



**GC Residential Limited v Kamau t/a Intraspace Freighters (Environment and Land Miscellaneous Application E191 of 2025) [2026] KEELC 148 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 148 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E191 OF 2025  
CG MBOGO, J  
JANUARY 26, 2026**

**BETWEEN**

**GC RESIDENTIAL LIMITED ..... APPLICANT**

**AND**

**KENNETH GITUNDA KAMAU T/A INTRASPAX  
FREIGHTERS ..... RESPONDENT**

**RULING**

1. The applicant filed the notice of motion dated 10<sup>th</sup> July, 2025 under the provisions of Section 152A and B of the *Land Act*, in addition to the provisions of Sections 1A, 1B, 3A and 3B of the *Civil Procedure Act* seeking the following orders: -
  1. Spent.
  2. An eviction order be and is hereby issued in favour of the applicant against the respondent for purposes of evicting the respondent from the property known as Villa Number 44 constructed on a portion of Title Number Nairobi/Block247/430 (previously known as Land Reference Number 29271 Nairobi).
  3. The applicant be at liberty to appoint an auctioneer for purposes of the eviction.
  4. Police assistance be provided to the applicant for the eviction of the respondent be undertaken under the supervision of the officer in charge of Kasarani Stadium Police Station or any other police officers under his command.
  5. The respondent be restrained from accessing, entering upon or in any manner interfering with the applicant's quiet and peaceful possession of the property known as Villa Number 44 constructed on a portion of Title Number Nairobi/Block247/430 (previously known as Land Reference Number 29271 Nairobi).



6. Costs be provided.
2. The application is premised on the grounds appearing on its face and the supporting affidavit of Samuel Kariuki, the chief executive officer of the applicant, which is sworn on even date. The applicant deposed that it is the sole registered owner of the property known as Villa Number 44 constructed on a portion of Title Number Nairobi/Block247/430 (previously known as Land Reference Number 29271 Nairobi), hereinafter referred to as the suit property. Further, that the respondent is a trespasser on the suit property having refused to vacate after being issued with a 90 days' notice dated 28<sup>th</sup> November, 2024 under Section 152E of the Land Act which had since lapsed.
3. The applicant further deposed that in an attempt to avoid eviction, the respondent filed two suits vide Milimani MCCC E400/2024 and Milimani MCELC E270/2025. Nonetheless, both suits were struck out. The court was urged to issue the eviction orders as sought.
4. In opposing the application, the respondent filed his replying affidavit sworn on 6<sup>th</sup> October, 2025. He deposed that the respondent entered into a sale agreement with the applicant on 22<sup>nd</sup> June, 2023 but the same was terminated on 26<sup>th</sup> June, 2024 by the applicant without reasonable cause. The respondent contended that it is on account of the applicant's actions that he filed the two suits which were struck out for want of jurisdiction. The respondent refuted the contention that he had refused to pay the purchase price and he urged the court to dismiss the application.
5. On 6<sup>th</sup> October, 2025 the respondent raised a preliminary objection challenging the application on the following grounds: -
  1. The issues raised herein are so weighty that they cannot be determined through a miscellaneous application the same having arisen out of a contract of sale.
  2. The application is totally defective, bad in law, an abuse of the court process and should be dismissed with costs to the respondents.
6. Both the application and the preliminary objection were canvassed by way of written submissions. The applicant filed its written submissions dated 31<sup>st</sup> October, 2025. The applicant submitted that the respondent has not raised any point of law as required of a preliminary objection. Further, that the respondent only advanced factual elements which would ordinarily call for justification and clarification. Reliance was placed in the case of Mukisa Biscuits Manufacturing Co. Ltd v Westend Distributors Ltd [1969] EA 696 to buttress the submission that the preliminary objection had been improperly raised.
7. In support of the submission that the court ought to allow the application, the applicant submitted that it had complied with Section 152E of the Land Act. The applicant maintained that it had followed proper procedure in initiating the respondent's eviction from the suit property. Reliance was placed upon the case of Margaret Karwirwa Mwonera v Francis Kofi [2019] eKLR in urging the court to issue the orders as sought.
8. The respondent filed his submissions on 4<sup>th</sup> November, 2025. He submitted that the instant application offends Article 50 of the Constitution for the reason that the applicant has not filed a substantive suit which would enable all the parties to ventilate their issues before the court. It was submitted that the respondent's right to a fair hearing had been disregarded by the applicant. To buttress his submissions, the respondent relied on the list of authorities dated 4<sup>th</sup> November, 2025.



