

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO 78 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE KIPKIRUI CHESIRE
ORGUT (DECEASED)

PERIS TOYOI KIPKURURI.....1ST
PETITIONER

KEN KIPTOO ORGUT.....2ND
PETITIONER

LEMMY KIBIWOT ORGUT.....3RD
PETITIONER

VERSUS

NEHEMIAH KIPKEMOI ORGUT.....
.....OBJECTORS

CHRISTOHER KIPLAGAT
ORGUT.....PROTESTOR

Coram: Before Justice R. Nyakundi
M/s Terer & Co Advocates

RULING

1. Before this court is Summons for Rectification of Grant dated 18th March 2026 expressed to be brought under Section 74 of the Law of Succession Act and Rule 43(1) & Rule 73 of the Probate and Administration Rules of Cap 160 Laws of Kenya where the Applicants are seeking the following orders: -
 - a. *Spent*
 - b. *That this Honourable Court be pleased to rectify and/or correct the Certificate of Confirmation of Grant of ALL the Estate of Kipkirui Chesire Orgut (Deceased) confirmed on 15th January 2026.*
 - c. *That the cost of this application be in the cause.*
2. This application is grounded on the annexed supporting Affidavit of LEMMY KIBIWOT ORGUT and such other grounds more particularly;

- a. That the Honourable Court confirmed the Grant of ALL the Estate of Kipkirui Chesire Orgut (Deceased) on 15th January 2026.
- b. That the grant issued was pursuant to a consent dated 26/02/2025 between parties and the same adopted as an order of the court.
- c. That the said Certificate of Confirmation of a Grant issued was erroneously typed in that Land Parcel Elgeyo Marakwet/Lower/Muskut/368 Measuring 1.5ha was erroneously typed to indicate the total acreage as "1.5 Ha" instead of "1.5 Acres".
- d. That the said Certificate of Confirmation of a Grant issued was erroneously typed in that Land Parcel Elgeyo Marakwet/Lower/Muskut/615 Measuring 8.57 was stated twice hence Omitting Land Parcel Elgeyo Marakwet/Lower/Koimur/44 Measuring 17.7 Ha.
- e. That further, the shares and the mode of Distribution should be maintained as stipulated in the grant confirmed on the 15th January 2026 and the consent dated 26/02/2025 adopted as a court order thereof.
- f. That the said typographical errors may hamper the final stages of distributing the Estate Assets and/or the registration of title in favour of the beneficiaries of the Estate.
- g. That it is only fair and in the interest of Justice that the said errors be rectified.
- h. That the instant Application has been taken out expeditiously and without undue delay.

Decision

3. The doctrine of rectification is an equitable remedy that allows a court to amend or rectify a written instrument such as a contract, deed, or document to ensure it accurately reflects the true, common intention of the parties involved. It is used when a document fails to express the agreement actually reached, due to a mistake in the drafting process.
4. The key aspects of rectification include:

- **Purpose:** *To make the written document match the prior, actual agreement of the parties.*
 - **Nature of Remedy:** *As an equitable remedy, its application is discretionary, meaning the court decides based on fairness and the specific circumstances of the case.*
 - **Common Mistake:** *Typically, the parties must prove that both shared a common intention that was not reflected in the final document.*
 - **Unilateral Mistake:** *In limited situations, it may apply if one party was mistaken and the other party was aware of this but acted unconscionably.*
 - **Standard of Proof:** *The party seeking rectification must provide strong, convincing evidence (often "convincing proof") that the document is incorrect.*
5. Rectification is an equitable means of correcting the text of a written form of contract or other legal instrument by changing or inserting words which the court is satisfied have been included or omitted by mistake. A mistake may be either mutual or unilateral and the courts have developed different rules depending on whether both parties shared a common mistake or only one party was mistaken.
6. In **Shore Vs Wilson Tindal CJ [1842] 9 Cl & Fin 355 (HL), 365** said:
- “The general rule I take to be, that where the words of any written instrument are free from ambiguity in themselves ... such instrument is always to be construed according to the strict, plain, common meaning of the words themselves; and that in such a case evidence dehors the instrument, for the purpose of explaining it according to the surmised or alleged intention of the parties to the instrument, is utterly inadmissible.”*
7. Similarly, in **Murray Vs Parker Sir John Romilly MR [1854] 19 Beav 305, 308** said:
- “In matters of mistake, the court undoubtedly has jurisdiction, and though this jurisdiction is to be exercised with great caution and*

care, still it is to be exercised, in all cases, where a deed, as executed, is not according to the real agreement between the parties. In all cases the real agreement must be established by evidence, whether parol or written; if there be no previous agreement in writing, parol evidence is admissible to shew what the agreement really was; if there be a previous agreement in writing which is unambiguous, the deed will be reformed accordingly; if ambiguous, parol evidence may be used to explain it, in the same manner as in other cases where parol evidence is admitted to explain ambiguities in a written instrument."

8. By this approach the summons dated 18th March 2026 premised on rectification in terms prayer a, b & c of the certificate of urgency as accompanied with the summons dated the same day be and is hereby allowed. The Deputy Registrar of the High Court shall henceforth amend the certificate of confirmation of grant dated 15th January 2026. I make no orders as to the costs. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 2ND
DAY OF APRIL 2026**

.....
R. NYAKUNDI
JUDGE