Republic of the Philippines
Supreme Court
Manila

EN BANC

REPUBLIC OF THE PHILIPPINES, **G.R. No. 249238**
Petitioner,

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

- versus -

RUBY CUEVAS NG a.k.a. RUBY NG SONO,
Respondent.

Promulgated:
February 27, 2024

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DECISION

DIMAAMPAO, *J.*:

Repugned in the instant Petition for Review on *Certiorari*[1] are the Decision[2] of Branch 220 of the Regional Trial Court of Quezon City (RTC) in SP Proc. Case No. R-QZN-18-05526-SP granting the Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry

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1 *Rollo*, pp. 11–28.
2 *Id.* at 29–34. The January 3, 2019 Decision was penned by Judge Jose G. Paneda of Branch 220, Regional Trial Court, Quezon City.

Under Article 26 of the Family Code[3] and the Order[4] denying the Motion for Reconsideration[5] thereof.

Antecedents

On December 8, 2004, respondent Ruby Cuevas Ng a.k.a. Ruby Ng Sono (Ng), a Filipino citizen, and Akihiro Sono (Sono), a Japanese national, contracted marriage in Quezon City.[6] Ensuingly, their union bore them a child named Rieka Ng Sono.[7]

Soon after their marriage, the spouses moved to Japan. Unfortunately, their relationship turned sour and they later decided to obtain a divorce. From then on, they secured a "divorce decree by mutual agreement" in Japan on August 31, 2007, as evinced in the Divorce Certificate[8] issued by the Embassy of Japan in the Philippines. Conformably, the Department of Foreign Affairs (DFA) in Manila provided an Authentication Certificate[9] and a Certificate of Acceptance of Notification of Divorce.[10] Likewise, the City Civil Registry Office of Manila released a Certification[11] dated April 19, 2018, guaranteeing that the Divorce Certificate provided by the Embassy of Japan in the Philippines was filed and recorded in its office. So, too, the fact of divorce was duly recorded in the Civil Registry of Japan as exhibited by the original copy of the Family Registry of Japan[12] bearing the official stamp of the Mayor of Nakano-Ku, Tokyo, Japan, and supported by its corresponding English translation.[13]

On May 28, 2018, Ng filed a Petition for judicial recognition of foreign divorce and declaration of capacity to remarry before the RTC.

During the initial hearing, the court *a quo* admitted all the documentary evidence submitted by Ng for purposes of compliance with jurisdictional requirements. The RTC also allowed her to present her evidence-in-chief *ex parte* after making a declaration of general default.[14]

On January 3, 2019, the RTC granted the Petition on the thrust of Article 26, paragraph 2 of the Family Code of the Philippines, ratiocinating that there was a valid divorce obtained by Ng abroad, disposing as follows:

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3 *Id.* at 37–41.
4 *Id.* at 35–36. The September 6, 2019 Order was penned by Judge Jose G. Paneda of Branch 220, Regional Trial Court, Quezon City.
5 *Id.* at 68–73.
6 *Id.* at 42.
7 *Id.* at 43.
8 *Id.* at 44.
9 *Id.* at 45.
10 *Id.* at 46.
11 *Id.* at 59.
12 *Id.* at 52–54.
13 *Id.* at 49–51.
14 *Id.* at 60.

WHEREFORE, premises considered, the judgment is hereby rendered:

> (a) **DECLARING** that the petition for judicial recognition of the foreign decree of divorce filed by **Ruby Cuevas Ng** is hereby judicially recognized by this Court and therefore, as capacitated to remarry under Article 26, 2nd paragraph of the Family Code, in view of the divorce which has been obtained in Japan by her alien spouse, terminating their matrimonial relationship or dissolving their marriage solemnized on December 8, 2004; and
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> (b) **DIRECTING** the Office of the Local Civil [Registrar] of Quezon City and the Philippine Statistics Authority to correct, change name or annotate the record of RUBY CUEVAS NG as regards her civil status to reflect that her marriage with AKIHIRO SONO has already been dissolved by way of foreign judgment and to declare the person of RUBY CUEVAS NG as single and free to remarry.
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> **SO ORDERED**.[15] (Emphasis in the original)

Displeased by the foregoing verdict, petitioner Republic of the Philippines (Republic), represented by the Office of the Solicitor General (OSG), moved for reconsideration of the said Decision, which the RTC denied in its Order dated September 6, 2019.

The Republic now comes to this Court, postulating that the RTC gravely erred in judicially recognizing a foreign divorce that was obtained by mere mutual agreement between the spouses. It harps on the modality by which Ng and Sono obtained their divorce, positing that a "divorce by agreement" is not worthy of recognition in the Court's jurisdiction. Avowedly, a foreign divorce, in order to be recognized in the Philippines, must be decided by a court of competent jurisdiction. The Republic further avows that Ng failed to prove the foreign divorce law as she did not proffer an authenticated copy of the Japanese Civil Code or one held by the official repository or custodian of Japanese public laws and records.

