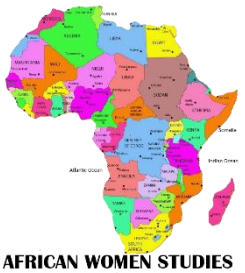
Pathways to African Feminism and Development
Journal of the African Women Studies Centre

Harnessing Women's Knowledge, Experiences for Women's Socio-Economic Transformation and Empowerment

ISSN (online): 2309-3625

Volume 9, Issue 1, December 2024



Quantifying The Unquantifiable: Feminist Economics and the quantification of Unpaid Care Work in Kenya

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Abstract

The Matrimonial Property Act of Kenya (2013) recognizes non-monetary contribution (NMC) as a legitimate form of spousal contribution to the family's wealth and property. This recognition is particularly significant in the division of property upon dissolution of marriage. However, the Act provides no guidance on how NMC, often manifesting as unpaid care work (UCW), should be valued or quantified. Drawing on the Feminist Economic Theory, which underscores the economic significance of UCW and critiques its systemic undervaluation, this article argues for its formal recognition and quantification in matrimonial disputes.

Through content analysis of Kenyan jurisprudence, the article identifies three emerging schools of thought: Progressive Jurisprudence, Equality Jurisprudence, and Oppressive Jurisprudence that reflect judicial attempts to grapple with the valuation of NMC. It further examines three quantification models from U.S. legal practice: the Opportunity Cost Method, the Market Replacement Method, and the Dissolution of Partnership Approach as potential frameworks for Kenya's judiciary. The paper analyses the strengths and limitations of each model and concludes that the choice of method must be context-specific, considering the country's economic conditions, the socio-educational background of the non-financially contributing spouse, and the nature of the UCW performed. Ultimately, the paper calls for legislative reform to guide courts in equitably valuing NMC and affirming the economic worth of unpaid care work.

Key words: *Feminist economics, Kenyan jurisprudence, matrimonial property, non-monetary contribution, quantification methods, unpaid care work*

1.0 Introduction

1.1 Quantification of Non-Monetary Contribution

One of the most visible manifestations of gender inequality is the disproportionate burden of Unpaid Care Work (UCW) borne by women. According to the International Labour Organization (ILO), women perform approximately 75% of UCW globally, dedicating an average of four hours and twenty-five minutes daily compared to just one hour and twenty-three minutes by men (Charmes, 2024).

Dhar (2010) estimates that 606 million women of working age engage in UCW on a full-time basis, while only 41 million men do the same.[1] Despite its critical role in sustaining households and communities, UCW remains unmonetized, undervalued, and largely invisible within traditional economic frameworks.[2] It is excluded from Gross Domestic Product (GDP) calculations in every country. Mainstream economic

[1]Diva Dhar, 'Women's UCW has been unmeasured and undervalued for too long.'(14 January 2020) <https://www.kcl.ac.uk/news/womens-unpaid-care-work-has-been-unmeasured-and-undervalued-for-too-long> accessed 17 August 2024. In this article Dhar illustrates that a high percentage of UCW is done by women who are between the age of 25 and 44. Therefore these women do not have the opportunity to make financial strides by working in the public sphere during the age when they would be most productive.

[2]Naila Kabeer, ' A flawed GDP Bypasses Women Unpaid Care Work.' (14 August 2023) <https://views-voices.oxfam.org.uk/2023/08/a-flawed-gdp-bypasses-womens-unpaid-care-work/#:~:text=Nearly%2090%20billion%20hours%20of,the%20GDP%20a%20flawed%20metric.> accessed 16 August 2024.

theory fails to recognize UCW as "work," even though over sixteen billion hours are spent on it daily. A UN study (2019) suggests that if UCW were quantified, it could account for between 10% and 39% of national GDPs (Kabeer, 2023). The ILO estimates its global value at 9% of GDP, approximately USD 11 trillion (Seedat & Rondon, 2021).

