

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. RUBY CUEVAS NG
A.K.A. RUBY NG SONO, RESPONDENT.***G.R. No. 249238. February 27, 2024*

Ponente: DIMAAMPAO, J.

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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 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:

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, 2[nd] 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

(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.

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]

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.

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]

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:

....

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.

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]

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 Philippine 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.

The Court does not agree.

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]

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 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 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 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 annulment or declaration of absolute nullity, or proceedings for legal separation before Philippine 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.

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.

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

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.

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 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 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.

Lazaro-Javier, Inting, M. Lopez, Gaerlan, Rosario, J. Lopez, Marquez, and Kho, Jr., JJ., concur.

Gesmundo, C.J., see separate concurring opinion.

Leonen, SAJ., with separate concurring opinion.

Caguioa, J., see concurring opinion.

Hernando and Singh, JJ., see dissenting opinion.

Zalameda, J., please see concurring opinion.

[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.

[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.

[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].

[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.

[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].

[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.

[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.

[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)

[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].

[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.*

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

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

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

[57] *Id.* at 39.

[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].

[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.*

[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].

[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)

[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.

[81] *Id.* at 595.

CONCURRING OPINION

GESMUNDO, C.J.:

This case involves Ruby Ng's (Ruby) Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry under Article 26, paragraph 2 of the Family Code, which was granted by Branch 220, Regional Trial Court of Quezon City (RTC) in its January 3, 2019 Decision. The Republic of the Philippines (Republic) filed a Motion for Reconsideration, but the RTC denied it through its September 6, 2019 Order. The case was elevated to this Court via the present Petition for Review on Certiorari.

The relevant facts are as follows: In 2004, Ruby, a Filipino citizen, and Akihiro Sono, a Japanese national,

contracted marriage in Quezon City and later had a child. After their marriage, they moved to Japan. When their relationship turned sour, they secured a "divorce decree by mutual agreement" in Japan on August 31, 2007. The divorce was duly recorded both in Japan and in Manila. In 2018, Ruby filed the Petition for Judicial Recognition before the RTC, and eventually, obtained a favorable ruling.

The Republic, through the Office of the Solicitor General (OSG), filed a Petition before this Court arguing that: (a) the RTC gravely erred in judicially recognizing a foreign divorce that was obtained by mere mutual agreement between the parties, and thus, did not undergo adversarial proceedings before a foreign court of competent jurisdiction; and (b) Ruby did not proffer an authenticated copy of the alleged Japanese Civil Code or one held by the official repository of Japanese laws and records. Ruby submitted before the RTC only an unauthenticated photocopy of the pertinent portions of the Japanese law on divorce and its corresponding English translation.

The ponencia grants the Petition of the Republic. First, it pronounces that although Philippine laws do not provide for absolute divorce, Article 26 of the Family Code extends the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. In *Basa-Egami v. Bersales*,^[1] the Court already rejected the OSG's postulate that a foreign divorce decree by mutual agreement should not be recognized here in the Philippines. Second, the ponencia acknowledges that "courts cannot take judicial notice of foreign laws."^[2] Considering that Ruby was able to establish the fact of divorce but not the Japanese law on divorce, a remand to the trial court for reception of evidence on the Japanese law on divorce is necessary.^[3]

I fully concur in the ponencia that: (a) a judicial proceeding abroad is not required for Article 26, paragraph 2 of the Family Code to apply; and (b) a remand to the trial court, instead of outright dismissal, is proper.

Article 26, paragraph 2 of the Family Code, Current jurisprudence on foreign divorce by mutual agreement

At the outset, it must be emphasized that absolute divorce is not allowed under the Philippine law. This prohibition against severance of marriages through the mode of divorce is said to be "rooted in the constitutional policy" of "protecting the inviolability of the institution of marriage."^[4] Thus, the marital bond between two Filipinos cannot be dissolved even by an absolute divorce obtained abroad. This is consistent also with the nationality principle under Article 15 of the Civil Code.^[5]

A different rule applies, however, in mixed marriages involving a Filipino citizen and a foreign national. Article 26, paragraph 2 of the Family Code allows a Filipino spouse to remarry when a divorce is validly "obtained abroad" capacitating the alien spouse to remarry. The provision reads:

Article 26. . . .

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 have capacity to remarry under Philippine law. (Emphasis supplied)

The rationale behind this provision has been clearly explained, thus: it serves as a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of their country.^[6] The provision only authorizes Philippine courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce. To underscore, Philippine courts cannot and do not try the case on the merits because doing so would be tantamount to trying a case for divorce.^[7] This provision purposefully rectifies the inequality of the situation wherein by virtue of a foreign divorce decree, the foreign spouse can remarry, but the Filipino spouse cannot.^[8]

To my mind, simply stated, Article 26, paragraph 2 of the Family Code focuses on the effect of the foreign

divorce on the Filipino spouse, thereby levelling the field for both parties in the mixed marriage. In assessing whether to give judicial recognition to the foreign divorce and consequently allow the Filipino spouse to remarry, courts do not look back to ascertain whether the foreign divorce should have been granted, but ventures forward to see whether the effects thereof should be extended to the Filipino spouse.[9]

In the process of judicial recognition of a foreign divorce decree under Article 26, paragraph 2 of the Family Code, the party pleading it has the burden to plead and prove the following as facts: (1) the national law of the foreign spouse that allows a divorce; and (2) the divorce decree obtained.[10] Notably, Article 26, paragraph 2 of the Family Code does not state that the divorce decree presented before the Philippine courts must be a decree obtained in a judicial proceeding before a foreign court. It simply requires that a divorce be "validly obtained abroad."

For this reason, in *Republic v. Orbecido III*,[11] the Court allowed a Filipino spouse to remarry after his Filipino wife became a naturalized American citizen and obtained a divorce. Tracing the legislative history of Article 26, paragraph 2 of the Family Code, the Court explained, thus:

On its face, the foregoing provision does not appear to govern the situation presented by the case at hand. It seems to apply only to cases where at the time of the celebration of the marriage, the parties are a Filipino citizen and a foreigner. The instant case is one where at the time the marriage was solemnized, the parties were two Filipino citizens, but later on, the wife was naturalized as an American citizen and subsequently obtained a divorce granting her capacity to remarry, and indeed she remarried an American citizen while residing in the U.S.A.

....

Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.

If we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26.

....

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry.[12] (Emphasis supplied)

In that case, the Court gave premium to the legislative intent behind the statutory provision by expanding its application to marriages celebrated between Filipino citizens where one of them later becomes a foreign citizen and obtains a divorce abroad.

In the seminal case of *Republic v. Manalo*,[13] the Court further expanded the application of Article 26, paragraph 2 of the Family Code by recognizing a foreign divorce that was initiated by the Filipino spouse. While the text of statutory provision specifies a divorce that is "obtained abroad by the alien spouse," the Court found it

more consistent with the legislative intent to judicially recognize a foreign divorce "without regard as to who initiated it." [14]

Following this ruling in *Manalo*, Article 26, paragraph 2 of the Family Code has been held to apply in 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. [15]

As shown in these jurisprudential pronouncements, the focus is on the residual effect of the divorce on the Filipino spouse's capacity to remarry. The rationale behind these expansions is to give depth to the legislative spirit. Clearly, the perspective of the Court has consistently been to uphold the legislative purpose behind the statutory provision.

