Civil Case No. 611 of 1999, applied before that court under Order 6 rule 13 of the Civil Procedure Rules for an order striking out the plaint in the suit, on the ground that the suit had been filed prematurely. On the date that application was due for hearing only the respondent, as plaintiff, appeared. At the request of its counsel the application was dismissed for nonattendance of the applicant, which is the appellant herein. Its application to set aside the order of dismissal, which was expressed to be brought under Order IXB rule 8 Civil Procedure Rules, was dismissed by Jeanne W. Gacheche, a Commissioner of Assize, on the ground that it lacked any merits.

In the appeal before us, the appellant contends that the learned Commissioner of Assize improperly exercised her discretion in refusing to vacate the aforesaid dismissal order. There is no indication that the learned Commissioner omitted to take into account any relevant matters or took into account irrelevant matters. Besides, the application by the appellant to vacate the dismissal order having been made under Order IXB rule 8 of the Civil Procedure Rules was clearly incompetent as the order of dismissal was not made under that Order. Mr Olola for the appellant concedes this fact.

In the result and for the foregoing reasons, this appeal lacks merits. We do not consider it necessary to hear Mr Mungai for the respondent and accordingly dismiss the appeal with costs.

**Dated and delivered at Nairobi this 4th day of October, 2000.**

**R.O. KWACH**

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**JUDGE OF APPEAL**

**S.E.O. BOSIRE**

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**JUDGE OF APPEAL**

**M. KEIWUA**

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**JUDGE OF APPEAL**

**I certify that this is**

**a true copy of the original.**

**DEPUTY REGISTRAR**