These findings underscore the economic and social significance of UCW. The Feminist Economic Theory challenges the exclusion of such labour from conventional metrics and argues for its recognition and valuation. Feminist economists apply gender-aware lenses to economic analysis, critiquing the androcentric assumptions of mainstream models and highlighting the systemic undervaluation of women's contributions (Elson, 1993). Folbre (2001, 2008) has extensively theorized the economics of care, emphasizing the societal reliance on unpaid labour, particularly by women, to sustain human well-being.

The valuation of UCW becomes especially pertinent in legal contexts such as divorce proceedings, where the homemaker's contribution, often the woman's, is assessed in relation to matrimonial property. This contribution is referred to as Non-Monetary Contribution (NMC) or Non-Financial Contribution (NFC). Accurately quantifying such labour is essential for equitable outcomes (Chen, 2013).

1.2 Methodology

This article employs desktop research and content analysis to explore three key methods for quantifying NMC: the Opportunity Cost Method, the Market Replacement Method, and the Dissolution of Partnership Approach.

1.3 Structure of the Article

The article is structured as follows:

Part I introduces the topic and outlines the rationale for quantifying UCW.

Part II examines three schools of thought on NMC emerging from Kenyan case law, alongside their theoretical underpinnings.

Part III elaborates on feminist economic theory, providing the conceptual foundation for this analysis.

Part IV discusses the three quantification methods, analysing their respective strengths and limitations.

Part V evaluates the contexts in which each method is most appropriate.

Part VI concludes with reflections on the implications of quantifying UCW for gender equity and economic justice.

2.0 Jurisprudence in Kenya on Non-Monetary Contribution

The Matrimonial Property Act of 2013 (MPA 2013) identifies five ways in which a spouse can make a non-monetary contribution (NMC). These are found in Section 2 of the Act, which states that:

Contribution means monetary and non-monetary contribution and includes:

(a) domestic work and management of the matrimonial home;

(b) child care;

(c) companionship;

(d) management of family business or property; and

(e) farm work.

In Kenya, there is no guide on how to quantify a non-monetary contribution (NMC). According to a study done by the UN(2022), the result of a lack of proper guidelines on the quantification and recognition of UCW has resulted in some judges recognizing and rewarding UCW, while others have not done the same. The study adds that due to a lack of guidance on the issue, judges are generally unsure of how to proceed (UN Women, 2022). This is best illustrated by the case of Chitebwe J of *MAA v. AR*, where Chitebwe J said that the court was left with no choice but to estimate the weight of NMC (*MAA v. AR, 2018).*

The overall result of this lack of guidance on the quantification of NFC is fragmented and inconsistent judgments (Mutuku, Kabira & Baraza, 2023). The article advances a three-pronged typology

on the quantification of NMC. The typology is derived from the case review conducted on cases from 1971-2023 where the issue of NMC arises. The typology elaborates three schools of thought on the quantification of NMC. These schools of thought are *the Progressive Jurisprudence, the Equality Jurisprudence, and the Oppressive Jurisprudence.*

2.1 Typology One: The Progressive Jurisprudence

The judges who subscribe to this jurisprudence hold the opinion that a homemaker does actual work that is worthy of reward. Therefore, they hold that NMC should be rewarded with a generous portion of property. The judgments under this jurisprudence show that the judges behind them are convinced of the invaluable contribution women make in the unpaid activities done in the private sphere.

The first case where the progressive jurisprudence presented itself was that of *Kivuitu vs Kivuitu*, where Justice Omolo penned that a homemaker in Nairobi and a wife in a rural home who tills the land and keeps the home going, certainly contributes to the acquisition of matrimonial property, and this contribution should not be overlooked (*Kivuitu v. Kivuitu,* 1985). *Nderitu vs Nderitu* marked a turning point in the jurisprudence on matrimonial property in Kenya because, for the first time, a wife in whose name the property was not registered was awarded fifty percent of the property, with her NMC carrying a lot of weight in the decision. (*Nderitu v. Nderitu*, 1977).

The Progressive Jurisprudence and Philosophical Anthropology

Philosophical Anthropology is a field that examines human conditions. Within this field, many perspectives address the value of women. Butler (1990) claims that women have the same value as men and gender should not be used as a basis for discrimination or unequal treatment. Beauvoir (2011) advocates for greater recognition of women's contributions to society. One of these contributions is through care-work.

