

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**SUCCESSION CAUSE NO. 38 OF 2008**

**N THE MATTER OF THE ESTATE OF KIPERENGE KIPTONUI  
MUGUN (DECEASED)**

**PATRICK KIMUTAI BIRGEN .....**  
**APPLICANT**

**VERSUS**

**RICHARD KIPSELIM TONUI & ANOTHER .....PROTESTERS**

**RULING**

1. Before this Court is the Applicant’s Notice of Motion dated 30<sup>th</sup> May 2025. The Application is brought under Rules 49, 63, and 73 of the Probate and Administration Rules, and Sections 47 and 83 of the Law of Succession Act, Cap 160 Laws of Kenya.

2. The Applicant seeks orders for the rectification of the confirmed grant issued on 8<sup>th</sup> August 2022 and subsequently amended pursuant to a mediation agreement adopted by this Court. The rectification is sought to align the grant with ground measurements and survey reports, to include omitted parcels of land, and to reflect estate liabilities.

3. The Application is supported by the Supporting Affidavit of PATRICK KIMUTAI BIRGEN, one of the administrators of the estate, sworn on even date. The Applicant also filed Written Submissions dated 11<sup>th</sup> December 2025.

4. In opposition, SAMUEL KIPKEMOI BUSHO, another administrator representing the 1st and 2nd Households, filed an Affidavit of

Protest on an unspecified date in 2025. The Protesters were granted leave to file Written Submissions but failed to do so within the time directed by this Court. Consequently, the Applicant's submissions stand unopposed.

5. The deceased, Kiperenge Kiptonui Mugun, died intestate on 20<sup>th</sup> December 2005. A Grant of Letters of Administration Intestate was issued on 8<sup>th</sup> August 2022. The grant was subsequently confirmed and amended pursuant to a mediation agreement adopted by this Court on 8<sup>th</sup> August 2022.

6. Following confirmation of the grant, a comprehensive ground survey and mutation process was conducted. The survey revealed significant discrepancies between the acreages recorded in the grant and the actual acreages on the ground.

7. The survey established the following;

Parcel No.	Acreage in Grant	Actual Survey	Acreage Surplus
Kericho/Chepsir/123	57 acres	60.6 acres	3.6 acres
Kericho/Soliat/139	54 acres	57.7 acres	3.7 acres
Kericho/Soliat/149	63 acres	70.42 acres	7.42 acres

8. The survey also revealed that two parcels of land forming part of the estate had been omitted from distribution;

- Kericho/Chepsir/166 - sold by the deceased to the Catholic Diocese of Kericho (St. Joseph Catholic Church, Chepsir) prior to his death.

- Kericho/Chepsir/165 – to be jointly registered in the names of the administrators.

9. Additionally, liabilities totaling 1.0 acre were identified;

- 0.5 acres to the African Gospel Church from Kericho/Soliat/149.

- 0.5 acres to Lucy Chepkirui Soi from Kericho/Chepsir/123.

10. The Applicant contends that the confirmed grant must be rectified to reflect the true state of the estate. He argues that;

- The Court has jurisdiction under Sections 47 and 83 of the Law of Succession Act, and Rules 49, 63, and 73 of the Probate and Administration Rules, to rectify a confirmed grant.

- The survey discrepancies, omitted parcels, and liabilities constitute sufficient grounds for rectification.

- The proposed redistribution maintains the original mediated household structure and allocates surplus acreage proportionately.

- The Protester’s objections were largely addressed in the Court’s ruling of 25<sup>th</sup> July 2024, which upheld the mediation agreement and found attempts to challenge it to be res judicata.

11. The Applicant proposes the following distribution of surplus acreage;

**Kericho/Chepsir/123 (60.6 acres)**

1<sup>st</sup> House (Kipsiele Tonui, Erick Kiprono Tonui, Richard Kipselim Tonui) 17.9 acres

2<sup>nd</sup> House (Sarah Cherotich Tonui, Joseph Kipsigei Birgen) 17.9 acres

3<sup>rd</sup> House (Sammy Kipkorir Birgen, Peter Kipkoech Birgen, Patrick Kimutai Birgen) 17.9 acres

Grace Cherop Ng'ok 3.15 acres

Sarah Chepngeno Mugun 3.15 acres

Lucy Chepkirui Soi (Liability) 0.5 acres

**Kericho/Soliat/139 (57.7 acres)**

1<sup>st</sup> House 17.0 acres

2<sup>nd</sup> House 17.0 acres

3<sup>rd</sup> House 17.0 acres

Grace Cherop Ng'ok 5.35 acres

Sarah Chepngeno Mugun 5.35 acres

**Kericho/Soliat/149 (70.42 acres)**

1<sup>st</sup> House 21.0 acres

2<sup>nd</sup> House 21.0 acres

3<sup>rd</sup> House 21.0 acres

Grace Cherop Ng'ok 1.3 acres

Sarah Chepngeno Mugun 5.6 acres

African Gospel Church (Liability) 0.5 acres

12. In the Affidavit of Protest, **Samuel Kipkemoi Busho** raises the following objections;

· ***The application is incompetent because the confirmed grant is “spent” and titles have already been issued.***