In the present case, the foreign law involved supposedly allows a divorce to be obtained by mutual agreement of the parties, and thus, without undergoing a judicial or adversarial proceeding. In resolving the issue of whether to recognize such divorce in this jurisdiction, it is my humble view that as long as the foreign law allows a divorce decree by mutual agreement by the parties even without judicial proceedings in such foreign country, and the said foreign law is proven in evidence in the judicial proceeding before the Philippines, then it is covered by Article 26, paragraph 2 of the Family Code. Essentially this same doctrine has been adopted by the Court in previous cases involving similar facts.

In *Galapon v. Republic*, [16] 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. The Court of Appeals (CA) explained that a divorce decree obtained by mutual agreement falls outside the ambit of Article 26, paragraph 2 of the Family Code. When the case was elevated, the Court reinstated the trial court's ruling and held that the 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, paragraph 2 of the Family Code as applied to divorce decrees obtained jointly by the foreign spouse and a Filipino citizen. [17]

In the case of *In Re: Ordaneza v. Republic*, [18] the Court concisely noted 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." Hence, the "foreign divorce decree by agreement" was judicially recognized. [19]

Similarly, in *Republic v. Bayog-Saito*, [20] which involves a Filipino and a Japanese who obtained a divorce in Japan via a Notice of Divorce, the recognition of a foreign divorce decree was likewise upheld. The Japanese husband asked the Filipino wife to sign the divorce notification papers, to which the latter acquiesced. The husband then submitted the divorce document to the Mayor of Minami-ku, Yokohama City. After 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 Department of Foreign Affairs (DFA). [21] When the Filipino 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's ruling. On appeal, the Court also affirmed the ruling of the lower courts.

In that same case, [22] the Court categorically held that a foreign decree of divorce may be recognized in the Philippines even though "the divorce decree was jointly obtained by the spouses abroad." [23] 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 Japan's laws capacitated the former husband to remarry, the Court found no reason to deprive the Filipino spouse of her legal capacity to remarry under our own laws.[24]

In *Basa-Egami*,[25] the Japanese husband asked his Filipino wife for a divorce. The latter, allegedly, was initially averse to the idea, but after relentless prodding, she eventually agreed to sign the divorce papers. Thereafter, they were issued a Japanese Divorce Decree, which was duly recorded in the family registry in Nagoya City. Subsequently, the Filipino wife 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 answered in the affirmative. The Court illuminated, thus:

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.

The myopic understanding of [Article 26, paragraph 2], as incessantly advocated by the OSG, would have been sound and successful in the past, since the Court repeatedly upheld this ultra-conservative view by relying on the letter of the law that killeth, instead of choosing that spirit of the law which giveth life.[26]

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." [27]

Altogether, these cases uniformly embody the current jurisprudential rule that foreign divorce by mutual agreement is within the ambit of Article 26, paragraph 2 of the Family Code, and as such, may be judicially recognized in the Philippines. In my view, this jurisprudential rule need not be reversed.

Article 26, paragraph 2 of the Family Code only requires the divorce to be obtained validly abroad, without regard to the mode of proceedings

During the deliberations on this present Petition, a view has been expressed that the term "divorce" in Article 26, paragraph 2 of the Family Code should be construed to mean a foreign divorce obtained in judicial proceedings. Thus, 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 posit 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 submit that ruling otherwise would encourage Filipinos to circumvent our laws which prohibit annulment of marriages through collusion.

To my mind, such position fails to persuade.

First, the text of the statutory provision does not support a construction to limit recognition of foreign divorce

decrees to those issued in judicial proceedings. A plain reading of Article 26, paragraph 2 of the Family Code reveals that it only requires that the "divorce" be "validly obtained abroad." [28] The validity of the divorce is examined from the lens of the foreign law. There is nothing in Article 26, paragraph 2 which requires that the divorce decree be acquired through a judicial proceeding in a foreign country.

Case law further explains that the statute authorizes domestic 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" [29] based on our laws. As such, what needs to be proven before our domestic courts in a judicial recognition case is that the national law of the foreign spouse allows absolute divorce, and based thereon, a foreign divorce decree was obtained. [30] The statutory text 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. Again, the text merely requires that the foreign divorce be validly obtained.

Moreover, a statute must be read according to its intent. Courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators. [31] It bears reiterating that the legislative spirit animating Article 26, paragraph 2 of the Family Code is to correct the anomalous situation where the foreign spouse is free to contract a subsequent marriage while the Filipino spouse cannot. The statutory provision looks forward and focuses on the effect of the foreign divorce on the Filipino spouse. Laws have ends to achieve, and statutes should be so construed as not to defeat, but to carry out such ends and purposes. [32]

Prescinding from these premises, it is my view that the proposition to limit recognition of foreign divorce decrees only to those obtained via judicial proceedings in a foreign jurisdiction runs counter to the text of Article 26, paragraph 2 of the Family Code.

Second, it would aid the Court to put in context the two public policies advanced to support the proposition: (1) the prohibition on absolute divorce; and (2) the prohibition against collusion.

As regards absolute divorce, case law acknowledges that the following rules exist in this jurisdiction:

1. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.
2. Consistent with Articles 15 and 17 of the New Civil Code, the marital bond between two Filipinos cannot be dissolved even by an absolute divorce obtained abroad.
3. An absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.
4. In mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad [capacitating the alien spouse] to remarry. [33]

Indubitably, 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.*, [34] where the Court pronounced that:

[O]wing 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. [35] (Emphasis supplied)

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." [36]

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.

Anent mixed marriages involving a 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, paragraph 2 of the Family Code. To underscore, Article 26, paragraph 2 of the Family Code was crafted precisely to be an exception to the nationality principle^[37] on the matter of divorce. 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. Besides, none of the other provisions of the Family Code require judicial proceedings to be conducted in a foreign country in order for the divorce decree to be considered "validly obtained" in this jurisdiction.

As regards the policy against collusion, Article 48 of the Family Code prohibits it specifically in marriage annulment and nullity cases:

Article 48. 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.

It must be underscored that this provision requiring the prosecuting attorney to appear on behalf of the State to take steps to prevent collusion, which requires a judicial proceeding in a domestic court, is only applicable in cases involving annulment or declaration of absolute nullity of marriage. It neither mentions nor contemplates divorce decrees that are validly obtained abroad by foreigners or those in mixed marriages. Thus, this provision cannot be used to justify that a divorce decree obtained in a foreign jurisdiction be secured exclusively through a judicial proceeding.

Case law explains that the grant of annulment of marriage by default is fraught with the danger of collusion.^[38] Collusion has been defined as an agreement "between the 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" an annulment. Collusion would be present "if the parties had arranged to make it appear that a matrimonial offense had been committed although it was not[.]"^[39] It seemingly contemplates a wrongdoing on the part of the parties to the proceedings before the courts. Hence, to avoid collusion between the husband and the wife in marriage annulment or nullity cases, the prosecuting attorney or fiscal is directed to "appear on behalf of the [S]tate for the purpose of preventing any collusion between the parties and to take care that their evidence is not fabricated or suppressed."^[40] The purpose of the prosecutor's intervention on the State's behalf is "to preserve the integrity and sanctity of the marital bonds."^[41]

Emphasis must be made that the legal safeguard against collusion arises in cases involving annulment or declaration of absolute nullity before Philippine courts where the marriage has not yet been dissolved. Such safeguard against collusion does not apply in cases seeking judicial recognition of foreign divorce pursuant to Article 26, paragraph 2 of the Family Code, as in the present case. Here, the marriage had already been dissolved and the foreign spouse is already capacitated to remarry. What is left for the Filipino spouse to prove is that the foreign divorce decree was validly obtained abroad. Again, 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 in preventing the dissolution of the marriage in a foreign jurisdiction.