The philosophical anthropological theory that sits securely with the progressive jurisprudence is feminist anthropology. This is a perspective that seeks to understand the experiences of women and challenge gender inequality and discrimination. Stein (1930) believed that women have a unique role in society and that their contributions are valuable.

Stein believed that women had a calling to be caregivers and caretakers of the family. She held the view that the voices of women should be heard in all levels of society as they had the capacity to bring unique perspectives. However, Stein conceded that women's primary vocation was to be a companion and a mother. She argued that women had a unique ability to nurture and care for others and that this role was essential to the flourishing of society.

Saint John Paul II (1995) was a strong advocate for the dignity and value of women.[3] He spoke extensively about the important [role] that women play in society. He recognised the significant contributions that women make in the home and the value of their work as caregivers and educators. He emphasized that women are the *"first and fundamental educators of the children."* St. John Paul II (1998) also spoke about the value of domestic work and the importance of recognizing it as a legitimate and necessary form of work. It is, therefore, clear that feminist anthropologists such as Edith Stein and St. John Paul II agree with progressive jurisprudence.

2.2 Typology Two: The Equality Jurisprudence

The equality jurisprudence stems from the interpretation that Article 45(3) of the Constitution recognises that spouses to a marriage are equal before, during, and after the marriage. This tacit acknowledgement means that matrimonial property is to be divided on a 50:50 basis. The judges who ascribe to this jurisprudence believe that private work is just as important as public work, and both the woman who contributes by making the home and the man who contributes by providing for his family through paid public work should be rewarded equally.

In *N.W.M v K.N.M*, the Court divided the property on a 50:50 basis due to the monetary contribution and NMC of the wife (*N.W.M v. K.N.M, 2014).* In *Joseph Ombogo Ogentoto vs Martha Bosibori Ogentoto,* the court held that equity advocated for a party who did not have the means of proving direct financial

[3] In his 1995 'Letter to Women', John Paul II wrote 'Thank you, women who work! You are present and active in every area of life; social, economic, cultural, artistic, and political. In this way, you make an indispensable contribution to the growth of culture which unites reasons and feeling to a model of life, ever open to the sense of mystery to the establishment of economic and political structures ever more worth of humanity.'

contribution not to be stopped from getting a share of the matrimonial property. The court then proceeded to divide the property on a 50:50 basis (*Joseph Ombogo Ogentoto v. Martha Bosibori Ogentoto, 2020).*

The Equality Jurisprudence and Community of Property

Marriage property regimes generally fall into two categories:

i. community of property (communio bonorum), and
ii. separation of property (separatio bonorum) (JC, 2012).

Under the community of property regime, all assets acquired during the marriage are jointly owned by both spouses, regardless of whose name appears on the title. Upon divorce, such property is divided equally. Importantly, no spouse may transact or gift matrimonial property without the consent of the other. This regime reflects an egalitarian ethos, grounded in the belief that marriage is a partnership with both social and economic dimensions (Ojienda, 2008).

In contrast, the separation of property regime allows each spouse to retain exclusive ownership and control over property acquired individually during the marriage. There is no automatic entitlement for the other spouse to a share upon dissolution (Njogu, 2011).

The equality jurisprudence aligns with the community of property model. It rejects the separation of property approach and instead affirms that matrimonial property should be divided equally, reflecting the shared contributions and equal status of spouses throughout the marriage.

2.3 Typology Three: The Oppressive Jurisprudence

This typology captures judicial decisions where courts, seemingly constrained by the Matrimonial Property Act (MPA) 2013, awarded property for non-monetary contributions (NMC) but in disproportionately low amounts. Despite acknowledging unpaid care work (UCW), these rulings reflect an underlying belief that such work is not deserving of equitable compensation.