On the other hand, Ng asseverates that the joint divorce she and Sono obtained in Japan falls within the exception provided in Article 26, paragraph 2 of the Family Code. Seeking refuge in the Court's pronouncement in *Republic v. Manalo*,[16] she asserts that the divorce by mutual agreement, which she filed jointly with her husband, may be recognized in the Court's jurisdiction given that the national law of Japan recognizes divorce either by agreement or judicial action. Finally, Ng maintains that the failure to present an authenticated copy of the foreign divorce law is not sufficient ground to dismiss her Petition as held in *Nullada v. Civil Registrar of Manila*.[17]

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15 *Id.* at 33–34.

16 831 Phil. 33 (2018) [Per J. Peralta, *En Banc*].

17 846 Phil. 96 (2019) [Per J. A. Reyes, Jr., Third Division].

Perceivably, the pivotal issues for the Court's resolution are *first*, whether the trial court erred in judicially recognizing the divorce decree jointly obtained by mere agreement between the spouses without undergoing an adversarial proceeding before a foreign court of competent jurisdiction; and *second*, whether Ng has sufficiently proven the divorce decree and the Japanese law on divorce.

The Court's Ruling

The Petition is meritorious.

Incipiently, it bears accentuating that Philippine laws do not provide for absolute divorce; hence, our courts cannot grant it.[18] Nevertheless, jurisdiction is conferred on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. "Article 26 of the Family Code—which addresses foreign marriages or mixed marriages involving a Filipino and a foreigner — allows a Filipino spouse to contract a subsequent marriage in case the divorce is validly obtained abroad by an alien spouse capacitating him or her to remarry."[19] The provision states:

> Article 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.
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> *Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.* (Emphasis supplied)

The case of *Minoru Fujiki v. Marinay*[20] elucidates the nature of Article 26, paragraph 2 of the Family Code, thus—

> The second paragraph of Article 26 is only a corrective measure to address the anomaly that results from a marriage between a Filipino, whose laws do not allow divorce, and a foreign citizen, whose laws allow divorce. The anomaly consists in the Filipino spouse being tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. The correction is made by extending in the Philippines the effect of the foreign divorce decree, which is already effective in the country where it was rendered.[21]

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18 *See Medina v. Michiyuki Koike*, 791 Phil. 645, 650 (2016) [Per. J. Perlas-Bernabe, First Division].
19 *Id.*
20 712 Phil. 524 (2013) [Per J. Carpio, Second Division].
21 *Id.* at 555.

In the instant case, the Republic opposes the recognition of the foreign divorce decree on the ground that it was by mutual agreement and not obtained through an adversarial proceeding in court and hence, the provision under Article 26(2) of the Family Code finds no application.

The contention is bereft of merit.

In the landmark case of *Manalo*, the Court emphatically declared that Article 26(2) only requires that there be a divorce validly obtained abroad capacitating the foreigner spouse to remarry, without regard as to who initiated it. *Manalo* instructs that there must be a confluence of two elements in order for the second paragraph of the quoted provision to be validly applied, to wit: (1) there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) a valid divorce is obtained capacitating the parties to remarry regardless of the spouse who initiated the divorce proceedings.[22]

Significantly, the Court clarified that pursuant to the majority ruling in *Manalo*, Article 26(2) of the Family Code applies to mixed marriages where the divorce decree is: (1) obtained by the foreign spouse; (2) *obtained jointly by the Filipino and foreign spouse*; and (3) obtained solely by the Filipino spouse.[23]

To be sure, the fact that divorce by mutual agreement is allowed in other jurisdictions was acknowledged by this Court in subsequent cases involving similar facts.

In the case of *Racho v. Seiichi Tanaka*,[24] the Court squarely dealt with a divorce by mutual agreement involving a Filipino and a Japanese national. In rejecting the OSG's argument that Article 26(2) applies only to "judicial" divorce decrees, the Court held that:

> The Office of the Solicitor General, however, posits that divorce by agreement is not the divorce contemplated in Article 26 of the Family Code, which provides:
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> . . . .
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> The national law of Japan does not prohibit the Filipino spouse from initiating or participating in the divorce proceedings. It would be inherently unjust for a Filipino woman to be prohibited by her own national laws from something that a foreign law may allow. Parenthetically, the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals.

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22 *See Republic v. Manalo*, 831 Phil. 33, 51 (2018) [Per J. Peralta, *En Banc*].
23 *Galapon v. Republic*, 869 Phil. 351, 364 (2020) [Per J. Caguioa, First Division].
24 834 Phil. 21 (2018) [Per J. Leonen, Third Division].