To highlight the distinction between the two proceedings, the parties in a marriage nullity or annulment case are the husband and the wife, while the party in a judicial recognition case is often the Filipino spouse. The foreign spouse is usually no longer a participant in the judicial recognition case.

To stress further, courts in cases involving judicial recognition of foreign divorce pursuant to Article 26, paragraph 2 of the Family Code do not look at the circumstances in which the divorce decree was obtained under a foreign law, as long as the divorce decree is valid under such law. Philippine courts do not dwell on the validity of the ground for divorce (i.e., with fault or no fault of one party), the type of proceeding (i.e., judicial or administrative), and consistent with the Manalo ruling, the identity of who initiated the divorce proceeding (i.e., the foreign spouse, the Filipino spouse, or both of them jointly). These matters are ascertained based on the foreign law involved. Verily, the type of proceeding by which a divorce is obtained in a foreign jurisdiction is beyond the purview of the Philippine courts. The amicable manner by which the divorce decree may be obtained, as allowed under the foreign divorce law, should be respected.

Based on the foregoing, I respectfully cannot subscribe to the view that the judicial recognition of foreign divorce decrees should be limited to those obtained in foreign judicial proceedings, which are usually adversarial in nature.

To strictly require a judicial proceeding in a foreign jurisdiction, even though it is not required by the foreign law, would result in an absurd scenario. Consider a situation wherein the couple in a mixed marriage already obtained a foreign divorce decree by mutual agreement. A directive for the Filipino spouse to institute a judicial proceeding in a foreign court would be a meaningless ritual that unduly burdens the latter in terms of time and finances. The Filipino spouse must continue to be in or regularly visit the foreign jurisdiction until the judicial proceeding is concluded because the divorce decree cannot be granted in the Philippines. There is also no incentive for the foreign spouse to take part in such judicial proceeding because from the latter's perspective, the marriage has already been dissolved. Meanwhile, the foreign spouse benefits from the legal effects of the termination of marriage, but the Filipino spouse remains married to the former.

Taking all these into account, it is my considered view that the jurisprudential pronouncements allowing foreign divorce by mutual agreement, even without a foreign judicial proceeding, should be maintained, as long as the foreign law allowing the divorce decree is likewise proven in the domestic court. This position is more consistent with both the text and the purpose behind Article 26, paragraph 2 of the Family Code.

I deem it necessary to add that within the realm of private international law, recognition and enforcement are extended to foreign sovereign acts pursuant to international comity or the comity of nations. The concept of "comity of nations" has been succinctly defined as the recognition that one nation allows within its territory to another nation's sovereign acts, whether in legislative, executive, or judicial form, 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.[42] This concept was elucidated by the U.S. Supreme Court in *Hilton v. Guyot*,[43] viz.:

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree shall be allowed to operate within the dominion of another nation depends upon what our greatest jurists have been content to call "the comity of nations." Although the phrase has been often criticized, no satisfactory substitute has been suggested.

"Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it 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.[44] (Emphasis supplied)

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.

In another case,[45] comity was further illuminated, thus:

[C]omity is not a rule of law, but it is a rule of "practice, convenience[,] and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision and discouraging repeated litigation of the same question." . . . It, therefore, rests, not on the basis of reciprocity, but rather upon the persuasiveness of the foreign judgment.[46] (Emphasis supplied, citation omitted)

For this reason, the Court has held that a petition to recognize a foreign divorce should not entail "relitigation under a Philippine court of the case as if it were a new petition for declaration of nullity of marriage." [47] The courts' review in a foreign divorce decree recognition case is limited to ascertaining the fact of divorce and the applicable foreign divorce law.[48]

Adherence to international comity allows courts to recognize divorces obtained abroad in marriages between two foreigners or between a Filipino citizen and a foreigner.[49] One author accurately stated that "[w]hile there is no provision of law requiring Philippine courts to recognize a foreign divorce decree between non-Filipinos[,] such will be recognized under the principle of international comity, provided that it does not violate a strongly held policy of the Philippines." [50] 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. Hence, the general rule prevails – that is, the dissolution of marriage which is validly obtained abroad shall be recognized in this jurisdiction.

At this point, the relevant question is this: when is the divorce considered "validly obtained" abroad to be granted recognition in the Philippines pursuant to Article 26, paragraph 2 of the Family Code? Alternatively stated, which foreign law should govern the grounds and process of the divorce?

It has been stated that "most countries exercise divorce jurisdictions on the basis of domicile of one of the parties or matrimonial domicile," [51] although some countries follow the nationality principle.[52] Whichever rule is applied, if the foreign country has jurisdiction over the domicile or nationality of the couple, "the grounds of divorce and the method of procedure recognized at that place will control." [53] Hence, if that foreign country allows divorce through a nonjudicial proceeding, such shall be controlling and respected in Philippine courts by virtue of international comity.

Illustrative is the case of *Kapigian v. Der Minassian* [54] where a U.S. court recognized a foreign divorce without the necessity of judicial proceedings, as allowed under Turkish law. The case involved the dissolution of a marriage between Turkish nationals who were domiciled in Turkey. In that case:

The husband came to the United States without his wife, intending to return to her later. The wife afterwards renounced the Christian religion and married a Mohammedan which, under the law of Turkey, constitutes a divorce without the necessity of legal proceedings. The husband thereupon married again in the United States. Later the second wife sought to annul the marriage on the ground of a previous subsisting marriage. It was decided that as the parties to the first marriage were domiciled in Turkey at the time of the act constituting a divorce, it would be recognized as valid in Massachusetts. The court said: "under the law of Turkey, a public and notorious fact, which constitutes a ground for divorce in most if not in all civilized countries allowing any divorce, is treated as of itself severing the marriage relation. There is nothing in this law so revolting to the

moral sense of a Christian nation as to prevent recognition and enforcement by its courts." [55] (Emphasis supplied)

Aside from Turkey, nonjudicial or administrative divorce is also allowed in several other foreign jurisdictions and takes various forms, viz.:

In Russia and Japan, divorce with mutual consent is relatively a simple procedure, not requiring judicial approval or intervention for its validity. Jewish law requires the sending of a letter of repudiation with the cooperation of several rabbis. Ireland, Quebec[,] and New Zealand admit divorce by special Act of Parliament. Denmark and Norway admit a divorce issued by the King or some administrative body. In Germany, a court may grant divorce on either of two grounds: marriage breakdown or mutual agreement. [56]

In the Philippine context, the Court, in *Moraña v. Republic*, [57] recognized a divorce obtained by the parties through a nonjudicial process pursuant to the foreign law of Japan. That case involved a Filipino woman and a Japanese man who were married in the Philippines, moved to live in Japan, and later obtained a divorce by agreement. The lower courts declined to consider the Divorce Report as proof of the fact of foreign divorce. In reversing the lower courts' ruling, the Court held, thus:

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. [58] (Emphasis)

With such pronouncement, the Court effectively recognized the applicability of the divorce laws of Japan, which is the country of domicile of the divorced couple and of nationality of the husband. It was shown in said case that Japan's divorce laws allow its citizens and domiciliaries to undergo a nonjudicial divorce process. To use the phrase in Article 26, paragraph 2 of the Family Code, the divorce was considered "validly obtained" in the proper foreign jurisdiction, and thus, can be recognized by Philippine courts. To my mind, this ruling is consistent with international comity.

In the present case, the factual circumstances show that the spouses involved were also domiciled in Japan and the former husband was a Japanese national. Applying either the domicile of both parties or the nationality of the foreign spouse, the laws of Japan govern the divorce between them. As such, the grounds of divorce and the method of procedure in Japan is controlling in this case. Therefore, the divorce by mutual agreement between the parties shall be recognized in Philippine courts.