Case Illustrations

i. MAA v AR: The plaintiff, praised for her selfless care and central role in the family during her husband's prolonged absence, was awarded only 30% of the property. The court offered no rationale for this figure, despite clear evidence of her contributions and the fact that neither party had contributed monetarily.

ii. SM v ASM (2021): The court recognized the applicant's extensive NMC over an 11-year marriage and acknowledged its difficulty to quantify. Yet, it awarded her only 25% of the property, reinforcing the undervaluation of UCW.

These cases exemplify a jurisprudence that, while formally recognizing NMC, materially devalues it , perpetuating gendered economic injustice.

Neoliberal Concepts of Work and the Logic of Oppression

Neoliberalism, with its emphasis on market-based productivity and paid labour, frames work as inherently public and monetised. Within this paradigm:

i. UCW is rendered invisible, not counted as labour, and not valued in economic terms.

ii. Judicial discretion aligns with neoliberal logic, reinforcing the marginalisation of domestic and care work in property division.

This ideological backdrop helps explain why courts, even when sympathetic, often default to minimal awards for NMC, reflecting systemic biases rather than legal neutrality.

Fragmentation and the Need for Comparative Inquiry

The three typologies: progressive, equality, and oppressive, reveal a fragmented jurisprudence in Kenya. With no consistent framework for quantifying NMC or recognizing UCW, outcomes vary widely and unpredictably.

This fragmentation underscores the urgency of:

i. Investigating global methods of quantification — to identify models that offer clarity, fairness, and gender sensitivity.

ii. Situating quantification in theory to understand why it matters, and how it can transform legal recognition of care work.

3.0 Feminist Economics

3.1 Definition

Feminist economics is a transformative approach to economic theory and policy that seeks to recognise, reduce, and ultimately eliminate gender inequality. Central to its framework is the assertion that unpaid care work (UCW), often performed within households holds substantial economic value and must be acknowledged and quantified. This work is foundational to the functioning of paid labour markets, as it sustains the daily lives of workers and underpins broader economic productivity (Chen, 2005).

3.2 Key Attributes of Feminist Economics

Feminist economics challenges the assumptions and blind spots of traditional economic paradigms, particularly their exclusion of UCW and care labour. Its core attributes include:

i. **Recognition of Unpaid Labor**: Feminist economists argue that care work should be integrated into national accounting systems such as GDP. One of the justifications for this is that if men do not have homemakers doing UCW, they would have to hire cooks, cleaners, nurses, and a whole host of other professionals to do this work. When such professionals get paid, it gets noticed, but when a homemaker does the work, it is unpaid and unaccounted for.

ii. **Critique of Gendered Policy Impacts**: Traditional economic policies often reinforce gender inequality by ignoring the gendered distribution of unpaid labour. For instance, international financial institutions have promoted austerity measures that reduce public investment in essential services like healthcare and education. These cuts disproportionately burden women, who must compensate for service gaps through unpaid labour. In 2016, research revealed that fifty-seven million unpaid workers globally were filling gaps in healthcare provision (Adlung, 2016).

iii. **Reframing Economic Questions**: Feminist economics contends that mainstream economics frequently asks the wrong questions or excludes women altogether. This leads to policy decisions that entrench inequality rather than dismantle it. Feminist economists advocate for inclusive, equity-driven frameworks that centre women's lived experiences and contributions.

iv. **Expanding the Scope of Economic Inquiry**: Traditional economics focuses on public markets from which most women of the world are absent because they are mostly at home working to ensure that public markets function smoothly.[4] Traditional models focus narrowly on paid labour and market transactions, domains where men are overrepresented. Feminist economics, therefore, calls for a fuller exploration of economic life, including topics such as family economics and using concepts such as connections and emotions to explain economic phenomena.[5]

3.3 Feminist Economic Modelling

Traditional economic models are built around an archetype: a rational, self-interested market actor who earns income, consumes goods, and rarely engages in caregiving. This model excludes the realities of women, especially those caring for children, elders, or communities, whose unpaid labour sustains both households and economies.

Feminist economic modelling seeks to correct this exclusion by:

[4] Marilyn Waring, 'If Women Counted: A New Feminist Economics,' (1990) Harper Collins Publishers.
The theory of rational choice which says people will act in a way which maximizes the gains to themselves, does not recognize that people often choose to act in ways to support their families rather themselves as individuals, and that gender norms mean women are more likely to do this than men.