> The Solicitor General's narrow interpretation of Article 26 disregards any agency on the part of the Filipino spouse. It presumes that the Filipino spouse is incapable of agreeing to the dissolution of the marital bond. It perpetuates the notion that all divorce proceedings are protracted litigations fraught with bitterness and drama. Some marriages can end amicably, without the parties harboring any ill will against each other. The parties could forgo costly court proceedings and opt for, if the national law of the foreign spouse allows it, a more convenient out-of-court divorce process. This ensures amity between the former spouses, a friendly atmosphere for the children and extended families, and less financial burden for the family.[25]

In *Galapon v. Republic*,[26] a Filipino and a South Korean secured a divorce decree by mutual agreement in South Korea. The trial court granted the petition for judicial recognition of the foreign divorce but the appellate court reversed such ruling. Upon elevation of the case to this Court, it reinstated the trial court's ruling and held that the Court of Appeals (CA) erred in denying the recognition of the divorce decree obtained by mutual agreement. In resolving the controversy, the Court centered on the interpretation of Article 26(2) as applied to divorce decrees obtained jointly by the foreign spouse and a Filipino citizen.[27]

In the case of *In Re: Ordaneza v. Republic*,[28] the Court likewise held that the divorce by agreement between a Filipino and a Japanese national "severed the marital relationship between the spouses and the Japanese spouse is capacitated to remarry."[29] Hence, the "foreign divorce decree by agreement" was judicially recognized.[30]

The case of *Republic v. Bayog-Saito*[31] also involved a Filipino and a Japanese who obtained a divorce in Japan via a Notice of Divorce. When the divorce notification was accepted, the divorce was recorded in the family registry in Japan. Thereafter, the vice-consul of the Japanese Embassy in the Philippines issued a Divorce Decree which was then authenticated by the DFA. When the Filipino spouse filed a petition for judicial recognition of foreign divorce decree, the trial court granted it. The OSG interposed an appeal to the CA asserting that absolute divorce is against public policy and the Filipino spouse cannot jointly seek a divorce decree with her husband even if such is allowed in the latter's country. The CA affirmed the RTC ruling. On appeal, the Court also affirmed the ruling of the lower courts.[32]

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25 *Id.* at 35, 38.
26 869 Phil. 351 (2020) [Per J. Caguioa, First Division].
27 *Id.* at 362–365.
28 G.R. No. 254484, November 24, 2021 [Per J. Carandang, Third Division].
29 *Id.* at 11. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
30 *Id.*
31 G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].
32 *Id.* at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

This Court categorically held in *Bayog-Saito* that a foreign divorce decree may be recognized in the Philippines even though "the divorce decree was jointly obtained by the spouses abroad." If such decree is valid according to the national law of the foreign spouse, the legal effects thereof may be recognized in our jurisdiction. Considering that the dissolution of their marriage under the laws of Japan capacitated the alien spouse to remarry, the Court found no reason to deprive the Filipino spouse of her legal capacity to remarry under our own laws.[33]

Similarly, in *Basa-Egami v. Bersales*,[34] the Japanese husband and his Filipino wife obtained a divorce decree by mutual agreement in Japan. Subsequently, the Filipino spouse filed before the trial court a petition for recognition of foreign divorce to be able to remarry. The trial court granted the petition, but on OSG's appeal, the CA reversed the ruling. When the case reached the Court, the pertinent issue of whether Philippine courts should recognize a divorce by mutual consent, was again answered in the affirmative. The Court edifyingly pronounced, thus—

> The OSG is adamant that petitioner's case does not fall under Article 26(2) of the Family Code. It postulates that the foreign divorce by mutual agreement between petitioner and Egami cannot be given recognition here because only a divorce obtained through a court judgment or adversarial proceeding could be recognized by Philippines courts, insisting that the only divorce contemplated under Article 26(2) is the one validly obtained by the alien spouse, without the consent or acquiescence of the Filipino spouse.
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> The Court does not agree.
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> If We are to follow the OSG's interpretation of the law, petitioner would sadly remain in limbo — a divorcee who cannot legally remarry — as a result of the ambiguity in the law, particularly the phrase "divorce is thereafter validly obtained abroad by the alien spouse." This perfectly manifests the dire situation of most of our *kababayans* in unsuccessful mixed marriages since, more often than not, their divorces abroad are obtained through mutual agreements. Thus, some of them are even constrained to think of creative and convincing plots to make it appear that they were against the divorce or that they were just prevailed upon by their foreigner spouse to legally end their relationship. What is more appalling here is that those whose divorce end up getting rejected by Philippine courts for such a flimsy reason would still be considered as engaging in illicit extra-marital affairs in the eyes of Philippine laws if ever they choose to move on with their lives and enter into another relationship like their foreigner spouse. Worse, their children in the subsequent relationship would be legally considered as illegitimate.[35]