The case must be remanded to the trial court for reception of evidence on the pertinent Japanese law on divorce

As stated earlier, in the process of judicial recognition of a foreign divorce decree, the party pleading it has the burden to plead and prove the following as facts: (1) the national law of the foreign spouse; and (2) the divorce decree. [59] The rule is that any declaration recognizing the foreign divorce decree can be made only upon petitioner's complete submission of evidence.

In the present case, Ruby was able to prove the fact of divorce when she submitted into evidence the following documents as detailed in the ponencia:

(1) An authenticated Divorce Certificate issued by the Embassy of Japan in the Philippines; (2) Certificate of Acceptance of Notification of Divorce; (3) Certification by the City Civil Registry Office of Manila acknowledging that a Divorce Certificate has been filed and recorded in their office; and (4) An original copy

of the Family Registry of Japan 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.[60] (Emphasis supplied)

As argued by the Republic, however, Ruby failed to prove the divorce law of Japan, noting that she only presented an unauthenticated photocopy of the pertinent portions of the Japanese law on divorce and its corresponding translation.[61]

The ponencia holds that, instead of dismissing the case, the proper ruling is to remand the case to the trial court for reception of evidence on the foreign law on divorce.

I agree.

To reiterate, the petitioner in a case for judicial recognition of foreign divorce has the burden to prove entitlement to such recognition. As the party seeking the grant of judicial recognition of the foreign divorce decree, it is incumbent upon Ruby to prove not only that a foreign divorce has been obtained, but also that the applicable foreign law has capacitated the foreign spouse to remarry. Only then can she successfully obtain the grant of judicial recognition of the foreign divorce.

Moreover, well-settled is the rule that "our courts do not take judicial notice of foreign judgments and laws," which the Court explained, thus:

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.[62] (Emphasis supplied)

To my mind, the stringent evidentiary requirements in a judicial recognition case should be maintained. Ruby still possesses the burden of proving the facts necessary for the grant of the recognition.

It must be noted that judicial notice dispenses with the need for proof. Case law explains that judicial notice signifies that there are certain "facta probanda," or propositions in a party's case, as to which such party will not be required to offer evidence; these will be taken as true by the tribunal without the need of evidence.[63] It is "based upon convenience and expediency for it would certainly be superfluous, inconvenient, and expensive both to the parties and the court to require proof, in the ordinary way, of facts which are already known to courts." [64]

During the deliberations on this case, it was proposed that the Court should take judicial notice of the relevant Japanese law on divorce based on its English translation as contained in the Office of the Court Administrator's (OCA) compilation of foreign divorce laws as circulated to the trial courts via OCA Circular No. 157-2022-A.[65] It was posited that the Japanese law's provision on divorce is "capable of questionable demonstration and ought to be known to the courts by virtue of their judicial functions,"[66] considering that the English translation thereof was already provided by the Japanese government itself, upon request by the OCA and the DFA.

This proposition invites us to assess the evidentiary value of the foreign divorce laws as contained in the OCA's compilation. In my view, although the OCA's compilation is helpful in enabling courts to have a preliminary reference, it does not dispense with the requirement for Ruby to comply with Rule 132, Sections 24 and 25 of the Revised Rules on Evidence, which state:

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 [or her] deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

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 be any, or if he [or she] be the clerk of a court having a seal, under the seal of such court. (Emphasis supplied)

The evidentiary requirements were further explained in *Rivera v. Woo Namsun*,^[67] thus:

As the foreign divorce decree allegedly issued by the Seoul Family Court, as well as the Civil Act of South Korea purports to be official acts of a sovereign authority, they may be established by complying with the requirements of Sections 24 and 25, Rule 132 of the Rules of Court, which states:

. . . .

Otherwise stated, to prove the foreign judgment and the law on which it was based, the Section requires 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.^[68] (Emphasis supplied)

The OCA Circular No. 157-2022-A states the means by which the texts and/or English translation of the foreign divorce laws were secured:

The texts of these laws, and/or their English translations, were officially transmitted to the Philippine Embassies and Consulates by the Ministry of Foreign Affairs [or] 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.^[69] (Emphasis supplied)

While the texts 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 (i.e., "official publications" or "copies attested by the officer having legal custody of the documents"). Notably, some of the texts were transmitted only by "indicating the official website or online link" where the supposed authentic copies are 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. 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 may or may not be considered as having legal custody of official record. These uncertainties prevent us from granting judicial notice of the foreign laws included in the compilation.

This brings us back to the prevailing rule that our courts do not take judicial notice of foreign laws. Therefore, the authenticity of foreign laws involved must be proven as facts pursuant to our rules on evidence.

Again, jurisprudence instructs that 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."^[70]

Considering that the evidentiary requirements to prove the pertinent provisions of the Japanese law on divorce were not established, this case should be properly remanded to the court a quo.

Notably, even in *Manalo*, the Court did not take judicial notice of the foreign law explaining, thus: 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.^[71] It emphasized that "the burden of proving" the pertinent Japanese law, as well as the foreign spouse's capacity to remarry, fall squarely upon therein petitioner. As a measure of liberality, it remanded the case to the court of origin for further proceedings and reception of evidence as to the relevant law on divorce.

In *Kondo v. Civil Registrar General*,^[72] it was stated that the Court has "time and again granted liberality in cases involving the recognition of foreign decrees to Filipinos in mixed marriages and free them from a marriage in which they are the sole remaining party."^[73] Such liberality was expressed through the remand of the case to the court a quo in order to conform with the requirements under the Rules on Evidence.

Similarly, in *Morisono v. Ryoji Morisono*,^[74] the Court explained that it cannot just order the grant of the petition for recognition of the foreign divorce decree, as therein petitioner has yet to prove that the divorce by agreement was obtained in Japan, and is in conformity with the Japanese laws on divorce. Considering that the trial court did not rule on these issues and that such questions require an examination of factual matters, the Court found that a remand to the court a quo was warranted.

In *Kondo*,^[75] the case was likewise remanded to the court a quo for the presentation in evidence of the pertinent Japanese law on divorce, as well as the document proving that the foreign spouse was recapacitated to remarry.

ACCORDINGLY, I vote that the Petition be GRANTED and that this case be REMANDED to the court a quo for reception of evidence on the pertinent Japanese law on divorce.

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

[2] Ponencia, p. 13.

[3] *Id.* at 17–18.

[4] *Republic v. Bayog-Saito*, G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division] at 7, n.55. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[5] Article 15 of the CIVIL CODE states that "[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

[6] *Minoru Fujiki v. Marinay*, 712 Phil. 524, 555 (2013) [Per J. Carpio, Second Division].

[7] *Id.*

[8] *Id.* at 556. "If the foreign judgment is not recognized in the Philippines, the Filipino spouse will be discriminated — the foreign spouse can remarry while the Filipino spouse cannot remarry."

[9] *Medina v. Michiyuki Koike*, 791 Phil. 645, 651 (2016) [Per J. Perlas-Bernabe, First Division]. The Court held that "the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse[.]"

[10] See *Republic v. Bayog-Saito*, G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division] at 8 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website); *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); *Racho v. Seiichi Tanaka*, 834 Phil. 21, 24 (2018) [Per J. Leonen, Third Division].

[11] 509 Phil. 109 (2005) [Per J. Quisumbing, First Division].

[12] *Id.* at 113–115.

[13] 831 Phil. 33 (2018) [Per J. Peralta, En Banc].

[14] *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division] at 10, n.39. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[15] *Galapon v. Republic*, 869 Phil. 351, 364 (2020) [Per J. Caguioa, First Division].

