REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **17 February 2021** *which reads as follows*:

"**G.R. No. 238259 (*Irene Diaz Rivera v. Republic of the Philippines*).** – This is an appeal by *certiorari* assailing the January 11, 2018 Decision[1] and March 21, 2018 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 105141 which set aside the September 3, 2014 Order[3] of the Regional Trial Court of Caloocan City, Branch 121 *(RTC)* in Sp. Proc. Case No. C-4816. The CA held that petitioner failed to prove the fact of the divorce decree obtained by her husband and the national law of Japan allowing divorce by agreement.

Antecedents

On January 16, 2014, Irene Diaz Rivera *(petitioner)*, a Filipino citizen, filed a verified Petition[4] in the RTC for recognition of divorce granted in Japan. She claimed to have been married to one Sadao Hida, a Japanese national, on January 16, 1996 in Caloocan City as evidenced by a Certificate of Marriage issued by the National Statistics Office and Authentication Certificate issued by the Department of Foreign Affairs *(DFA)*.[5]

Petitioner alleged that her marriage ended in divorce on June 28, 2013 based on the Divorce Certificate issued by Consul Yoshihisa Joto of the Embassy of Japan, Pasay City on November 13, 2013. The Divorce

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[1] *Rollo*, pp. 36-47; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Priscilla J. Baltazar-Padilla (now a retired Member of this Court) and Pedro B. Corales, concurring.
[2] Id. at 48-49.
[3] Id. at 110-113; penned by Presiding Judge Edison F. Quintin.
[4] Id. at 60-62.
[5] Id. at 75-76 and 84-85.

Certificate was filed and recorded in the City Civil Registry Office of Manila as certified by City Civil Registrar Maria Josefa Encarnacion A. Ocampo on November 25, 2013 and duly authenticated by the DFA per Certification No. S.N. 11A-1897836 dated November 25, 2013.[6] Petitioner thus prayed for recognition of the decree of divorce which was validly obtained in Japan to be as valid and effective under Philippine laws.[7]

The Office of the Solicitor General *(OSG)* filed its Notice of Appearance and Letter of Deputation to the Office of the City Prosecutor of Caloocan City on March 4, 2014.[8]

The RTC Ruling

After trial, the RTC issued an Order[9] on September 3, 2014 granting the petition, thus:

> **WHEREFORE**, the foregoing premises considered, the petition is hereby ***GRANTED***.
>
> The divorce validly obtained in Japan on June 28, 2013 dissolving the marriage solemnized [at] Caloocan City, Philippines, on February 16, 1996 between petitioner ***Irene Diaz Rivera and Sadao Hida*** evidenced by the Divorce Certificate, is ordered ***RECOGNIZED*** in the Philippines to the extent contemplated under Paragraph 2 of Article 26, Family Code of the Philippines. In this regard, the Local ***Civil Registry of the City of Caloocan City*** [sic] and the ***Civil Registrar General*** are ***ORDERED*** to ***RECORD*** in their respective marriage registers the said ***FOREIGN DIVORCE***.
>
> Let copies of this Decision be furnished the Office of the Solicitor General, the Office of the City Prosecutor of Caloocan City, Office of the Local Civil Registrar of Caloocan City, and the Office of the Civil Registrar General/National Statistics Office (NSO).
>
> SO ORDERED.[10]

The trial court found that the Divorce Certificate was validly issued by the Consul of the Embassy of Japan on the basis of the Official Family Register issued by the Mayor of Koshigaya City, Saitama Prefecture, Japan; that the law on the termination and severance of marriage was laid down in the Civil Code of Japan, Section 4, Subsection 1 in relation to Article 763

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[6] Id. at 86-87 and 93-94.
[7] Id. at 61.
[8] Id. at 71.
[9] Id. at 110-113.
[10] Id. at 112-113.

which provides, among others, that the husband and wife may effect divorce by agreement; and that in accordance with Art. 728 of the Civil Code of Japan, the matrimonial relationship is terminated by divorce.[11]