9. I have considered the application, the replying affidavit as well as the written submissions filed by both parties. The sole issue for determination is whether the applicant has demonstrated merit in the instant application seeking to evict the respondent.
10. The applicant moved the court seeking an order of eviction in accordance with the provisions of Section 152 of the *Land Act*. In particular, the applicant claims to have complied with Section 152E with respect to the issuance and service of the requisite eviction notice to an unlawful occupier of private land. Section 152E outlines as follows:-
  1. If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.
  2. The notice under subsection (1) shall: -
    - a. be in writing and in a national and official language;
    - b. in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
    - c. specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
    - d. be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.
11. It is not in doubt that the applicant is the registered owner of the suit property and that there existed a landlord-tenancy relationship with the respondent till on or about 23<sup>rd</sup> October, 2023 when the applicant issued a default notice annexed as Exhibit “KGK-4”. Later on, the respondent was issued with a termination notice in relation to the purchase of the suit property dated 26<sup>th</sup> January, 2024 and annexed as Exhibit “SK-1”.
12. In proposing that it had complied with Section 152E, the applicant alleged at paragraph 5 of the supporting affidavit that it had issued an eviction notice dated 28<sup>th</sup> November, 2024. Nonetheless, upon perusal of Exhibit “SK-2”, it is inconclusive whether the said notice was issued as what has been presented is an alleged excerpt from the email dispatching the eviction notice to the respondent. Moreover, the applicant has not adduced evidence of service of the eviction notice to the deputy county commissioner and the officer commanding police division of the area.
13. To be precise, the applicant has not satisfied the court over compliance with Section 152E (2) (a) and (d) of the *Land Act*.
14. While dealing with an application seeking similar orders, the court observed as follows in the case of *Opande v Opondo* [2024] KEELC 1702 (KLR):-

“The court is mandated under Section 152F of the Act to consider, inter alia, the matters set out in Section 152E before proceedings to make orders on the eviction notice. When this court considers the provisions of section 152E in the light of the eviction notice and affidavit of service exhibited to the court, it finds that the notice did not comply with the mandatory provisions of section 152E (2).

The options open to the court in considering an eviction notice are contained in Section 152F (2) of the Act. The option available to the court in the circumstances of this matter



is to cancel the eviction notice for non-compliance with the provisions of Section 152E(2) of the *Land Act*.”

15. Similarly, in the case of Benjamin Kimeli Tanui v Omari Salim Nasib & another [2020] eKLR, the court held as follows: -

“The order that this court granted in its judgment related to the appellants who were to “be evicted in accordance with the law.” That law is found in section 152 E of the *Land Act*. The up-shot of the above is that having considered both applications by the appellants and the respondent, I make the following orders: - The respondent must comply with the provisions of section 152 E of the *Land Act* if he wishes to evict the appellants.”

16. Again in Sabai & 4 others v District Land Adjudication & Settlement Office, Trans- Nzoia & 11 others [2022] KEELC 4874 (KLR), the court aptly held as follows: -

“I agree with the analysis of the courts in the foregoing paragraphs. sections 152E to 152G of the *Land Act* remain applicable to eviction on persons unlawfully occupying private land without a court order. In that regard, it is a mandatory requirement for the person seeking eviction to apply within the precincts of the law strictu sensu.”

17. In the present case, the applicant did not demonstrate that an eviction notice was issued and served upon the respondent with corresponding service being effected on the deputy county commissioner and the officer commanding police division of the area. The court cannot issue arbitrary orders without ensuring procedural safeguards that ensure a fair hearing has been afforded to the respondent as well.

18. In the circumstances, the application herein is devoid of merit and it is hereby dismissed.

19. In regards to the respondent’s preliminary objection, I am in agreement with the applicant’s submissions that the same does not raise a pure point of law as prescribed by the court in Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696. To this end, the respondent’s preliminary objection cannot be sustained and the same is hereby dismissed.

20. From the above, the notice of motion dated 10<sup>th</sup> July, 2025 and the notice of preliminary objection dated 6<sup>th</sup> October, 2025 are hereby dismissed. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 26<sup>TH</sup> DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.**

**JUDGE**

**26/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Mr. Gitau for the Applicant

Michael Were Associates for the Respondent – absent

