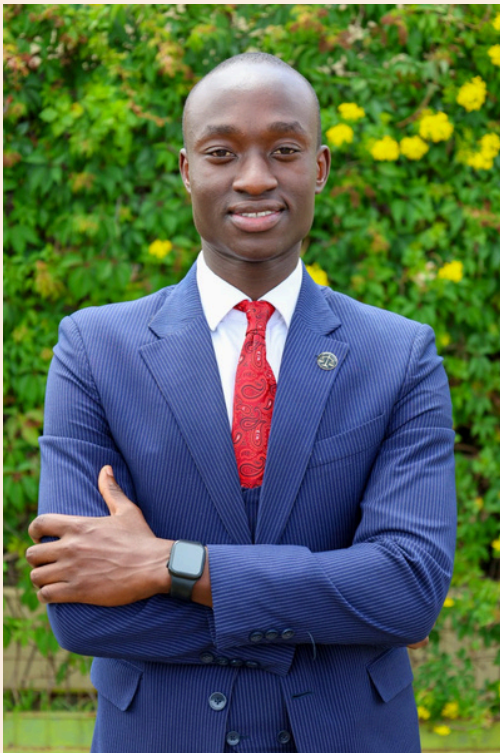


DOCUMENTARY RIGOR VS SOCIAL REALITY: A CRITICAL ANALYSIS OF *RESMA COMMERCIAL AGENCIES* -VS- *NGATTAH*



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The recent judgment by the Court of Appeal at Nakuru in ***Resma Commercial Agencies v Ngattah (Suing as the Legal Representative of the Estate of Leah Wangui Ngata (Deceased)) & another KECA 2214 (KLR)*** serves as a poignant reminder of the enduring tension in Kenyan jurisprudence between the sanctity of the land register and the equitable claims of non-titled spouses. This case, involving a matrimonial home sold by a husband without his wife's express consent, forced the court to choose between two competing philosophies: ***the strict evidentiary requirement of documentary proof and a contextualized appreciation of informal economic contributions.***

The Factual Matrix and the Genesis of the Dispute

The dispute centered on a property in Nakuru where Leah Wangui and Francis Ngata had raised their five children over seventeen years. In May 2006, Francis sold the property to a neighbor, Resma Commercial Agencies, for Kshs. 1,100,000 without Leah's knowledge. Leah subsequently sued, asserting a beneficial interest arising from her substantial financial and labor-based contributions, including running a retail shop, small-scale farming and laboring in family-owned hotels to service the mortgage.

The trial court originally ruled in Leah's favor, finding that the sale was "shrouded in secrecy" and that spousal consent was an "overriding interest" even under the old legal order. However, by the time the appeal was determined in 2025, both original had passed away, leaving the court to act, in the words of Warsame, J.A., as "morticians for justice".

The Majority Opinion: The Primacy of the Register and Proof of Contribution

The majority, led by Warsame and Korir, JJA, allowed the appeal, primarily on the grounds that Leah failed to discharge the **burden of proof regarding her contribution**. Drawing heavily from the English landmarks of ***Pettit v Pettit*** and ***Gissing v Gissing***, the majority emphasized that the label "**matrimonial home**" or "**family asset**" is "**devoid of legal meaning**" and does not automatically vest beneficial interest.

The majority's reasoning rests on several key pillars:

- **The Evidentiary Threshold:** The court insisted on "credible, cogent, documentary evidence" to establish contribution. Warsame, J.A. noted the absence of bank statements, business licenses or tax returns to substantiate Leah's claims of business income.
- **The Principle of Separate Ownership:** The evidence suggested the couple maintained separate financial lives; for instance, Leah held a separate title in her own name and retained the bulk of the proceeds from a previous land sale. This conduct, the court found, rebutted any inference of a "common intention" to own the suit property jointly.
- **Protection of Bona Fide Purchasers:** Since Leah failed to prove a beneficial interest, no trust arose in her favor. Consequently, Resma Commercial Agencies, having conducted due diligence and finding Francis as the sole registered proprietor, was protected by the doctrine of indefeasibility of title.

The Dissenting View: Challenging "Male-Coded" Jurisprudence

In a robust dissent, Joel Ngugi, J.A. argued that the majority's "**heightened documentary threshold**" ignores the lived reality of many Kenyan women. He posited that requiring formal bookkeeping for poultry farming and subsistence enterprises imposes an "impossible burden" on those operating in the informal economy.

Ngugi, J.A.'s dissent offers a critical counter-narrative:

- **Credibility over Paperwork:** The good Judge argued that Francis's admission in the witness box- where he confessed that his wife had indeed contributed and that the sale was secret- carried more weight than untested affidavit material.
- **Social Context:** He warned that rules of evidence framed without social context risk "converting an already unequal social terrain into a legal disadvantage for women". From his perspective, the 17-year residence and the totality of the joint endeavor were sufficient to infer a beneficial interest.

Conclusion:

The Ghost of *Echaria*?

The majority's decision points to a deliberate, albeit strictly reasoned approach, adherence to the precedent set in *Peter Mburu Echaria v Priscilla Njeri Echaria*, confirming that even under the **Matrimonial Property Act of 2013**,

contribution remains the "legal mechanism" by which a non-titled spouse earns proprietary rights.

However, this case highlights a significant judicial divide. While the majority views the lack of receipts as a fatal flaw in a litigant's case, the dissent views it as a systemic barrier to justice. For practitioners, the takeaway is clear: while the courts acknowledge **indirect contribution** (such as childcare and household management), the current majority of the Court of Appeal remains deeply skeptical of such claims unless they are anchored by some form of "monetary or financial" substantiation.

In conclusion, *Resma Commercial Agencies v Ngattah* reinforces the status of the registered proprietor as the "prima facie" sole owner. It underscores that in the eyes of the law, marriage alone does not grant a right to property; only proven contribution- **documented and quantifiable** - secures the home against the claims of third-party purchasers.