[16] *Id.*

[17] See also *Abel v. Rule*, G.R. No. 234457, May 12, 2021 [Per J. Leonen, Third Division] at 10 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website), where the Court, citing *Manalo* and *Galapon*, held that Article 26, paragraph 2 of the Family Code "does not impose an additional requirement for the alien spouse to solely obtain the divorce." Hence, the foreign divorce was recognized.

[18] G.R. No. 254484, November 24, 2021 [Per J. Carandang, Third Division].

[19] *Id.* at 11. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[20] G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].

[21] *Id.* at 2. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[22] *Republic v. Bayog-Saito*, G.R. No. 247297, August 17, 2022 (Per J. Inting, Third Division).

[23] *Id.* at 7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[24] *Id.* at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[25] *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].

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

[27] *Id.* at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[28] *Abel v. Rule*, G.R. No. 234457, May 12, 2021 [Per J. Leonen, Third Division] at 10 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website); *Republic v. Manalo*, 831 Phil. 33, 57 (2018) [Per J. Peralta, En Banc].

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

[30] See *Racho v. Seiichi Tanaka*, 834 Phil. 21, 24 (2018) [Per J. Leonen, Third Division].

[31] *League of Cities of the Philippines v. Commission on Elections*, 623 Phil. 531, 548 (2009) [Per J. Velasco, Jr., En Banc].

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

[33] *Republic v. Manalo*, 831 Phil. 33, 48–49 (2018) [Per J. Peralta, En Banc].

[34] 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

[35] *Id.* at 362.

[36] *Republic v. Manalo*, 831 Phil. 33, 54 (2018) [Per J. Peralta, En Banc].

[37] See *J. Caguioa*, Dissenting Opinion in *Republic v. Manalo*, 831 Phil. 33, 89 (2018) [Per J. Peralta, En Banc].

[38] *Tuason v. Court of Appeals*, 326 Phil. 169, 180 (1996) [Per J. Puno, Second Division].

[39] *De Ocampo v. Florenciano*, 107 Phil. 35, 39 (1960) [Per J. Bengzon, En Banc].

[40] *Tuason v. Court of Appeals*, 326 Phil. 169, 180 (1996) [Per J. Puno, Second Division].

[41] *Tolentino v. Villanueva*, 155 Phil. 1, 5 (1974) [Per J. Makasiar, First Division].

[42] See *Sison v. Board of Accountancy*, 85 Phil. 276, 282 (1949) [Per J. Torres, En Banc], citing *Hilton v. Guyot*, 159 U.S. 113 (1895).

[43] *Id.*

[44] *Id.* at 163–164.

[45] See JOVITO R. SALONGA, *PRIVATE INTERNATIONAL LAW*, 69 (1995 ed.), citing *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381 (1926).

[46] *Johnston v. Compagnie Generale Transatlantique*, *id.* at 387.

[47] *Minoru Fujiki v. Marinay*, 712 Phil. 524, 546 (2013) [Per J. Carpio, Second Division].

[48] *Id.* Indeed, "[Philippine courts] cannot substitute their judgment on the status, condition and legal capacity of the foreign citizen who is under the jurisdiction of another state."

[49] *Republic v. Manalo*, 831 Phil. 33, 50 (2018) [Per J. Peralta, En Banc]. "Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality, but the legal effects thereof, [e.g.], on custody, care and support of the children or property relations of the spouses, must still be determined by our courts."

[50] JORGE R. COQUIA and ELIZABETH A. PANGALANGAN, *CONFLICT OF LAWS: CASES, MATERIALS AND COMMENTS* 287 (2000 ed.); see Article 15 of the of the Civil Code which applies only to Filipino citizens: "[l]aws relating to family rights and duties or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." (Emphasis supplied)

[51] COQUIA and PANGALANGAN, *id.* at 275.

Most countries exercise divorce jurisdiction on the basis of domicile of one of the parties or matrimonial domicile. The rationale for this is that divorce, being a matter of concern of the state, should be controlled by the "law of the place with which the person is most intimately concerned, the place where he dwelleth and hath his home." Likewise, due process requires that the forum court have a substantive contact with the relationship which by its laws it will decide whether or not to dissolve. (Emphasis supplied, citation omitted)

See also ARTHUR K. KUHN, *COMPARATIVE COMMENTARIES ON PRIVATE INTERNATIONAL LAW OR CONFLICTS OF LAW*, 159–160 (1937).

. . . We have seen that marriage is regarded as a status as well as a mode of life. Therefore, it seems reasonable to accord to the state in which this mode of life is centralized, namely, the state of [domicile], the power to dissolve it. It has been said: "The process of divorce is provided for because the lawmaking body deems it for the best interest of the parties and the state that, under certain conditions, which it sets out as grounds for

divorce, individuals should no longer be compelled to maintain the relations of husband and wife." It is in the nature of marriage that, though entered into under the local law of a particular country, it may be modified or dissolved by the sovereign power of any country where the parties may be domiciled.

Although originating in contract, marriage is a domestic relation in which the state has an immediate interest, and each state to which the parties remove has a similar interest; "and as every nation and state has an exclusive sovereignty and jurisdiction within its own territory, so it has exclusively the right to determine the domestic and social condition of the persons domiciled within that territory." The place of the contract, therefore, should give way to the place where the relationship subsists, if the parties have removed from the former.

[52] See SALONGA, *supra* note 45, at 285. "Aliens may obtain divorces abroad which may be recognized in the Philippines, provided they are valid according to their national law."

Note: While there have been attempts to codify through international agreements common standards for the recognition and enforcement of divorce, separate from the recognition and enforcement of foreign judgments, such efforts are still in its early stages. One of the prominent efforts on this front, with only 20 contracting parties to date, is the Convention on the Recognition of Divorces and Legal Separations (1970 HCCH Divorce Convention), Article 2 of which acknowledges jurisdiction over the divorce in the State where either of the parties are nationals or domiciliaries. (Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, Entry into force: 24-VIII-1975, "Number of Contracting Parties to this Convention: 20," available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80> (last accessed on February 20, 2024).

[53] KUHN, *supra* note 51, at 167.

[54] 212 Mass. 412 (1912).

[55] KUHN, *supra* note 51, at 167.

[56] SALONGA, *supra* note 45, at 285–286.

[57] 867 Phil. 578 (2019) [Per J. Lazaro-Javier, First Division].

[58] *Id.* at 593.

[59] See *Republic v. Bayog-Saito*, G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division] at 11 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website); *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division] at 11 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website); *Racho v. Seiichi Tanaka*, 834 Phil. 21, 24 (2018) [Per J. Leonen, Third Division].

[60] Ponencia, p. 14.

[61] *Id.* at 17.

[62] *Corpuz v. Sto. Tomas*, 642 Phil. 420, 432–433 (2010) [Per J. Brion, Third Division].

[63] *People v. Rullepa*, 446 Phil. 745, 768 (2003) [Per J. Carpio Morales, En Banc].

[64] *Id.*

[65] *Compilation of the Laws of Foreign Countries on Marriage and Divorce*.

[66] Rule 129, sec. 2 of the Revised Rules on Evidence provides that judicial notice is discretionary on "matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges

because of their judicial functions." (Emphasis supplied)

[67] G.R. No. 248355, November 23, 2021 [Per J. Lopez, J., First Division].

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

[69] OCA Circular No. 157-2022-A, Compilation of the Laws of Foreign Countries on Marriage and Divorce, pp. 1–2.