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33 *Id.* at 11–12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

34 G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].

35 *Id.* at 8–9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

Accordingly, the Court concluded that "the divorce obtained by petitioner abroad against her foreign husband, whether at her behest or acquiescence, may be recognized as valid in this jurisdiction so long as it complies with the documentary requirements under the Rules of Court."[36]

Altogether, these cases uniformly embody the current jurisprudential rule that foreign divorce by mutual agreement is within the ambit of Article 26(2) of the Family Code, and as such, may be judicially recognized in the Philippines.

During the deliberations on this Petition, however, a view was expressed that the term "divorce" in Article 26(2) of the Family Code should be construed to mean a foreign divorce obtained in *judicial* proceedings. Otherwise stated, only those rendered by "a foreign court of competent jurisdiction" should be given recognition. This proposition would effectively reverse the abovementioned jurisprudential pronouncements granting recognition to foreign divorce obtained by mutual agreement of the parties. The proponents of this view submit that extending recognition to foreign divorce decrees obtained by mutual agreement violates the Constitution, the public policy against absolute divorce, and the public policy against collusion to dissolve a marriage. They posit that ruling otherwise would encourage Filipinos to circumvent our laws which prohibit annulment of marriages through collusion.[37]

The propositions fail to persuade.

The text of Article 26(2) of the Family Code does not support a construction to limit recognition of foreign divorce decrees to those issued in *judicial* proceedings only. It is a basic principle in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.[38]

This Court, in *Securities and Exchange Commission v. Commission on Audit*,[39] further expounded this principle of statutory construction, viz.:

> This is the plain meaning rule of statutory construction. To go beyond what the law says and interpret it in its ordinary and plain meaning would be tantamount to judicial legislation. When the words or language of a statute is clear, there may be no need to interpret it in a manner different from what the word plainly implies. This rule is premised on the presumption that the legislature knows the meaning of the words, to have

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36 *Id.* at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
37 J. Hernando, Dissenting Opinion, pp. 2–6; J. Singh, Dissenting Opinion, pp. 4–9.
38 *Crisologo v. Hao*, 891 Phil. 195, 201 (2020) [Per J. Gaerlan, First Division].
39 G.R. No. 252198, April 27, 2021 [Per J. Lazaro-Javier, *En Banc*]. (Citation omitted)

> used words advisedly, and to have expressed its intent by use of such words as are found in the statute.[40]

A plain reading of Article 26(2) of the Family Code reveals that it only requires that the divorce be "validly obtained abroad."[41] To insist that the divorce be obtained through judicial proceedings in a foreign jurisdiction is to insert a condition not provided in the law. Indeed, the law does not distinguish between divorces obtained through judicial proceedings and administrative proceedings; or between those where one spouse files for divorce and the other contests it, and those where the divorce is a product of mutual agreement. The plain meaning rule prohibits this Court from imposing its own distinctions and qualifications on the clear and unambiguous language of Article 26(2). To do so would be tantamount to judicial legislation, an unwarranted overstepping of the Court's judicial functions. After all, it is also an elementary rule in statutory construction that where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos*.[42]

Case law further elucidates that "the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse *without undergoing trial* to determine the *validity* of the dissolution of the marriage."[43] As such, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.[44] The statutory provision does not direct our courts to ascertain whether the procedure availed of in the foreign jurisdiction is judicial or administrative, before granting the Filipino spouse with the capacity to remarry.

Assuming *arguendo* that there is ambiguity in the provision that calls for construction, applying the provision to the present divorce by mutual agreement is consistent with the purpose of the law and will not result in any absurdity.

Settled is the rule that a statute must be read according to its spirit or intent. Courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.[45] Whether a divorce is obtained in a judicial or administrative proceeding, and whether the divorce proceedings are adversarial or by mutual consent, the result of a divorce that is valid under foreign law is the same: the alien spouse is no longer married

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40 *Id.* at 9–10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

41 *Republic v. Manalo*, 831 Phil. 33, 57 (2018) [Per J. Peralta, *En Banc*].

42 *See Ambrose v. Suque-Ambrose*, G.R. No. 206761, June 23, 2021 [Per J. Gaerlan, First Division] at 6. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

43 *Medina v. Michiyuki Koike*, 791 Phil. 645, 651 (2016) [Per J. Perlas-Bernabe, First Division]. (Emphasis supplied)

44 *Garcia v. Recio*, 418 Phil. 723, 731 (2001) [Per J. Panganiban, Third Division].

