**Muti v Kenya Finance Corporation and another**

**Division:** High Court of Kenya at Nairobi

**Date of ruling:** 10 March 2004

**Case Number:** 199/03

**Before:** Ochieng AJ

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Estoppel – Equitable estoppel – Plaintiff defaulting in loan repayment – First security sold –*

*Plaintiff acknowledging sale and pleading for waiver of balance and discharge of second security –*

*Defendant, waiving and discharging security – Plaintiff suing in respect of first security – Whether*

*plaintiff estopped from suing – Order VI, rule 13(1)(b) and (d) – Civil Procedure Rules – Whether suit an*

*abuse of court process.*

**Editor’s Summary**

The plaintiff borrowed an amount of KShs 330 000-00 from the defendant in 1987 on the security of two of his properties. The plaintiff defaulted in paying and the defendant sold one of the properties by public auction for KShs 700 000-00. In January 2002, the plaintiff wrote to the defendant requesting the defendant to waive the balance of the interest and release the title documents of the unsold property to the plaintiff. The defendant agreed to the request. The plaintiff subsequently brought action against the defendant challenging the sale of the property earlier sold by public auction. The defendant (applicant) brought an application to strike out the plaint under Order VI, rule 13(1)(*b*) and (*d*) of the Civil Procedure Rules. The main ground of the application was that the plaintiff (respondent) was equitably estopped from bringing the suit because by his letter seeking waiver and release of title documents he made a representation that the sale of his property by public auction was proper and lawful.

**Held** – The plaintiff/respondent made representations to the defendant/applicant in the letter intending that the defendant should act upon the representation. The plaintiff acknowledged the sale and its finality on the basis of which acknowledgement his account balance was waived. By writing off the plaintiff’s/respondent’s debt the defendant/applicant discharged the remaining security and cannot counterclaim for the balance. The defendant also lost its entitlement to realise the second security and suffered some damage. The doctrine of estoppel operated against the plaintiff/respondent.

Application was allowed.

**No cases referred to in ruling**