[70] *Rivera v. Woo Namsun*, G.R. No. 248355, November 23, 2021 [Per J. Lopez, J., First Division] at 1. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

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

[72] 872 Phil. 251 (2020) [Per J. Lazaro-Javier, First Division].

[73] *Id.* at 263.

[74] 834 Phil. 823 (2018) [Per J. Perlas-Bernabe, Second Division].

[75] 872 Phil. 251 (2020) [Per J. Lazaro-Javier, First Division].

CONCURRING OPINION

LEONEN, SAJ.:

This case involves a Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry filed by respondent Ruby Ng a.k.a. Ruby Ng Sono (Ng), based on Article 26 of the Family Code of the Philippines.

In 2004, Ng, a Filipino citizen, married a Japanese national and moved to Japan with him. On August 31, 2007, she and her then husband obtained a divorce decree by mutual agreement.[1]

On May 28, 2018, Ng filed before the Regional Trial Court a Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry. Among others, her Petition was supported by the following documents: (1) Divorce Certificate issued by the Embassy of Japan in the Philippines; (2) Authentication Certificate by the Department of Foreign Affairs in Manila; (3) Certificate of Acceptance of Notification of Divorce by the Department of Foreign Affairs in Manila; (4) Certification of the filing and recording of Divorce Certificate in the City Civil Registry Office of Manila; (5) Original Copy of the Family Registry of Japan with its English translation, bearing the official stamp of the Mayor of Nakano-Ku, Tokyo, Japan, showing the divorce was duly recorded in the Civil Registry of Japan.[2]

The Regional Trial Court judicially recognized Ng's divorce and declared her capacitated to remarry.[3]

Petitioner Republic of the Philippines (the Republic) elevated the trial court's ruling to this Court, arguing that a divorce by agreement cannot be recognized in the Philippines because a foreign divorce has to have been decided by a court of competent jurisdiction to be judicially recognized. It also argued that respondent failed to prove the law in Japan on divorce.[4]

The ponencia denied the Petition, ruling that Article 26(2) of the Family Code covers all valid divorces, whether initiated by the foreign national, the Filipino, or both, and whether it was obtained amicably or through adversarial proceedings.[5]

I concur with the ponencia.

In *Republic v. Manalo*,^[6] this Court ruled that a valid divorce obtained abroad, even if it was at the behest of the Filipino and not the foreign national, may be judicially recognized in our jurisdiction. This Court explained that Article 26(2) of the Family Code is meant to avoid the unjust scenario where a Filipino is still married to a foreign national, even if the latter is free and able to remarry another person on account of their valid divorce abroad.

Considering this rationale, it is congruous to apply Article 26(2) of the Family Code to all types of foreign divorces— so long as they were validly obtained and they conform to the foreign law that allows it.

As discussed by the ponencia, this has been reiterated in several cases already, and I see no reason to depart from this ruling. I thus respectfully disagree with my esteemed colleagues who raise concerns relating to the public policy against absolute divorce.

Firstly, the law itself is clear. Article 26(2) of the Family Code reads:

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 a 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.

A plain reading of the provision shows that the divorce need only be validly obtained abroad by the alien spouse.

Thus, to require that the divorce be obtained through a foreign court of competent jurisdiction is to insert a condition not provided in the law. To impose this as an additional requirement amounts to judicial legislation.

Justice Maria Filomena Singh points that the procedural rule governing the recognition of foreign divorces applies only to judgments, final orders, or issuances of courts and foreign tribunals.^[7] It does not provide for the recognition of divorces obtained extrajudicially, including those by mutual consent of the parties.

However, the lack of a clear procedural rule for a process should not be used as a basis to deny a substantive right. The solution is to promulgate the rules of procedure for it, not to suggest that the substantive right is not recognized. Ultimately, procedural rules give way to substantive law.

I understand the concern raised regarding collusion.^[8] However, collusion implies an illicit collaboration or an intention to deceive. It is done to obtain a result through dishonest means. This cannot be likened to mutual agreement openly and candidly expressed.

The same principle applies to the need for a full and fair hearing.^[9] It may be necessary when both parties are not in agreement about any matter and are articulating allegations against each other. However, when the parties themselves are in mutual agreement, the involvement of the courts may not be necessary.

Justice Ramon Paul Hernando and Justice Singh raise the public policy against absolute divorce^[10] and its application to all Filipinos because of Article 15 of the Civil Code.^[11] They argue that to recognize foreign mutual consent divorces is to facilitate circumvention of the law.^[12]

However, I find it to be counterintuitive to assume that persons will be marrying their partners just because they can divorce them. Secondly, to assume that Filipinos will be encouraged to circumvent the law erroneously takes the autonomy of the foreign spouse out of the equation. The foreigner, as the spouse, has a say in the marriage and the divorce. The Filipino spouse does not decide these matters by themselves.

In any case, Justice Hernando himself recognizes that we already impose a tedious judicial process for the recognition of a foreign divorce.[13] This in itself ensures that divorces obtained abroad are not easily accepted as fact in our jurisdiction. Thus, even if the parties obtained it by mutual consent in another country, it will not be recognized in our country until it is sufficiently proven in a judicial proceeding.

Finally, granting parity and protection to Filipino spouses is not inconsistent with State policies.

Prior to the enactment of the Family Code, this Court has upheld the intent to do justice to the Filipino spouse in *Van Dorn v. Romillo, Jr.*: [14]

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. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which divorce dissolves the marriage . . .

. . . .

Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, et. Seq. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.[15]

Thus, and as mentioned, Article 26(2) of the Family Code and this Court's ruling in *Manalo* emphasized on reasonability: It is unreasonable for a person to remain married without a spouse.

In my separate concurring opinion in *Manalo*, I added that this interpretation is consistent with the State policy under our Constitution, laws, and treaties to ensure the equality of women and men before the law. Likewise, allowing divorces is more consistent with the constitutional mandate of valuing human dignity and guaranteeing full respect of human rights:

. . . divorce is more consistent with the constitutionally entrenched fundamental freedoms inherent in individuals as human beings. It is also most consistent with the constitutional command for the State to ensure human dignity.

The restrictive nature of our marriage laws tends to reify the concept of a family which is already far from the living realities of many couples and children. For instance, orthodox insistence on heteronormativity may not compare with the various types of care that various other "non-traditional" arrangements present in many loving households.

The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are dominant in government regard as romantic. In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.

In other words, words that describe when we love or are loved will always be different for each couple. It is

that which we should understand: intimacies that form the core of our beings should be as free as possible, bound not by social expectations but by the care and love each person can bring.

Yet, the present form and the present interpretation we have on the law on marriage constrains. In love, there are no guarantees. In choosing our most intimate partners, we can commit mistakes. It is but part of being human.

Our law cruelly defines the normal. The legal is coated in a false sense of morality poorly reasoned. It condemns those who have made bad choices into a living inferno.

. . . .

A world whose borders are increasingly becoming permeable with the ease of travel as well as with the technological advances will definitely foster more inter-cultural relationships. These relationships can become more intimate.

I am of the belief that the law never intended for the Filipino to be at a disadvantage. For so long as the Constitution itself guarantees fundamental equality, the absurd result from a literal and almost frigid and unfeeling interpretation of our laws should not hold. To say that one spouse may divorce and the other may not contributes to the patriarchy. It fosters an unequal relationship prone to abuse in such intimate relationships.

The law is far from frigid. It should passionately guarantee equality and I stand with this Court in ensuring that it does.[16]

I reiterate these sentiments in this concurring opinion. A restrictive position on the marital relations of individuals tends to run contrary to the constitutional mandates of (1) protecting the family as a basic autonomous social institution; (2) ensuring the fundamental equality of men and women before the law; and (3) valuing human dignity and full respect of human rights.