45 *See League of Cities of the Phils. v. COMELEC,* 623 Phil. 531, 547–548 (2009) [Per J. Velasco, Jr., *En Banc*].

to the Filipino spouse. The legislative spirit animating Article 26(2) of the Family Code is precisely to correct this anomalous situation where the foreign spouse is free to contract a subsequent marriage while the Filipino spouse cannot. The statutory provision focuses on the *effect* of the foreign divorce on the Filipino spouse. For indeed, it would be unjust for a Filipino spouse to be prohibited by their own national laws from something that a foreign law may allow. Clearly, our laws should not be intended to put Filipinos at a disadvantage.[46] "Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes."[47] Furthermore, our laws must not operate in a vacuum, but must be applied and adapted to persisting realities.[48]

This is the interpretation of the law that gives life to it. Indubitably, the instant case does not present any reason to deviate from the plain language of Article 26(2) of the Family Code or settled case law.

The Court likewise cannot subscribe to the view that extending recognition to foreign divorce decrees obtained by mutual agreement violates the public policies against absolute divorce and collusion.

It bears to stress that the prohibition against absolute divorce is maintained in this jurisdiction. Philippine courts still cannot grant absolute divorce. The applicability of this prohibition has been clarified as early as the 1985 case of *Van Dorn v. Romillo, Jr.*,[49] where the Court pronounced that:

> It is true that owing to the nationality principle embodied in Article 15 of the Civil Code only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law.[50]

Consistent with the nationality rule, a marriage between two Filipinos cannot be dissolved by absolute divorce even if the decree is obtained abroad. The rationale for this policy is that under the prevailing legal framework in the Philippines, absolute divorce is "considered contrary to our concept of public policy and morality."[51]

However, this policy finds no application in marriages involving a foreign couple whose national laws allow absolute divorce and who, in fact, obtained such divorce abroad. With respect to mixed marriages involving a

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46 *Racho v. Seiichi Tanaka*, 834 Phil. 21, 39 (2018) [Per J. Leonen, Third Division].

47 *Galapon v. Republic*, 869 Phil. 351, 363 (2020) [Per J. Caguioa, First Division].

48 *See The Department of Energy v. Court of Tax Appeals*, G.R. No. 260912, August 17, 2022 [Per J. Singh, Third Division] at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

49 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

50 *Id.* at 362.

51 *Id.*

Filipino and a foreigner, it must be emphasized that it is not the prohibition on absolute divorce between Filipino nationals that governs, but Article 26(2) of the Family Code. To underscore, Article 26(2) of the Family Code was crafted precisely to be an exception to the nationality principle on the matter of divorce,[52] and it is not for the Court to unduly limit the scope of the exception. Hence, the prohibition on absolute divorce should not be used to withhold recognition of a divorce decree that is validly obtained abroad between a Filipino spouse and a foreigner. Accordingly, if the divorce is valid according to the national law of the alien spouse and allows said spouse to remarry—regardless of the modality by which the divorce was obtained—Article 26(2) applies and entitles the Filipino spouse to obtain recognition of the foreign divorce.

This Court, likewise does not subscribe to the view that the possibility of collusion constitutes sufficient justification to prevent the recognition of a valid divorce by mutual agreement. For one, the fact that the parties opted for divorce by mutual agreement does not necessarily mean that they resorted to machinations like collusion. "Agreement" is not the same as "collusion." An "agreement" is defined as "[a] mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons."[53] On the other hand, "collusion" is defined as a "secret agreement or cooperation especially for an illegal or deceitful purpose,"[54] or "[a]n agreement to defraud another to do or obtain something forbidden by law."[55]

In *Ocampo v. Florenciano*,[56] the Court adopted the definition of "collusion" — "[An] agreement ... between husband and wife for one of them to commit, or to appear to commit, or to be represented in court as having committed, a matrimonial offense, or to suppress evidence of a valid defense, for the purpose of enabling the other to obtain a divorce. This agreement, if not express, may be implied from the acts of the parties. It is a ground for denying the divorce."[57]

A divorce by mutual agreement obtained by the spouses can hardly be considered as a form of collusion if it is proven that this agreement is sanctioned under Japanese laws as a mode of terminating a marriage, and hence, is covered by Article 26(2). Therefore, the agreement is not for the purpose of circumventing a law.

Moreover, Chief Justice Alexander G. Gesmundo correctly pointed out that the legal safeguard against collusion is present in cases involving

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52 *See Nullada v. Civil Registrar of Manila*, 846 Phil. 96, 107 (2019) [Per A. Reyes, Jr., Third Division].