[5] Marianne A. Ferber, Julie A. Nelson, 'Feminist Economics Today: Beyond Economic Man.' Chicago: Univ. of Chicago Press. pp. 1–32. ISBN 978-0-226-24206-4. This article demands that focus should not remain on making women work for the good of the economy but making the economy work for women.

i. **Incorporating Non-Market Activities:** It accounts for UCW and other forms of unpaid labour that are essential to economic functioning but are omitted from orthodox models.

ii. **Valuing Invisible Contributions:** By rethinking and revaluing these activities, feminist economists expose the limitations of traditional frameworks and advocate for more holistic, just representations of economic life (Braunstein & Staveren, 2011).

iii. **Supporting Progressive Jurisprudence**: Feminist economic theory aligns with legal and policy reforms that recognize and protect the rights and contributions of unpaid workers, particularly women (Sweetman, 2008).

4.0 Methods of Quantification

This section outlines three primary methods used to quantify Unpaid Care Work (UCW): the *Opportunity Cost Method*, the *Market Replacement Method*, and the *Dissolution of Partnership Approach*. These approaches are predominantly applied in the United States, and each carries distinct advantages and limitations.

Scholars have long argued that the care work performed by women within households is invaluable (Braunstein & Staveren, 2008). The unpaid services rendered, often by wives managing domestic affairs, cannot be easily equated with market-based labour. Their worth is frequently described as *"invaluable"* or *"unquantifiable."* Yet, for legal and financial purposes such as the division of matrimonial property or life insurance claims, quantification becomes necessary. Beyond legal necessity, quantifying care work affirms its economic value. Those engaged in UCW provide essential services that sustain households, communities, and economies, services that would otherwise require paid labour.

The other reason quantification of care-work is important is the fact that those doing this work provide a service which has an economic value.[6]

4.1 The Opportunity Cost Method

This is an economic concept where the benefits of picking an option are weighed against the costs of foregoing another option. In the case of UCW, this method measures the value of this work by calculating the amount of money unpaid care workers would be making if, instead of doing UCW, they were working in the public arena. An example of this would be if a trained accountant is now a stay-at-home mother and homemaker doing unpaid domestic work. The value of her unpaid domestic work per hour should be equivalent to the hourly rate she could make if she were working as an accountant.

Economists posit that the opportunity cost is the value of what someone forgoes when they choose to do something else. If a homemaker earned Kenya Shillings (Kshs) 1,200,000 per year as a chef but instead gave up her career to become a homemaker for 20 years, the opportunity cost of being a homemaker would be Kshs 24,000,000 (The National Network for Women, 2021). If one of the spouses sacrifices their career so that the career of the other spouse progresses, the household expenses come down considerably. The value of their sacrifice can be calculated through the opportunity cost method.[7] Using this method, the foregone opportunity is regarded as the next-best and most financially rewarding opportunity, and a value is, therefore, assigned to it.[8]

a) Advantages of the Opportunity Cost Method

A key challenge in applying this method is estimating how far a homemaker might have advanced in their career had they remained in the workforce. To address this, economists often invoke the principle of Ceteris

[6] United Nations Human Rights Committee, 'General Recommendations Adopted By The Committee On The Elimination Of Discrimination'(December 2021) <https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations> accessed 13 August 2024. This document affirms that the "measurement and quantification of the unremunerated domestic activities of women, which contribute to development in each country, will help to reveal the de facto economic role of women."

[7] Harriet Cohen, 'WHAT'S A WIFE WORTH? What's a homemaker's life worth in valuing 'separate' property?' (Summer 1988) Family Advocate11(1) Special Issue: APPRECIATION OF PROPERTY p. 26. Cohen argues that in order to arrive at an appropriate figure, the care-worker's employment history, education, and age is put into consideration. If she has never been employed outside the home, the value is arrived at based on her education and qualifications. If she left formal employment in order to relocate in support of her husband's career or business, her lost earnings and benefits are computed from the time of the said relocation.