· ***The Applicant is “mischievous” and seeks to enrich the 3<sup>rd</sup> Household by apportioning larger portions to himself and his siblings.***

· ***The allocations to Grace Cherop Ng'ok and Sarah Chepngeno Mugun are unjustified.***

- ***The surplus in Kericho/Chepsir/123 should be shared equally among the three households (20.2 acres each).***
- ***The distribution of Kericho/Soliat/139 and Kericho/Soliat/149 should follow a different formula, giving the 1<sup>st</sup> and 2<sup>nd</sup> Houses larger shares.***
- ***The survey for Kericho/Soliat/149 included an “unknown parcel” owned by a third party.***

13. The Protester did not file any Written Submissions despite being granted leave to do so. No counter-survey was filed to dispute the Applicant’s certified survey reports.

14. From the pleadings and submissions, the following issues arise for determination;

- a) Whether this Court has jurisdiction to rectify a confirmed grant after titles have been issued.***
- b) Whether the Applicant has established sufficient grounds for rectification.***
- c) Whether the Protester’s objections have merit.***
- d) Whether the Applicant’s proposed redistribution is equitable and consistent with the mediation agreement adopted by this Court.***

15. The Protester argues that the confirmed grant is “spent” and that this Court cannot review it because titles have already been issued. I find this argument to be without merit.

16. Section 47 of the Law of Succession Act provides;

**“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”**

17. Section 83 of the Act imposes a duty on administrators to distribute the estate in accordance with the confirmed grant.

Where the grant is based on incorrect or incomplete information, the Court retains supervisory jurisdiction to rectify errors to ensure proper administration.

18. Rule 73 of the Probate and Administration Rules preserves the Court's inherent power;

*“Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”*

19. The Court of Appeal in ***re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR*** held that a confirmed grant may be reviewed where there are errors or omissions. Similarly, ***in re Estate of Kibii (Deceased) [2020] eKLR***, the Court held that rectification is permissible where survey measurements reveal discrepancies.

20. The fact that titles have been issued does not oust the Court's jurisdiction. If titles were issued based on incorrect acreages, the Court has the power to order their rectification or cancellation as a necessary corollary to ensuring accurate distribution.

21. I therefore find that this Court has jurisdiction to entertain the Application for rectification.

22. The Applicant has placed before the Court certified survey reports and mutation forms demonstrating significant discrepancies between the acreages recorded in the grant and the actual acreages on the ground. These documents have not been challenged by any counter-survey or expert evidence.

23. The discrepancies are material;

· ***Kericho/Chepsir/123: 3.6 acres surplus.***

· ***Kericho/Soliat/139: 3.7 acres surplus.***

· ***Kericho/Soliat/149: 7.42 acres surplus.***

24. Additionally, the Applicant has identified omitted parcels (***Kericho/Chepsir/166*** and ***Kericho/Chepsir/165***) and undisputed liabilities (0.5 acres to African Gospel Church and 0.5 acres to Lucy Chepkirui Soi).

25. The Protester concedes the position regarding ***Kericho/Chepsir/165***, which is to be registered in the names of the administrators.

26. I am satisfied that the Applicant has established sufficient grounds for rectification. The grant as currently confirmed does not reflect the true state of the estate, and failure to rectify would result in inaccurate distribution and potential prejudice to beneficiaries.

27. The Protester's objections fall into two categories: procedural and substantive.

28. The Protester contends that the application is incompetent because the grant is "spent." As discussed above, this objection is without legal foundation. The Court retains jurisdiction to rectify errors even after confirmation and issuance of titles.

29. The Protester also argues that the Applicant should have sought revocation or cancellation of titles rather than rectification. This is a distinction without a difference. The rectification of the grant is the proper procedural vehicle for correcting the

distribution framework. If titles were issued in accordance with the erroneous grant, they will necessarily be corrected to reflect the rectified distribution.

30. The Protester alleges that the Applicant is “mischievous” and seeks to enrich the 3<sup>rd</sup> Household. Upon examination of the proposed distribution, I find no evidence of mischief. The Applicant’s proposal maintains the mediated household structure and allocates surplus acreage proportionately to all three houses. The separate allocations to Grace Cherop Ng’ok and Sarah Chepngeno Mugun are consistent with the mediation agreement and have not been shown to be unjustified.

31. The Protester’s alternative distribution proposals are not supported by any evidence. They are based on mere assertion and, in the case of Kericho/Soliat/139 and Kericho/Soliat/149, would result in gross inequality and contradict the mediated structure that this Court already adopted.

32. Regarding the claim of an “unknown parcel” in Kericho/Soliat/149, the Protester provided no counter-survey or any evidence to support this assertion. The Applicant relies on certified survey reports. In the absence of contrary evidence, I accept the certified survey results.