53 BLACK'S LAW DICTIONARY 84 (11th ed., 2019).

54 MERRIAM-WEBSTER DICTIONARY, "COLLUSION," *available at* https://www.merriam-webster.com/dictionary/collusion (last accessed on November 3, 2023).

55 BLACK'S LAW DICTIONARY 322 (11th ed., 2019).

56 107 Phil. 35 (1960) [Per J. Bengzon, *En Banc*].

57 *Id.* at 39.

annulment or declaration of absolute nullity, or proceedings for legal separation before Philippines courts, where the marriage has not yet been dissolved.[58] Such safeguard against collusion does not apply in cases seeking judicial recognition of foreign divorce pursuant to Article 26(2) of the Family Code, as in the present case. Here, the marriage has already been dissolved and the foreign spouse is already recapacitated to remarry. What is left for the Filipino spouse to prove is that the foreign divorce decree was validly obtained abroad. To stress, courts in judicial recognition proceedings are called to ascertain whether the effects of the foreign divorce should be extended to the Filipino spouse. Hence, the prohibition against collusion does not play a role to prevent the dissolution of the marriage in a foreign jurisdiction.[59]

Lastly, adherence to international comity allows courts to recognize divorces obtained abroad in marriages between a Filipino citizen and a foreigner, regardless of the modality by which they are obtained.

Comity "is the recognition which one nation allows within its territory to the *legislative, executive, or judicial acts* of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."[60] Hence, recognition of sovereign acts may be extended not only to foreign judgments but also to the foreign countries' nonjudicial actions, such as the issuance of a divorce decree without court intervention, as in this case.

It is true that a foreign law, judgment, or contract shall not be applied or recognized by the Court when it would contravene a sound and established public policy of the forum, or work undeniable injustice to the citizens or residents of the forum.[61] However, as discussed earlier, the policies against absolute divorce and collusion are inapplicable to justify the denial of recognition of the foreign divorce. The burden of proving that a foreign divorce is offensive to public policy falls on the party claiming it, which was not shown in this case. Thus, the rule that a foreign divorce which is validly obtained abroad will be recognized in this jurisdiction, prevails.

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58 Art. 48, FAMILY CODE: In all cases of annulment or declaration of absolute nullity of marriage, the court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment. (88a)

. . . .

Art. 56. The petition for legal separation shall be denied on any of the following grounds:

. . . .

(5) Where there is collusion between the parties to obtain the decree of legal separation.

59 C.J. Gesmundo, Concurring Opinion, pp. 12–13.

60 *J. A. Sison v. Board of Accountancy*, 85 Phil. 276, 282 (1949) [Per J. Torres, *En Banc*], *citing Hilton v. Guyot*, 159 U.S., 113, 40 Law. ed., 95.

61 *See Del Socorro v. Van Wilsem*, 749 Phil. 823, 837 (2014) [Per J. Peralta, Third Division], *citing Bank of America v. American Realty Corp.*, 378 Phil. 1279, 1296 (1999) [Per J. Buena, Second Division].

Along this grain, well-ensconced is the rule that the divorce decree and the governing personal law of the alien spouse must be proven because courts cannot take judicial notice of foreign laws and judgments.[62]

In *Corpuz v. Sto. Tomas*,[63] the Court had the occasion to rule that:

> The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." *This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.* The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.[64] (Emphasis supplied)

Moreover, in *Garcia v. Recio*,[65] it was pointed out that in order for a divorce obtained abroad by the alien spouse to be recognized in our jurisdiction, it must be shown that the divorce decree is valid according to the national law of the foreigner. Both the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven.[66] Since our courts do not take judicial notice of foreign laws and judgments, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven like any other fact.[67]

Thus, for Philippine courts to recognize a foreign act relating to the status of a marriage, a copy of the foreign decree may be admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25 of the Revised Rules on Evidence. These provisions state:

> Sec. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by his seal of office.

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62 *See In Re: Ordaneza v. Republic*, G.R. No. 254484, November 24, 2021 [Per J. Carandang, Third Division] at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

63 642 Phil. 420 (2010) [Per J. Brion, Third Division].

64 *Id.* at 432–433.

65 418 Phil. 723 (2001) [Per J. Panganiban, Third Division].

66 *Id.* at 725.

67 *Id.*

> Sec. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Here, Ng was able to sufficiently and satisfactorily prove the fact of divorce when she submitted into evidence the following documents: 1) an authenticated Divorce Certificate[68] issued by the Embassy of Japan in the Philippines; 2) Certificate of Acceptance of Notification of Divorce;[69] 3) Certification[70] by the City Civil Registry Office of Manila acknowledging that a Divorce Certificate was filed and recorded in their office; and 4) an original copy of the Family Registry of Japan[71] issued by the Mayor of Nakano-Ku, Tokyo, Japan with its English translation, evincing that the fact of divorce was duly recorded in the Civil Registry of Japan.