[8] United Nations Human Rights Committee, 'General Recommendations Adopted by The Committee on The Elimination of Discrimination'(December 2021) <https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations> accessed 13 August 2024.

Paribus, Latin for *"all other things being equal."* This assumption allows analysts to isolate the impact of one variable (e.g., career interruption) while holding others constant.

Under this framework, it is assumed that the individual would have progressed steadily in their profession. For example, if a woman left her legal career a decade ago, her opportunity cost could be estimated by identifying a peer who remained in the field and was at a similar career stage at the time of departure. The current earnings of that peer serve as a proxy for the value of the foregone career trajectory. Many famous economists have used this theory in their writings[9]. Gregory Mankiw, a contemporary economist, extensively uses *Ceteris Paribus* assumptions in his works.[10]

In the case of a homemaker who has given up a career, it is assumed that she would have risen steadily in the ranks in the career she gave up. If a woman were a lawyer and gave up her career ten years ago, and we are now trying to measure her opportunity cost, we look for a woman who is a lawyer and who was at the same level she was ten years ago and see what this woman is currently earning.

b) Disadvantages of the Opportunity Cost Method

One major limitation of the opportunity cost method is its reliance on the care worker's prior education and skill level to determine value. While unpaid care workers may perform tasks with equal proficiency to their paid counterparts, the valuation varies significantly depending on their formal qualifications (Luxton, 1997).

Harriet Cohen critiques this method for its meticulous calculations that, while capturing a woman's opportunity costs, fail to reflect the true value of her care work, especially when that work spans decades. In matrimonial property cases, the method becomes time-consuming, incurs high expert fees, and often results in undervaluing the homemaker's contributions (Cohen, 1988).

This undervaluation arises from the speculative nature of estimating what a woman might have earned had she remained in the workforce. She might have pursued further education, received promotions, or changed career paths—factors that are difficult, if not impossible, to quantify. Moreover, systemic gender pay gaps mean that the very figures used to calculate opportunity cost are themselves devalued (The National Network for Women, 2021).

4.2 Market Replacement Cost Method

The market replacement cost method estimates the value of unpaid care work (UCW) by calculating how much it would cost to hire someone to perform the same tasks. For instance, the value of unpaid laundry work is equated to the cost of dry-cleaning services. This method, also known as the replacement-cost method, assesses the cost of substituting a homemaker with paid professionals (Cohen, 1988). Valuation can be based on:

i. Historical earnings data (e.g., Bureau of Labor Statistics);

ii. Market rates for professionals such as nutritionists, nurses, and chefs;

iii. Current rates for hiring domestic workers (Corry & Corry, 2010).

The process involves listing all tasks performed by the care worker, estimating the time spent on each, and applying the corresponding market rate (Women Work, 2024).

a) Advantages of the Market Replacement Cost Method

This method allows for a more granular and potentially fair quantification. Since homemakers perform multiple tasks throughout the day, each task can be valued according to the time spent and the market rate of the corresponding professional. For example, if a chef's daily wage is divided by the hours spent cooking, and similar calculations are applied to other roles, the homemaker's cumulative contribution can be estimated using a composite of professional rates.

[9] John Maynard Keynes, a very influential economist, used the concept of ceteris paribus extensively in various works. In 'The General Theory of Employment, Interest and Money,' 1936 Keynes analysed the determinants of interest rates, employment, output, and demand using the ceteris paribus assumption. Alfred Marshall, an important economist of the late 19th century, applied the theory of Ceteris Paribus in his works extensively. He argues that in the real world many factors affect supply and demand simultaneously, but Ceteris Paribus allows economists to simplify their analysis.

[10] Gregory Mankiw, Principles of Economics, in this work Mankiw has written on non-market production (UCW) and acknowledges the importance of this work. He declares that although it does not contribute directly to the GDP it is a significant economic activity.

b) Disadvantages of the Market Replacement Cost Method

Despite its practicality, this method fails to capture the emotional and relational dimensions of care work. A mother's labour is infused with love, affection, and commitment, qualities that are inherently unquantifiable. Comparing this to the transactional nature of hired labour overlooks the depth and value of familial care.

