

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO E019 OF 2025

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH KIPKERING
TERER (DECEASED)**

THROUGH

JANE JEPTANUI NGISIREI.....1ST
APPLICANT

ROSA JEPTANUI TERER.....2ND
APPLICANT

Coram: Before Justice R. Nyakundi

RULING

1. Before this Court is an Application dated 25th March 2026. The Applicants seek the following orders;

- a. *THAT the certificate of confirmation of grant issued to the said JANE JEPTANUI NGISIREI and ROSA JEPTANUI TERER in this matter on the 9TH June,2025, be rectified to correct the acreage and provide for the distribution of the property known as KAPSARET/SIMAT BLOCK 2(SIMAT)/384, KAPSARET/SIMAT BLOCK 2(SIMAT)/385, KAPSARET/SIMAT BLOCK 2(SIMAT)/386, KAPSARET/SIMAT BLOCK 2(SIMAT)/387, KAPSARET/SIMAT BLOCK 2(SIMAT)/388, KAPSARET/SIMAT BLOCK 2(SIMAT)/389, KAPSARET/SIMAT BLOCK 2(SIMAT)/390 among others whereof the same to devolve to the following as provided by Rule 43(1) of the Probate and Administration rules:-*

PROPERTY	BENEFICIARY	ID NO	SIZE/ ACREAGE
KAPSARET/SIMAT BLOCK 2(SIMAT)/384	ISAIAH KIPTANUI KIPTOO	2007879 4	0.084 Ha
KAPSARET/SIMAT BLOCK	BOAZ KIPLIMO SANGA	2096581 4	0.042 Ha

2(SIMAT)/385			
KAPSARET/SIMAT BLOCK 2(SIMAT)/386	DANIEL KIRWA SEREM	2407948 4	0.084 Ha
KAPSARET/SIMAT BLOCK 2(SIMAT)/387	ROSA JEPTANUI TERER JAPHET KIPKEMBOI KERING JULIUS KIMELI KERING JOSHUA KIPCHUMBA JOSEPH KIMELI TAKETANY	6858269 2141950 9 2453657 7 2836253 9 1380713 4	1.620 Ha 1.072 Ha 1.072 Ha 0.084 Ha 0.126 Ha
KAPSARET/SIMAT BLOCK 2(SIMAT)/388 KAPSARET/SIMAT BLOCK 2(SIMAT)/388	ROSA JEPTANUI TERER JANE JEPTANUI NGISIREI JAPHET KIPKEMBOI KERING JULIUS KIMELI KERING CATHERINE CHEMUTAI TERER PRISCILLAH JEPTOO TERER & ELZEBAH JEPTUM TERER JANE JEPTANUI NGISIREI DAMARIS JEPNGETICH LUDIA JEBOR HENRY FREDRICK SARO NAUM JEPKOECH	6858269 6871074 2141950 9 2453657 7 3340004 6 2518403 5 2746625 7 6871074 4002192 7 9871796 2778340 8 2664752	0.220 Ha 0.730 Ha 0.220 Ha 0.220 Ha 0.042 Ha 0.084 Ha JOINTLY 0.084 Ha 0.042 Ha 0.084 Ha 0.202 Ha 0.042 Ha

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KAPSARET/SIMAT BLOCK 2(SIMAT)/389	JANE JEPTANUI NGISIREI JANE JEPTANUI NGISIREI RUTH JELAGAT and MAGDALINE CHEPLETING	6871074 6871074 2815725 9 3090645 2	3.898 Ha 0.084 Ha 0.084 Ha JOINTLY
KAPSARET/SIMAT BLOCK 2(SIMAT)/390	ROSA JEPTANUI TERER JANE JEPTANUI NGISIREI	6858269 6871074	0.1825 Ha 0.1825 Ha

Decision

2. Rectification of Grants is provided for in section 74 of the Law of Succession Act, Cap 160, Laws of Kenya and Rule 43(1) of the Probate and Administration Rules. Section 74 provides as follows:

“74. Errors may be rectified by court:

Errors in names and descriptions, or in setting forth the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

3. Rule 43(1) provides as follows:

“Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.”

4. The court addressed this issue in Marley V Rawlings (2014) where it was observed: *‘I accept that the expression ‘clerical error’ can have a narrow meaning, which would be limited to mistakes involved in copying or writing out a document...the expression is not one with a precise or*

well-established, let alone a technical meaning. The expression can also carry a wider meaning, namely a mistake arising out of office work of a relatively routine nature, such as preparing, filing, sending, organizing the execution of, a document (save, possibly, to the extent that the activity involves some special expertise). Those are activities which are properly to be described as 'clerical', and a mistake in connection with those activities, such as wrongly filing a document or putting the wrong document in an envelope, can properly be called 'a clerical error'...it seems to me that the expression 'clerical error' in s.20(1)(a) should be given a wide, rather than a narrow meaning.'

5. Rectification requires that the parties to the grant of representation demonstrate that the written instrument issued by the court does not reflect the agreement because of a common mistake. What is required for a common mistake is often decided in Judgements and rulings without a full explanation of the nature of mistake required. The premise underlying a rectification of grant of representation is the administrators desire to maintain the legal instrument and its validity but in a crystal clear format in terms of description of the property or the names of the beneficiaries. The rectification of the grant of representation whether confirmed or not requires the Applicant to demonstrate the common mistake or error apparent on the face of the record. The nature of a common mistake as compared to a mutual mistake or unilateral mistake is that the substance of the mistake is the same as between the parties. In the context of rectification for common mistake, the satisfaction of the common mistake requirement may as well be described as *res ipsa loquitur*.
6. In ordering rectification under Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules, the court does not rectify the substratum or the subject matter of the grant of representation but what it rectifies is the erroneous expression of the instrument to give it clarity and authenticity as the parties intended

while moving the summons for grant of representation of confirmation. This is the threshold to be measured in the application and affidavit before this court. It turns out that the Applicant has shown that there is merit to grant the orders.

7. In view of the above principles, the application for amendment of grant be and is hereby allowed in terms of the proposals on distribution captured elsewhere in this ruling. With this in mind the Deputy Registrar shall cause the amendment of the grant dated 9th June 2025. I make no orders as to costs. It is so ordered.

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

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R. NYAKUNDI
JUDGE