



**In re EC (Child) (Miscellaneous Application E003 of 2023)
[2023] KEHC 18071 (KLR) (16 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18071 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS APPLICATION E003 OF 2023**

JK SERGON, J

MAY 16, 2023

**IN THE MATTER OF THE CHILDREN'S ACT NO.29 OF 2022
AND
IN THE MATTER OF APPLICATION FOR GUARDIANSHIP TO
EC**

IN THE MATTER OF

PKS APPLICANT

RULING

1. Pursuant to the provisions of section 157, 159 (1) (a) (i), 160 and 164 of the [Children Act](#) No 8 of 2001, PKS, the applicant herein took out the originating summons dated March 22, 2023 whereof he sought for the following orders:-
 - i. That the applicant herein PKS be appointed as legal guardian *ad litem* of EC.
 - ii. That the applicant be allowed and be the authorized guardian in respect of the above-mentioned child.
 - iii. That upon guardianship is being granted, the guardian be known as the parent to the child above-mentioned.
 - iv. That this court do issue further orders as may be deemed fit in interest of the child above-mentioned.
2. The applicant filed an affidavit he swore in support of the summons. When the summons came up for hearing, the applicant solely relied on the grounds stated on the originating summons plus the facts he deposed in the supporting affidavit.



3. I have considered the grounds stated and the facts deponed in the supporting affidavit. A cursory perusal of the summons will show that the sections cited and relied upon by the applicant are inapplicable. Section 157 of the Act is in respect of care on committal to a rehabilitation school while section 159 is in respect of escort of a child to a rehabilitation school. Section 160 is on a charge of harbouring or concealing of a child. Its apparent that the applicant relied on irrelevant provisions of the *Children Act* No 29 of 2022.
4. The originating summons therefore is fatally defective and in the result, the same should be struck out since it is incompetent.
5. The originating summons is found to be incompetent hence the same is ordered struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY, 2023.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

