



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**CIVIL SUIT NO. 6 OF 2016 (OS)**

**MMM.....APPLICANT**

**AND**

**LOO.....RESPONDENT**

**RULING**

1. I have considered the application dated 9<sup>th</sup> September 2019 by the respondent LOO. I accept that the originating summons for division of matrimonial property dated 26<sup>th</sup> February 2016 was filed together with an application of the same date seeking injunction to restrain the respondent from selling, leasing, mortgaging, charging and transferring the stated matrimonial property and to restrain the respondent from evicting the applicant MMM. from the matrimonial home. Against the application was filed a notice of preliminary objection. The objection was heard and determined on 31<sup>st</sup> October 2016. The application was severally set down for hearing. Directions were give that parties do file written submissions on it. On 23<sup>rd</sup> July 2018 counsel appeared before me for that application. I indicated I would render a decision on 23<sup>rd</sup> October 2018. Unfortunately, my record showed “**Judgment on 23<sup>rd</sup> October 2018**” instead of “**Ruling on 23<sup>rd</sup> October 2018.**” This led me to write a decision on the originating summons instead of ruling on the application. This was a mistake, and it was inadvertent.

2. I appreciate that no direction had been taken on the originating summons.

3. The result is that the ruling/judgment entered on 23<sup>rd</sup> October 2018 was irregular and is hereby set aside.

4. The mistake was on the part of the court and therefore I do not order for costs.

5. I ask that this matter be heard by another court. There will be mention on **26<sup>th</sup> November 2020** before Judge Mutuku who shall henceforth handle the matter.

**DATED and DELIVERED at NAIROBI this 5<sup>TH</sup> NOVEMBER 2020.**

**A.O. MUCHELULE**

**JUDGE**