



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**civ case 1671 of 00**

**SYLVESTER MUCHINYI.....PLAINTIFF**

**- V E R S U S -**

**NAIROBI CITY COUNCIL.....DEFENDANT**

This application is brought under Order XXXIX of the Civil Procedure Rules (hereinafter referred to as “the Rules”). In it, the Plaintiff seeks to restrain the Defendant by itself, its servants or otherwise howsoever from suspending him or interfering with his employment pending the hearing and determination of this suit. The Plaintiff graduated from the University of Nairobi with a 1st class Honours Bachelor of Engineering Degree in June 1978. In 1988 he was appointed as a Principal Assistant Engineer in the Project Implementation Unit for the Third Nairobi water supply project. His appointment was approved by the Public Service Commission. He worked in that position until 1994, when he was promoted as the Chief Assistant Engineer. On 28th July, 1999, the Public Service Commission appointed him as the Deputy General Manager (Water Operations and Maintenance) a position which he held until 28th June, 2000, when he was suspended from employment with the Respondent – Council. The Plaintiff was suspended for failure to exercise his duty as a public servant with due care and diligence.

At the very outset, I must agree with Mr. Karauka for the Defendant that this application is misplaced as it has been overtaken by events. From the evidence on the Plaintiff’s Affidavit, the Plaintiff has already been suspended at the time he filed this application. He cannot, therefore, come here under Order XXXIX of the Rules seeking to prevent the Defendant from doing what has already been done. This court will not issue an order in vain. The Plaintiff has not sought to undo what has already been done but to prevent what has already been done. That, of course, cannot be done. This application is, therefore, undeserving of further consideration and must be rejected. I, dismiss the same with costs.

**DATED and DELIVERED at NAIROBI this 4th day of April, 2001.**

**ALNASHIR VISRAM**

**JUDGE**