



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muiruri t/a Mururi Auto Parts & 5 others v Kihumo Property Devellers (K) Ltd  
(Environment & Land Case 945 of 2016) [2023] KEELC 16219 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16219 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 945 OF 2016**

**LN MBUGUA, J  
MARCH 2, 2023**

**BETWEEN**

**JOHN KAGECHU MUIRURI T/A MURURI AUTO PARTS ..... 1<sup>ST</sup> PLAINTIFF**

**RICHARD KIMANI WAHINYA T/A MARKHAN ENTRPRISES .... 2<sup>ND</sup>  
PLAINTIFF**

**ROYAL TYRES LTD ..... 3<sup>RD</sup> PLAINTIFF**

**WAMBUA MUSAU KANYANGE T/A KIKO AUTO TYRES ..... 4<sup>TH</sup> PLAINTIFF**

**PETER KIOKO MAKAU T/A KIKO AUTO TYRES ..... 5<sup>TH</sup> PLAINTIFF**

**PATEL AUTOMOBILE HOUSE LIMITED ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**KIHUMO PROPERTY DEVELLPERS (K) LTD ..... DEFENDANT**

**RULING**

1. Vide a ruling delivered by this court on November 29, 2017, Summary Judgment was entered for the defendant against the plaintiffs, of which the plaintiffs were to give vacant possession of the land. The plaintiffs had indeed vacated the suit land as at July 30, 2018. Thus only the prayer for mesne profits is outstanding.
2. On February 21, 2023, counsel for the defendants (plaintiffs in the counter-claim) requested to just table the valuation report without a witness as they were having difficulties getting the person who did the valuation.
3. However in formal proof, a party is required to adduce sufficient evidence to raise a presumption that what is claimed is true-see *Samson S. Maitai & Another vs. African Safari Club Limited & Another* [2010] eKLR. A claimant in an undefended claim is still required to discharge that burden of proof.



4. Since someone has to own the report, in this case the plaintiff, then the said party is at liberty to avail the report by itself or its appointed representatives if the valuer cannot be found. Otherwise I decline the request to have the report tabled before this court without a witness.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF MARCH, 2023  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Mongerri for Defendant

Court assistant: Vanilla