Additionally, the method's accuracy is hindered by household-specific variables, such as:

i. Number of children

ii. Quality and quantity of care work;

iii. the number of children in the household;

iv. the possible contributions to the care-work by the husband, older children, and other relatives;

v. number of years the homemaker has done the care-work.[11]

Some jobs performed by homemakers are undervalued on the job market. In contexts like Kenya, for example, domestic roles such as childcare, cleaning, and cooking are among the lowest-paid professions, reflecting broader societal undervaluation (Mbugua, 2015). In contrast, parts of Europe offer better compensation due to stronger labour protections (ILO, 2018). Using low market wages to value homemakers' work perpetuates this undervaluation.

Finally, the homemaker's multifaceted role spans numerous professions, chef, cleaner, nanny, nurse, seamstress, teacher, nutritionist, financial planner, and driver. Attempting to compute a realistic replacement cost using all these roles becomes impractical and may still fall short of capturing the full scope of her contributions (Women Work, 2008).

4.3 The Dissolution of Partnership Method

The Dissolution of Partnership method conceptualizes marriage as an equal economic partnership, wherein the financial contributions of one spouse are deemed to be the contributions of both. Upon the dissolution of marriage, all property acquired during the union is divided equally between the spouses (Corry & Corry, 2010). This approach results in a 50:50 division of matrimonial property, as was briefly practiced in Kenya prior to the enactment of the Matrimonial Property Act (MPA) of 2013.[12] The underlying assumption is that marriage entails a balanced distribution of roles. For instance, when a wife relinquishes her career to provide unpaid care work at home, she enables her husband to pursue employment or business ventures without domestic constraints. Her labour, though invisible in market terms, directly contributes to his earning capacity. Consequently, her contribution is considered equivalent to half of his income (Corry & Corry, 2010).

a) Advantages of the Dissolution of Partnership Approach

This approach offers several advantages:

i. **Recognition of unpaid care work:** It affirms the economic value of homemaking and caregiving, ensuring that the homemaker's contributions are not overlooked or undervalued.

ii. **Judicial endorsement:** In Marriage of Steinke v. Steinke (1985) case,[13] the court endorsed this method as superior to other valuation approaches, noting that it honours the spouses' mutual agreement to adopt distinct roles within the marriage.

iii. **Simplicity and efficiency:** By equating the homemaker's contribution to half of the income-earning spouse's salary, this method avoids the complex data collection and calculations required by alternative approaches (Cohen, 1988).

[11] Cohen. In this work Cohen also wonders whether this method considers the important but somewhat limited care work done by a woman who also has a paid job outside the home. Will her efforts in the evening after a long day be rewarded?

[12] *Agnes Nanjala William vs Jacob Petrus Nicolas Vander Goes* Civil Appeal No 127 of 2011. This was the first case on the division of matrimonial property where judgment was passed after the 2010 constitution. The court applied Article 45 and interpreted it to mean that property should be divided on a 50:50 basis. *ZWN vs PNN* [2012] eKLR. In this case the court divided the property on a 50:50 basis on the premise of fairness and justice.

[13] In Re Marriage of Steinke V. Steinke (1985)126 Wis. 2d 372.

b) Disadvantages of the Dissolution of Partnership Approach

Despite its strengths, this method is not without limitations.

i. **Income-based valuation may distort equity:** The value of the homemaker's contribution is pegged to the husband's income, rather than the actual volume or intensity of care work performed. Thus, the wife of a man earning Kshs 60,000 may be deemed to have contributed less than the wife of a man earning Kshs 120,000, despite potentially performing similar or greater domestic labour (Women Work, 2008).

ii. **Assumes full financial transparency:** The method presumes that the income-earning spouse discloses all earnings and liabilities. In practice, some men may divert income to undisclosed expenditures—such as supporting extended family, maintaining a second household, or acquiring hidden assets. Empirical studies indicate that men are more likely than women to engage in risk-taking behaviours, including undisclosed borrowing and debt accumulation (Byrnes, Miller & Schafer, 1999; Charness & Gneezy, 2012; Anderson & Baland, 2002; Komura, 2013). Such liabilities may only surface upon death or divorce, significantly diminishing the value of the matrimonial estate. Thus, the method's fairness is contingent upon full disclosure.