The RTC concluded that since petitioner and Sadao Hida had obtained a valid divorce in Japan, they are "freed from the bond of marriage and they are no longer husband and wife in all legal intents and purposes under the laws of Japan."[12] Accordingly, the two (2) elements required in the application of Art. 26, paragraph 2 of the Family Code of the Philippines, *viz.*: (1) that there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) that a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry, were both present.[13]

Respondent Republic, represented by the OSG, filed a Motion for Reconsideration[14] arguing that there was insufficient evidence to prove both the fact of divorce and the national law of Japan; that the only evidence presented by petitioner was her own testimony (Judicial Affidavit); and that while petitioner presented a Divorce Certificate and a purported copy of the Civil Code of Japan, identification thereof was only limited to their existence and not with respect to their contents.[15]

The RTC denied the motion in its Order[16] dated January 30, 2015. The trial court held that while the subject divorce was obtained by agreement and not through judicial proceeding, the same appears to have been initiated by the foreign spouse. Moreover, to deny the petition would defeat the very purpose of Art. 26 of the Family Code and would place the Filipino spouse in miserable condition while her foreign spouse is allowed to remarry.[17]

Consequently, the OSG filed a Notice of Appeal.[18]

The CA Ruling

On appeal, the CA rendered the assailed Decision[19] setting aside the September 3, 2014 Order of the RTC. The CA disposed:

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[11] Id. at 111-112.
[12] Id. at 111.
[13] Id. at 112.
[14] Id. at 114-119.
[15] Id. at 116.
[16] Id. at 120-122.
[17] Id. at 121-122.
[18] Id. at 123-124.
[19] Id. at 36-47.

> We **SET ASIDE** the Order dated 3 September 2014 issued by the Regional Trial Court, Branch 121, Caloocan City, in SP Proc. Case Number C-4816. Instead, we **DISMISS** the Petition filed in the Regional Trial Court, Branch 121, Caloocan City.
>
> **IT IS SO ORDERED.**[20]

The CA ruled that the divorce decree, as well as the national law of the foreign spouse, were not proven in accordance with Rule 132, Sec. 24 of the Rules of Court. Notably, the Divorce Certificate is inadmissible in evidence. The appellate court also held that there was no showing that the Japanese Consul, Yoshihisa Joto, was the person who had legal custody of the Divorce Certificate in the Philippines. Moreover, there was no evidence that the copy of the Divorce Certificate was the correct copy of the original, and that the attestation by Japanese Consul Yoshihisa Joto was under the official seal of Japanese Consul Yoshihisa Joto as attesting officer.[21]

Petitioner filed a Motion for Reconsideration[22] but the CA denied the same in the Resolution[23] dated March 21, 2018.

ISSUES

Aggrieved, petitioner filed the present petition for review on *certiorari* on the following grounds:

> A
>
> WITH UTMOST RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT CONSIDERED THE ARGUMENTS RAISED BY THE RESPONDENT FOR THE FIRST TIME ON APPEAL;
>
> B
>
> WITH UTMOST RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT UNDULY DOWNPLAYED THE EVIDENCE PRESENTED BY THE PETITIONER;

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[20] Id. at 47.
[21] Id. at 46.
[22] Id. at 177-187.
[23] Id. at 48-49.

C

WITH UTMOST RESPECT, THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT PETITIONER FAILED TO PROVE THE TWO ELEMENTS TO BE ESTABLISHED UNDER ARTICLE 26, SECOND PARAGRAPH OF THE FAMILY CODE.[24]

Petitioner contends that respondent's objections by invoking Secs. 24 and 25, Rule 132 of the Rules of Court, were raised for the first time on appeal and were never presented before the RTC at the time the pieces of evidence were being formally offered.[25]

At any rate, petitioner claims to have satisfied the requirements under Sec. 24 when: (1) she submitted and made part of the records, the Original Document of Family Register Translation issued by the Japanese Embassy; (2) the custodian of the Family Register, Tsutomo Takahashi, issued a Certification stating: "This is to certify that all matters recorded in this Family Certificate are certified herein;" (3) the seal of Tsutomo Takahashi's office as Mayor was placed right beside his name; (4) the Consul of the Embassy of Japan, Yoshihisa Joto, issued a Certification of the fact of divorce which bears the seal of the Embassy of Japan. Petitioner contends that if these circumstances failed to satisfy Sec. 24 of Rule 132, the Divorce Certificate should still be regarded as a public document under Sec. 19(b) and (c) and should be deemed as "*prima facie* evidence of the facts stated therein and evidence of the fact which gave rise to its execution."[26]