Likewise, the Republic did not dispute the existence of the Divorce Certificate, and more importantly, the fact of divorce between Ng and her husband. "[I]f the opposing party fails to properly object, as in this case, the existence of the divorce report and divorce certificate is rendered admissible as a written act of the foreign official body."[72]

Apropos thereto, the Office of the Court Administrator issued Circular No. 157-2022 (Compilation of the Laws of Foreign Countries on Marriage and Divorce) on June 23, 2022. It furnished all regional trial courts with copies of the divorce laws (or English translations thereof) of other countries, which were submitted to the DFA by its foreign counterparts. Notably, the said OCA Circular advised the family courts to take judicial notice of this compilation of foreign divorce laws in the resolution of cases requiring the presentation of such laws.

However, OCA Circular No. 157-2022 was eventually *superseded* by OCA Circular No. 157-2022-A issued on July 7, 2022, which is reproduced in full below:

OCA CIRCULAR NO. 157-2022-A

TO	:	ALL JUDGES, BRANCH CLERKS OF COURT AND OFFICERS-IN-CHARGE/ACTING CLERKS OF COURT OF THE REGIONAL TRIAL COURTS
SUBJECT	:	COMPILATION OF THE LAWS OF FOREIGN COUNTRIES ON MARRIAGE AND DIVORCE

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68 *Rollo*, pp. 44–45.
69 *Id.* at 46.
70 *Id.* at 59.
71 *Id.* at 52–54.
72 *See In Re: Petition for Judicial Recognition of Divorce*, 867 Phil. 578, 594 (2019 [Per J. Lazaro-Javier, First Division].

> The growing migration, foreign employment and cross-border travel of Filipinos have resulted in significant numbers of intermarriages with foreign nationals. However, some of these marriages end up as the subject of divorce decrees obtained overseas. As a consequence, there is an increasing number of petitions filed before Philippine courts for recognition and enforcement of foreign decree of divorce.
>
> Recently, the Office of the Court Administrator (OCA) experienced a sudden influx of requests for certified true copies of divorce laws of foreign countries which the parties intend to use as supporting document to their petitions for recognition of a foreign decree of divorce.
>
> To address this matter, the Department of Foreign Affairs (DFA), upon request of the OCA, furnished the OCA with a compilation of several foreign laws on marriage and divorce, for reference and use of the judiciary in resolving petitions for recognition and enforcement of foreign decree of divorce, subject to prevailing jurisprudence and/or applicable Court issuances related thereto. This could be accessed at https://sc.judiciary.gov.ph/foreign-divorce-laws/.
>
> The text of these laws, and/or their English translations, were officially transmitted to the Philippine Embassies and Consulates by the Ministry of Foreign Affairs of other agencies of the concerned foreign governments through Notes Verbale or official letters enclosing the text of these laws or indicating the official website or online link containing the authentic copies. In some states within the United States of America, the text of the laws provided were authenticated by the Secretary of State or by other competent officials having custody of authentic copies of these laws.
>
> This circular supersedes OCA Circular No. 157-2022 dated 23 June 2022.
>
> For the information and guidance of all concerned. (Underscoring in the original).

Indubitably, the provision in OCA Circular No. 157-2022 advising family courts to take *judicial notice* of this compilation of foreign divorce laws was effectively abandoned in OCA Circular No. 157-2022-A. Instead, the existing OCA Circular No. 157-2022-A emphasizes that this compilation of foreign laws on marriage and divorce may be used as reference by the courts in resolving petitions for recognition and enforcement of foreign divorce decrees, "*subject to prevailing jurisprudence and/or applicable Court issuances related thereto.*"

This added provision leads to no other conclusion than that, although the OCA's compilation is helpful in enabling courts to have a preliminary reference of laws of foreign countries on marriage and divorce, it does not, in any manner, dispense with the requirement of parties to comply with Rule 132, Sections 24 and 25 of the Revised Rules on Evidence.

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To reiterate, these rules require proof, either by (1) official publications; or (2) copies attested by the officer having legal custody of the documents. Should the copies of official records be proven to be stored outside of the Philippines, they must be (1) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (2) authenticated by the seal of [their] office. If copies are offered into evidence, the attestation: (1) must state that it is a correct copy of the original, or a specific part thereof; and (2) must be under the official seal of the attesting officer, or if [they] be the clerk of a court having a seal, under such seal of said court.[73]

A closer scrutiny of OCA Circular No. 157-2022-A reveals that while the text of the foreign laws were "officially transmitted" to our embassies or consulates, it appears uncertain whether the versions transmitted were compliant with the necessary proof under Rule 132 of the Revised Rules on Evidence. Notably, some of the texts were transmitted only by indicating the "official website or online link" where the supposed authentic copies were uploaded. It is likewise unclear whether the copies of the texts were supported by attestations *under the official seal of the attesting officer* as required under Rule 132, Section 25 of the Revised Rules on Evidence. Moreover, while some of the documents were sourced from the foreign affairs ministries of the foreign governments, some documents were also obtained from their "other agencies," which this Court is unsure of if these are agencies which have *legal custody* of official record as mandated by the rules. Ineludibly, these uncertainties preclude this Court from relying solely on the compilation as competent evidence of the pertinent foreign laws on marriage and divorce.