The Constitution recognizes marriage as an inviolable social institution which deserves State protection, serving as the foundation of the family.[17] In turn, "[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution." [18] In the 1987 Constitution, Article XV, "[t]he State recognizes the Filipino family as the nation's foundation. Accordingly, it shall strengthen its solidarity and actively promote its total development." [19]

The Constitution, thus, is clear in its intent. However, our laws on marriage do not reflect these principles. Society regulates via culture. Laws are created by and are a result of the dominant culture in society. Laws contribute to the hegemony. Thus, not all laws are just and equitable. This is seen in the predominance of heteronormativity and patriarchy in our legal system, especially in our laws on marriage.

To restrict ourselves to the heteronormative idea that a family consists of a married man and woman and their child is to remain blind to actual societal realities. Many families thrive and are able to form the strongest of relationships, leading happy and fulfilling lives without the concept of husbands, or wives, or fathers, or mothers, or children. While the traditional idea of a family will remain prevalent, the conventional form is not necessary for a unit to flourish and raise upstanding citizens and respectable and responsible members of society. Marriage could assist in creating harmonious relations in families, considering that its very nature implies a strong, supposedly irrevocable bond. However, there are many instances when marriage creates the opposite of harmony on account of various factors, and the termination or absence of marital ties can achieve the balanced, congenial, peaceful atmosphere the State aims for familial relations.

It is noteworthy that the Constitution does not require families to be in a particular configuration. The constitutional policies in relation to family are limited to defending the rights essential to achieve the State

objectives. Article XV, Sections 3 and 4 of the 1987 Constitution reads:

SECTION 3. The State shall defend:

- (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
- (2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;
- (3) The right of the family to a family living wage and income; and
- (4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

What the Constitution protects, thus, is not how families are formed. It emphasizes what must be prioritized: parental autonomy balanced with parental duty, care and protection of children, a family living wage and income, options to participate in matters that affect them, and consideration for elderly members.

Restrictions against divorce likewise run contrary to the State policy to value human dignity and to guarantee full respect for human rights.[20]

The State should be wary of interfering in the personal relations of individuals, especially relating to marriage, as the tendency is to impinge on the right to intimacy, which is closely linked to the right to privacy.

The right to privacy is enshrined in our Constitution and in our laws. It is defined as "the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities." It is the right of an individual "to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Simply put, the right to privacy is "the right to be let alone." [21]

While a social institution, marriage is, at its root, a relationship between two people. Each marriage is unique, shaped by its parties, and involves private decisions that need not be intruded upon by the public or interfered with by the State. While the State may be interested in what might result from it, it should not, and could not, exercise control over affairs involving intimacy, affection, and attachment—relations brought about by a necessary combination of autonomy and sincerity. It cannot be forced for it to be genuine. In these affairs, individuals are entitled to their freedom and privacy.

As it is, our laws on marriage intrude upon a number of private rights—matters relating to intimacy and our individual autonomy. The State touches upon who we marry, under what conditions to maintain it, and how it can be terminated. Should the State go so far as to discourage its citizens from marrying foreigners just because of its public policy against divorce? I find that the State should be wary to not be so restrictive. Those who choose to marry foreigners are placed in a position different from two Filipinos marrying each other. The State, thus, should not turn a blind eye to their special circumstances, let alone punish them for exercising their right to wed the person they want to marry.

Finally, to subscribe to heteronormative models in matters relating to marriage and family likewise runs conflicts with the State policy to ensure equality of men and women before the law.

The insistence on the traditional formula of what a family is and the roles each member plays reinforces

patriarchal beliefs. It results in the othering of persons and the stereotyping of relationships without understanding context or nuance. It automatically looks away from actual realities in favor of a possibly outdated "ideal" or "usual" scenario. For the State to insist this restricted point of view results in laws or policies not rooted in reality. Necessarily, it achieves a result different from what is intended.

In all cases relating to Article 26 of the Family Code, the arguments against divorce are rooted on the inaccurate assumption that divorce is always unfavorable to family relations. However, in actual experience, there are numerous instances when the mutual agreement to terminate a marriage has prevented heightened hostility and resulted in a more hospitable, peaceful environment for children.

I thus subscribe to the position that the State must no longer insist on a black and white perspective of what constitutes a family and acknowledge the many grey areas—the ambiguities between polarities.[22] It is time to recognize that one type of familial relation need not be idealized and demanded over another to fulfill the State's constitutional mandates.

ACCORDINGLY, I vote to deny the Petition for Review on Certiorari.

[1] Ponencia, p. 2.

[2] Id.

[3] Id. at 3.

[4] Id.

[5] Id. at 5.

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

[7] RULES OF COURT, Rule 39, sec. 48; J. Singh, Dissenting Opinion, p. 5.

[8] J. Lazaro-Javier, Reflections, p. 3.

[9] J. Hernando, Reflections, p. 3.

[10] J. Hernando, Reflections, pp. 3-4; J. Singh, Dissenting Opinion, p. 6.

[11] CIVIL CODE, art. 15 states: Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

[12] J. Hernando, Reflections, p. 4; J. Singh; Dissenting Opinion, p. 8.

[13] J. Hernando, Reflections, p. 3.

[14] Van Dorn v. Romillo, Jr., 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

[15] Id. at 362-363.

[16] J. Leonen, Separate Opinion in Republic v. Manalo, 831 Phil. 33, 83-85 (2018) [Per J. Peralta, En Banc].

[17] CONST., art. XV, sec. 2.

[18] CONST., art. II, sec. 12.

[19] CONST., art. XV, sec. 1.

[20] See CONST., art. 2, sec. 11.

[21] Spouses Hing v. Choachuy, Sr., 712 Phil. 337, 348 (2013) [Per J. Del Castillo, Second Division].

[22] See SIMONE DE BEAUVOIR, ETHICS OF AMBIGUITY (1947).

CONCURRING OPINION

CAGUIOA, J.:

I concur.

I.

Article 26 of the Family Code 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 a 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. (Emphasis supplied)

In *Republic v. Orbecido III*,^[1] the Court held that the twin elements for the application of paragraph 2 are:

(1)

There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and

(2)

A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.^[2]

There appears to be no dispute as to the first element.

With respect to the second element, the Court in *Republic v. Manalo*^[3] (Manalo) held that the word "obtained" does not mean "initiated," such that Article 26(2) would apply even if it was the Filipino spouse who initiated the divorce since, in the end, the divorce was still "obtained" by the foreign spouse.^[4]

In my Separate Opinion therein, I disagreed with the majority on that point and submitted that Article 26(2) of the Family Code is a narrow exception to the nationality principle found in Article 15 of the Civil Code. In my view, Article 26(2) merely recognizes the residual effect that a foreign divorce obtained abroad by the foreign spouse would have on the Filipino spouse who remains unable to remarry under Philippine law. Article 26(2) thus allows the Filipino spouse to remarry in such a situation. However, Article 26(2) should not operate when it is the Filipino spouse who initiates and obtains the foreign divorce (as in the case of *Manalo*), for that would be to allow him or her to evade the effects of the nationality principle which does not recognize divorce as a mode of terminating a marriage.

In subsequent cases,^[5] I concurred in the applicability of Article 26(2) in cases where both the Filipino and foreign spouse jointly initiate and obtain the foreign divorce. I maintained my position in *Manalo* and explained that Article 26(2) should apply in a case where the Filipino spouse jointly initiates and obtains the divorce with the foreign spouse because the requirement of the law is still satisfied—the divorce was initiated and obtained by

the foreign spouse, albeit with the conformity of the Filipino spouse. That said, while I maintain my view in Manalo, that does not apply in the present case because, unlike in Manalo, the foreign divorce here was initiated and obtained by both the Filipino spouse and the foreign spouse.