5.0 Suitability of Valuation Methods

5.1 Opportunity Cost Method

This method is most appropriate where one spouse, typically the wife, chooses to remain at home to support the other's career or education (Corry & Corry, 2010). It is particularly relevant in developed countries, where the cost of hiring professional care workers is prohibitively high. The method is also suitable for valuing the contributions of spouses who forego employment or career advancement due to family responsibilities, such as pregnancy or childcare.

It is especially applicable to women who have exited professional careers to become full-time homemakers, often in response to the excessive cost of domestic labour in high-income settings.

5.2 Market Replacement Method

This method is best suited to spouses who did not have high-paying professional careers prior to becoming homemakers such as casual labourers, small-scale traders (mama mbogas),[14] or street cleaners. It is particularly relevant in developing countries, where women frequently exit formal employment to raise children (Kibugi, 2016; Onsongo, 2016).

However, educational background should not be assumed. Research indicates that even women with higher education in Kenya may leave the workforce for family reasons (Mutinda, 2016). Moreover, some informal sector workers possess post-secondary qualifications, challenging simplistic categorizations.

This method is most effective in shorter marriages, typically under five years, where estimating the cost of professional replacements for homemaking tasks remains manageable.

5.3 Dissolution of Partnership Method

This method is versatile and applicable in both developed and developing contexts. It is particularly suitable for long-term marriages (e.g., over twenty years), where calculating the market replacement value of decades of homemaking would be impractical.

It is also appropriate when the homemaker did not have a professional career prior to marriage, and the couple operated under a clear division of labour premised on mutual economic partnership.

6.0 Conclusion

This article has identified three prevailing schools of thought in Kenya regarding the valuation of non-monetary contributions (NMC) in marital disputes: *Progressive Jurisprudence, Equality Jurisprudence,* and *Oppressive Jurisprudence*. These divergent approaches reflect the absence of a coherent framework

[14] Women who sell vegetables on the roadside.

for assessing and quantifying NMC. To address this gap, Kenya can draw insights from three established models used in the United States: the *Opportunity Cost Method*, the *Market Replacement Method*, and the *Dissolution of Partnership Method*. Of these, the Dissolution of Partnership Method, aligned with the Equality Jurisprudence, most closely mirrors Kenya's emerging legal reasoning.

The choice of quantification method must be context-specific, shaped by factors such as the country's economic conditions, the social and educational background of the non-financially contributing spouse, and the nature and extent of their unpaid care and domestic work (UCW). As argued throughout this paper, the labour of homemakers, often invisible and undervalued, is foundational to the functioning of households and economies. While this work may defy precise quantification, its economic significance is undeniable and must be recognized in divorce settlements.

Unpaid care and domestic work hold intrinsic and instrumental value, regardless of the limitations of current quantification models. Therefore, developing robust, context-sensitive methods for valuing UCW is not only a legal imperative but a matter of justice. Legislative reform is essential to provide courts with clear, consistent guidance on assessing non-monetary contributions, thereby ensuring equitable outcomes, and affirming the dignity of unpaid labour.

7.0 Policy Recommendation: Advancing Equitable Valuation of Non-Monetary Contributions

To promote consistency and fairness in matrimonial property adjudication, it is recommended that:

i. Legislative frameworks be established to codify principles for recognizing and valuing UCW, offering courts clear statutory guidance.

ii. Hybrid valuation models be adopted, integrating elements of existing quantification methods to reflect Kenya's socio-economic realities.

iii. Judicial training be enhanced to equip legal practitioners with gender-sensitive tools for assessing NMC.

iv. Contextual factors be considered, ensuring valuation mechanisms reflect the lived experiences of spouses, particularly women in informal and rural economies.

v. Public awareness be promoted to foster recognition of UCW as economically productive labour, challenging entrenched gender biases.