On the other hand, the OSG asserts that the CA did not commit reversible error because petitioner's documentary evidence fell short of the requirements set by the Rules of Court. It also reiterates that our courts cannot take judicial notice of foreign laws, and as such, these must be proved as fact.[27]

Did the CA commit reversible error in dismissing the petition for judicial recognition of foreign divorce filed by petitioner?

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[24] Id. at 22.
[25] Id. at 23.
[26] Id. at 27-29.
[27] Id. at 219.

The Court's Ruling

We **GRANT** the petition.

Art. 26 of the Family Code, as amended, provides:

> **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.
>
> **Where a marriage between a Filipino citizen and a foreigner is validly celebrated and divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.** (emphases supplied)

While there is no absolute divorce under Philippine law, in mixed marriages between a Filipino citizen and an alien spouse, the above provision authorizes our courts to extend the effect of a foreign divorce decree to the Filipino spouse. It is regarded as a corrective measure intended to benefit the Filipino spouse who remains married to the alien spouse who, after obtaining a divorce abroad, is no longer married to the former. In essence, the second paragraph of Art. 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry.[28]

It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must be alleged and proved.[29] Thus, petitioner is burdened to prove not only the fact of divorce "by agreement," but more importantly, the Japanese law on divorce which allows such mode of termination of marriage and its legal effects. As this Court elucidated in *Corpuz v. Sto. Tomas*:[30]

> 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**

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[28] *Corpuz v. Sto. Tomas*, 642 Phil. 420, 430 (2010).
[29] *Republic v. Manalo*, 831 Phil. 33, 77 (2018).
[30] *Corpuz v. Sto. Tomas*, supra note 28.

> **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 [or her] claim or defense.[31] (emphases supplied)

Since both the foreign divorce decree and the national law of the alien spouse purport to be official acts of a sovereign authority, compliance with Sec. 24[32] of Rule 132 of the Rules of Court is necessary.[33] Under Secs. 24 and 25[34] of Rule 132, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) 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 (b) authenticated by the seal of his office.[35]

To prove the divorce "by agreement" between her and Sadao Hida, petitioner submitted the following documents: (1) Divorce Certificate issued by the Japanese Embassy and signed by Consul Yoshihisa Joto; (2) Authentication Certificate issued by the DFA attesting that Yoshihisa Joto, at the time of his signing the Divorce Certificate, was the Consul, Embassy of Japan; and (3) Original Document of Family Register Translation in English containing the Certificate of All Matters, also issued by the Japanese Embassy where, among others, was listed the record of marriage and divorce between petitioner and Sadao Hida, certified by Tsutomu Takahashi, with seal of his office as Mayor of Koshigaya City, Saitama Prefecture, Japan.[36]

On the other hand, to establish the Japanese law on divorce, petitioner presented a copy of the English Translation of the Civil Code of Japan (2001) published under authorization of The Ministry of Justice (The Codes of Translation Committee), stamped with the Library of the Japan Information and Culture Center, Embassy of Japan, EHS Law Bulletin Series, Vol. II.[37]

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[31] *Corpuz v. Sto. Tomas*, supra note 28 at 432-433.

[32] **Section 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 the seal of his office. (25a)

[33] See *Juego-Sakai v. Republic*, 836 Phil. 810, 817-818 (2018).

[34] **Section 25.** *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of 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 by any, or if he be the clerk of a court having a seal, under the seal of such court. (26a)

[35] *Arreza v. Toyo*, G.R. No. 213198, July 1, 2019; citing *Garcia v. Recio*, 418 Phil. 723, 732-733 (2001).

[36] *Rollo*, pp. 86-92.

[37] Id. at 96-105.