Moreover, the Court cannot turn a blind eye to the genuine possibility that a foreign jurisdiction would repeal or amend its laws regarding marriage and divorce, rendering the said compilation outdated and inaccurate. Laws are dynamic and consistently evolving, such that the Court must take caution in relying solely on this compilation of foreign divorce laws in resolving judicial recognition cases.

These considerations circle back to the hornbook rule that *our courts do not take judicial notice of foreign laws and judgments*; our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven like any other fact.[74] Accordingly, the stringent evidentiary requirements in cases for judicial recognition of foreign divorce decree must be maintained. The compilation of foreign laws on marriage and divorce pertained to in OCA Circular No. 157-2022-A *does not* dispense with the requirement for the petitioner in petitions for recognition and enforcement of

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73 *Rivera v. Woo Namsun*, G.R. No. 248355, November 23, 2021 [Per J. Lopez, J., First Division] at 8–9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

74 *See Basa-Egami v. Bersales,* G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division] at 14. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Emphasis supplied)

foreign divorce decrees to comply with the rules on proof of foreign laws, i.e., Rule 132, Sections 24 and 25 of the Revised Rules on Evidence.

This brings us to the next question of whether Ng was able to prove the applicable law on divorce in Japan of which her former husband is a national.

In this case, to prove the Japanese law on divorce, Ng merely proffered in evidence an *unauthenticated* photocopy of pertinent portions of the Japanese Civil Code on divorce and its corresponding English translation.[75] Regrettably, this does not constitute sufficient compliance with the rules on proof of foreign laws.

Given that Ng was able to prove the fact of divorce but not the Japanese law on divorce, a remand of the case rather than its outright dismissal is proper. This is consistent with the policy of liberality that the Court has adopted in cases involving the recognition of foreign decrees to Filipinos in mixed marriages.[76]

In *Manalo*, the Court enunciated that "Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function." It emphasized that "the burden of proving" the pertinent Japanese law, as well as the foreign spouse's capacity to remarry, fall squarely upon the petitioner. As a measure of liberality, the Court remanded the case to the court of origin for further proceedings and reception of evidence as to the relevant law on divorce. [77]

Also, in *Nullada*, the Court noted that only photocopies of the Civil Code of Japan were submitted by the petitioner, thus, it also remanded the case to the trial court for presentation of the relevant Japanese law on divorce.[78]

Similarly, in *In Re: Petition for Judicial Recognition of Divorce*,[79] the fact of divorce was likewise duly proven, but not the Japanese law on divorce. The Court therein held that "the higher interest of substantial justice compels that petitioner be afforded the chance to properly prove the Japanese law on divorce, with the end view that petitioner may be eventually freed from a marriage in which she is the only remaining party."[80]

In obeisance to these previous pronouncements, and considering that Ng was able to present certified documents establishing the fact of divorce

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75 *Rollo*, pp. 103–107.

76 *Republic v. Kikuchi*, G.R. No. 243646, June 22, 2022 [Per J. Hernando, First Division] at 8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

77 *Republic v. Manalo,* 831 Phil. 33, 77 (2018) [Per J. Peralta, *En Banc*].

78 *See Nullada v. Civil Registrar of Manila*, 846 Phil. 96, 109 (2019) [Per J. Reyes, A., Jr., Third Division].

79 867 Phil. 578 (2019) [Per J. Lazaro-Javier, First Division].

80 *Id.* at 596.

and that relaxation of the rules will not prejudice the State,[81] a remand of the instant case to the trial court for further proceedings and reception of evidence of the Japanese law on divorce is in order.

ACCORDINGLY, the Petition for Review on *Certiorari* is hereby **GRANTED**. The January 3, 2019 Decision and the September 6, 2019 Order of Branch 220 of the Regional Trial Court, Quezon City in SP Proc. Case No. R-QZN-18-05526-SP are **REVERSED**. The case is **REMANDED** to the trial court for further proceedings and reception of evidence of the pertinent Japanese law on divorce.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

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[81] *Id.* at 595.

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.

ALEXANDER G. GESMUNDO
Chief Justice