33. Importantly, the Protester was granted leave to file Written Submissions but failed to do so. His objections therefore remain unsupported by legal argument. I find that the Protester’s objection lacks merit and is hereby dismissed.

34. The Applicant’s proposed redistribution maintains the original framework of the mediation agreement adopted by this Court on 8<sup>th</sup> August 2022. The three houses receive equal shares of the surplus acreage from each parcel, while separate allocations to Grace Cherop Ng’ok and Sarah Chepngeno Mugun are preserved.

36. The proposed redistribution also properly accounts for the omitted parcels (Kericho/Chepsir/166 and Kericho/Chepsir/165) and the liabilities to African Gospel Church and Lucy Chepkirui Soi.

37. The Protester’s alternative proposals would unilaterally alter the mediated settlement, create significant inequality among the houses and contradict the Court’s previous ruling of 25<sup>th</sup> July 2024, which upheld the mediation agreement.

38. I find that the Applicant’s proposed redistribution is equitable, consistent with the mediation agreement, and supported by certified survey evidence.

39. For the reasons set out above, I make the following orders;

**a). The Protester’s objection is hereby dismissed.**

**b). The confirmed grant issued on 8<sup>th</sup> August 2022 and amended pursuant to the mediation agreement adopted by this Court is hereby rectified as follows:**

**(i) In respect of Kericho/Chepsir/123 (60.6 acres):**

<b>Beneficiaries</b>	<b>Acreage</b>
<b>Kipsiele Tonui, Erick Kiprono Tonui, Richard Kipselim Tonui(1<sup>st</sup> House)</b>	<b>17.9 acres</b>
<b>Sarah Cherotich Tonui, Joseph Kipsigei Birgen (2<sup>nd</sup></b>	<b>17.9 acres</b>

<b>House)</b>	
<b>Sammy Kipkorir Birgen, Peter Kipkoech Birgen, Patrick Kimutai Birgen (3<sup>rd</sup> House)</b>	<b>17.9 acres</b>
<b>Grace Cherop Ng'ok</b>	<b>3.15 acres</b>
<b>Sarah Chepngeno Mugun</b>	<b>3.15 acres</b>
<b>Lucy Chepkirui Soi (Liability)</b>	<b>0.5 acres</b>

**(ii) In respect of Kericho/Soliat/139 (57.7 acres):**

<b>Beneficiaries</b>	<b>Acreage</b>
<b>Kipsiele Tonui, Erick Kiprono Tonui, Richard Kipselim Tonui(1<sup>st</sup> House)</b>	<b>17.0 acres</b>
<b>Sarah Cherotich Tonui, Joseph Kipsigei Birgen (2<sup>nd</sup> House)</b>	<b>17.0 acres</b>
<b>Sammy Kipkorir Birgen, Peter Kipkoech Birgen, Patrick Kimutai Birgen (3<sup>rd</sup> House)</b>	<b>17.0 acres</b>
<b>Grace Cherop Ng'ok</b>	<b>5.35 acres</b>
<b>Sarah Chepngeno Mugun</b>	<b>5.35 acres</b>

**(iii) In respect of Kericho/Soliat/149 (70.42 acres):**

<b>Beneficiaries</b>	<b>Acreage<sup>1</sup></b>
<b>Kipsiele Tonui, Erick Kiprono Tonui, Richard Kipselim Tonui(1<sup>st</sup> House)</b>	<b>21.0 acres</b>
<b>Sarah Cherotich Tonui, Joseph Kipsigei Birgen (2<sup>nd</sup> House)</b>	<b>21.0 acres</b>
<b>Sammy Kipkorir Birgen, Peter Kipkoech Birgen, Patrick Kimutai Birgen (3<sup>rd</sup> House)</b>	<b>21.0 acres</b>

<b>Grace Cherop Ng'ok</b>	<b>1.3 acres</b>
<b>Sarah Chepngeno Mugun</b>	<b>5.6 acres</b>
<b>African Gospel Church (Liability)</b>	<b>0.5 acres</b>

**(iv) In respect of omitted parcels:**

**· Kericho/Chepsir/166 (0.111 acres) is hereby recognized as having been sold to the Catholic Diocese of Kericho (St. Joseph Catholic Church, Chepsir) and shall not form part of the distributable estate.**

**· Kericho/Chepsir/165 (1.33 acres) shall be jointly registered in the names of the administrators: Grace Cherop A. Ngok, Richard Kipselim Tonui, Samuel Kipkemoi Busio, and Patrick Kimutai Birgen.**

**(v). The rectified grant is hereby issued reflecting the hereinabove distribution.**

**(vi. There shall be no order as to costs.**

**Dated, signed and delivered at Kericho this 31<sup>st</sup> day of March, 2026**

.....  
**J. K. SERGON**  
**JUDGE**

In the presence of:

C/Assistant - Rutoh

Kirui holding brief for Mutai J. K. for Protestor

No Appearance for the Applicant