Sec. 4 on Divorce of said Civil Code (Act No. 89 of April 27, 1896) includes a Subsection on Divorce by Agreement, subject to Acceptance of Notification of Divorce.[38]

In the recent case of *Moraña v. Republic (Moraña),*[39] this Court recognized such "non-judicial" divorce between a Filipina and a Japanese national, where the petitioner submitted in evidence similar documents, thus:

> Petitioner identified, presented[,] and formally offered in evidence the Divorce Report issued by the Office of the Mayor of Fukuyama City. It clearly bears the fact of divorce by agreement of the parties, *viz.*:
>
> x x x x
>
> Both the trial court and the Court of Appeals, nonetheless, declined to consider the Divorce Report as the Divorce Decree itself. According to the trial court, the Divorce Report was "*limited to the report of the divorce granted to the parties.*" On the other hand, the Court of Appeals held that the Divorce Report "*cannot be considered as act of an official body or tribunal as would constitute the divorce decree contemplated by the Rules.*"
>
> The Court is not persuaded. Records show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. **There was no *"divorce judgment"* to speak of because the divorce proceeding was not coursed through Japanese courts but through the Office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan**. In any event, since the Divorce Report was issued by the Office of the Mayor of Fukuyama City, **the same is deemed an *act of an official body* in Japan.** By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.
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> Notably, the fact of divorce was also supported by the Certificate of All Matters issued by the Japanese government to petitioner's husband Minoru Takahashi, indicating the date of divorce, petitioner's name from whom he got divorced and petitioner's nationality as well, thus:
>
> Divorce [Date of Divorce] May 22, 2012
> [Name of Spouse] Juliet Moraña Takahashi
> [Nationality of Spouse] Republic of the Philippines
>
> More, petitioner submitted below a duly authenticated copy of the Divorce Certificate issued by the Japanese government. **The fact alone that the document was submitted to the trial court without anyone identifying it on the stand or making a formal offer thereof in evidence does not call for dismissal of the petition.**

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[38] Id. at 104.
[39] G.R. No. 227605, December 5, 2019.

> For one, **the State did not question the existence of the Divorce Report, Divorce Certificate, and more importantly the fact of divorce between petitioner and her husband. As *Republic v. Manalo* pronounced, if the opposing party fails to properly object, as in this case, the existence of the divorce report and divorce certificate decree is rendered admissible as a written act of the foreign official body.**
>
> For another, petitioner explained that despite repeated prompt requests from the Japanese Embassy, the latter released the Divorce Certificate quite belatedly after petitioner had already terminated her testimony and returned to Japan to care for her children.
>
> Still, another, the Divorce Report, Certificate of All Matters, and Divorce Certificate were all authenticated by the Japanese Embassy. These are proofs of official records which are admissible in evidence under Sections 19 and 24, Rule 132 of the Rules on Evidence[.][40] (citations omitted, emphases supplied)

In here, the Divorce Certificate was issued by the Consul of the Japanese Embassy on the basis of the Official Family Register issued by the Mayor of Koshigaya City, signed by the latter under the official seal of his office. Respondent did not object to said evidence but only questioned its evidentiary weight *via* a motion for reconsideration before the RTC. Accordingly, the Divorce Certificate issued by the Japanese government was rendered admissible as a written act of an official body.

Nonetheless, We find that petitioner failed to prove the Japanese law on divorce and its legal effects. The plain copies of the pertinent portions of the Civil Code of Japan, while purportedly the English translation published by the EHS Law Bulletin Series under authority of the Ministry of Justice, was not properly authenticated by the public officer having custody of the official record, as a faithful copy of the original text of the law. This Court in *Arreza v. Toyo*[41] also declared that the English translation published by the EHS Law Bulletin Series is not an official publication exempted from authentication, thus:

> The English translation submitted by petitioner was published by Eibun-Horei-Sha, Inc., a private company in Japan engaged in publishing English translation of Japanese laws, which came to be known as the EHS Law Bulletin Series. However, these translations are "not advertised as a source of official translations of Japanese laws;" rather, it is in the KANPO or the Official Gazette where all official laws and regulations are published, albeit in Japanese.

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[40] Id.

[41] Supra note 35.

> Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication.[42]

Moreover, the photocopies submitted by petitioner are no better than the printouts from a website that this Court had rejected in *Moraña.* However, despite such lack of proper authentication in accordance with Secs. 24 and 25 of the Rules of Court, this Court in *Moraña* still granted the petition and ordered the remand of the case in order to provide petitioner therein with the opportunity to comply with the said provisions, thus:

> This brings us to the next question: was petitioner able to prove the applicable law on divorce in Japan of which her former husband is a national? On this score, *Republic v. Manalo* ordained:
>
> > Nonetheless, the Japanese law on divorce must still be proved.
> >
> > > x x x The burden of proof lies with the "party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action." In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introducenew matters. x x x
> >
> > It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must alleged and proved. x x x The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in thenegative.
>
> Since the divorce was raised by Manalo, the burden of proving the pertinent Japanese law validating it, as well as her former husband's capacity to remarry, fall squarely upon her. Japanese laws on persons and family relations are not among those matters that Filipino judges aresupposed to know by reason of their judicial function.

Here, what petitioner offered in evidence were **mere printouts of pertinent portions of the Japanese law on divorce and its English translation. There was no proof at all that these printouts reflected the existing law on divorce in Japan and its correct English translation. Indeed, our rules require more than a printout from a website to prove a foreign law**. In *Racho*, the Japanese law on divorce was duly proved through a copy of the English Version of the Civil Code of Japan translated under the authorization of the Ministry of Justice and

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[42] Id.

> the Code of Translation Committee. At any rate, considering that the fact of divorce was duly proved in this case, 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. In *Manalo*, the Court, too, did not dismiss the case, but simply remanded it to the trial court for reception of evidence pertaining to the existence of the Japanese law on divorce.[43] (citations omitted, emphasis supplied)

It bears emphasis that even prior to *Moraña*, this Court in *Nullada v. Civil Registrar of Manila,*[44] noting that only photocopies were submitted by petitioner therein and relying on *Racho v. Tanaka*[45] and *Republic v. Manalo*,[46] also remanded the case to the trial court for presentation of the relevant Japanese law on divorce for a new decision on the merits,[47] thus:

> Marlyn failed to satisfy the foregoing requirements. The records only include a **photocopy of excerpts of The Civil Code of Japan, merely stamped LIBRARY, Japan Information and Culture Center, Embassy of Japan,** 2627 Roxas Boulevard, Pasay City 1300. **This clearly does not constitute sufficient compliance with the rules on proof of Japan's law on divorce**. In any case, similar to the remedy that was allowed by the Court in *Manalo* to resolve such failure, a remand of the case to the RTC for further proceedings and reception of evidence on the laws of Japan on divorce is allowed, as it is hereby ordered by the Court.[48] (emphases supplied)

A similar treatment in this case is warranted considering that petitioner was able to present certified documents establishing the fact of divorce and that relaxation of the rules will not prejudice the State.[49]

Finally, it bears emphasis that relaxation of procedural rules in the interest of substantial justice underpin the liberality granted by the Court in petitions for recognition filed by Filipino spouses to free themselves from the marital ties with their foreign spouses after a divorce validly obtained abroad had effectively released the latter from all legal duties and obligations of marriage. Indeed, procedural rules are designed to secure and not override substantial justice, especially as in these cases where what is involved is a matter affecting lives of families.[50]

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[43] Supra note 39.
[44] G.R. No. 224548, January 23, 2019.
[45] 834 Phil. 21 (2018).
[46] 831 Phil. 33, 77 (2018).
[47] See *Kondo v. Civil Registrar General*, G.R. No. 223628, March 4, 2020.
[48] *Nullada v. Civil Registrar of Manila,* supra note 44.
[49] *Moraña v. Republic,* supra note 39.
[50] *Kondo v. Civil Registrar General,* supra note 47.

WHEREFORE, the petition is **GRANTED.** The January 11, 2018 Decision and March 21, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 105141 are **SET ASIDE.** The case is **REMANDED** to the Regional Trial Court of Caloocan City, Branch 121 for further proceedings and reception of evidence on the pertinent Japanese law on divorce.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
06 MAY 2021

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