Back to the present case, jurisprudence further requires the following to be proven: (1) the fact of divorce;^[6] (2) that such divorce conforms to the national law of the foreign spouse;^[7] and (3) under the national law of the foreign spouse, the divorce capacitates such foreign spouse to remarry.^[8]

In this case, however, only the fact of divorce was proven by the respondent. The fact of divorce, though not also disputed by the Office of the Solicitor General,^[9] is shown by the following pieces of evidence submitted by the respondent: (1) an authenticated Divorce Certificate issued by the Japanese embassy in the Philippines; (2) a Certificate of Acceptance of Notification of Divorce; (3) a Certification by the Civil Registry Office of Manila City acknowledging that a Divorce Certificate has been filed and recorded in their office; and (4) an original copy of the Family Registry of Japan issued by the Mayor of Nakano-Ku, Tokyo, Japan, with its English translation, showing that the fact of divorce was duly recorded in the Civil Registry of Japan.^[10]

As to the national law of the foreign spouse, it is unfortunate that the respondent only presented an unauthenticated photocopy of the relevant provisions of the Japanese Civil Code and its corresponding English translation. Nonetheless, if it would appear later on, after the reception of evidence pursuant to the ponencia's remand, that the English translation of the Japanese law is similar to the Japanese law provisions proven in previous cases decided by the Court, I believe that respondent's Petition should be granted.

Culled from decided cases which granted the petition for recognition filed by the parties,^[11] the relevant provisions of the Japanese Civil Code provide:

(Termination of Matrimonial Relationship)

Article 728. The matrimonial relationship is terminated by divorce.

....

Section 4 Divorce

Sub-Section 1 Divorce by Agreement

(Divorce by agreement)

Article 763. Husband and wife may effect divorce by agreement.

(Application mutatis mutandis of the provisions on marriage)

Article 764. The provisions of Articles 738, 739 and 747 shall apply mutatis mutandis to a divorce by agreement.

(Notification of divorce)

Article 765. The notification of divorce may not be accepted unless the divorce does not contravene the provisions of Article 739 paragraph 2 and Article 819 paragraph 1, and of other laws and ordinances.

2. The validity of divorce shall not be affected even in cases where the notification of divorce has been accepted in contravention of the provisions of the preceding paragraph.^[12]

From the foregoing provisions, it is evident that the divorce in the present case conforms to the national law of the Japanese husband and thereby recapacitated him to remarry. Under Article 763, the spouses may divorce each other by agreement; which is done through a notification made by the spouses. Here, it appears that the spouses agreed on the divorce, notified the Mayor of Nakano-Ku, Tokyo, and caused its registration in the Civil Registry of Japan.^[13] Under Article 763, it is clear that the-divorce by mutual agreement capacitated the respondent's Japanese spouse to remarry. Thus, if the respondent is able to prove the Japanese Civil Code provisions above, her Petition for recognition should be granted since all the elements for the application of Article 26(2) are present.

II.

During the deliberations, some of my esteemed colleagues took the position that Article 26(2) should not apply in the present case because: (1) Article 26(2) applies only to foreign divorce decrees issued by a foreign court, and not to a divorce decree by mutual agreement, as in this case; and (2) recognizing the divorce by mutual agreement would be repugnant to the Philippines' policy against dissolving marriages based on "collusion" of the parties.

I respectfully differ.

Foreign divorces obtained by mutual agreement are included within the ambit of Article 26, paragraph 2

To reiterate, Article 26 of the Family Code 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 a 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. (Emphasis supplied)

From a plain reading of the provision, it is clear that Article 26(2) does not distinguish between a divorce obtained judicially and one obtained not through a judicial process. Under the plain-meaning rule, or *verba legis*, when the law is clear and unambiguous, there is no room for interpretation; only application.^[14] Moreover, where the law does not distinguish, neither should the Court. *Ubi lex non distinguit nec nos distinguere debemus*.^[15] "[G]eneral words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law."^[16]

In the present case, since the provision employs the word "divorce"—without any qualification as to its form—it should apply to a divorce whether obtained through judicial process or not. The Court is bound by the words of the statute and cannot put words in the mouths of the lawmakers, for the legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.^[17] Indeed, had the legislature intended to make a distinction between divorces obtained through a judicial process and those that were not, it could have easily done so by qualifying "divorce" with the word "judicial" or "decree." But the legislature did not do this, and it is presumed that this lack of distinction was intentional. Any perceived deficiency in the language of Article 26(2) may only be corrected by legislation, not by the Court's judicial power.

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.

A statute must be read according to its spirit or intent. *Ratio legis est anima* or "the spirit rather than the letter of the law." When construing a statute, the Court must bear in mind the reason for its enactment, the purpose it seeks to achieve, and the evil it seeks to remedy.^[18] "[T]hat which is within the intent of the lawmaker is as much within the statute as if within the letter; and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers."^[19]

The second paragraph of Article 26 was not part of the original provision. It was inserted by subsequent amendment^[20] "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who,

after obtaining a divorce, is no longer married to the Filipino spouse." [21] It was based on the Court's decision in *Van Dorn v. Judge Romillo, Jr.*, [22] where the foreign spouse sought to lay a claim on the Filipino spouse's business and properties in the Philippines despite his previous acknowledgment in the divorce that they had no communal properties. The foreign spouse argued that the divorce cannot be recognized in the Philippines for being contrary to public policy and, therefore, in the Philippines, he should still be considered as the spouse of the Filipino. The Court rejected this argument, holding that a foreign divorce that is valid under the national law of the foreign spouse may be recognized in the Philippines. The Court also acknowledged that it would be unjust to hold the Filipino spouse to her marital obligations, when the foreign spouse is released from such obligations in his own country. Thus:

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, et. seq. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served. [23] *(Italics in the original)*

In *Fujiki v. Marinay, et al.*, [24] the Court explained that Article 26(2) is—

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. The second paragraph of Article 26 of the Family Code is based on this Court's decision in *Van Dorn v. Romillo* which declared that the Filipino spouse "should not be discriminated against in her own country if the ends of justice are to be served." [25] *(Citations omitted)*

With this legislative intent in mind, Article 26(2) cannot, and should not, be interpreted as excluding divorces by mutual agreement. If the divorce by mutual agreement in the present case is not recognized by the Court, respondent Ruby Ng Sono will remain tied to the marriage, but her foreign spouse will be free to marry under the laws of his country. This is the very evil, "anomaly," or "absurd situation" that Article 26(2) seeks to address. Such an interpretation is not supported by, but in fact goes against, both the letter and the spirit of the law.

Associate Justice Ramon Paul L. Hernando (Justice Hernando) submits that a divorce by mutual agreement is not the foreign judgment contemplated by our rules because it lacks some form of judicial proceeding or judicial intervention. While this argument finds support in Rule 39, Section 48 which speaks of the "[e]ffect of foreign judgments or final orders," [26] this procedural inadequacy should not operate to limit the efficacy of Article 26(2) of the Family Code. To be sure, procedural rules must give way to substantive law.

To require that foreign divorces, in order to be recognized in the Philippines, should be obtained judicially, would be to ignore the fact that: (1) there are jurisdictions, such as Japan, which allow a divorce outside judicial proceedings; and (2) such divorce, if not recognized in the Philippines, will defeat the corrective purpose of Article 26(2) to the prejudice of the Filipino spouse.

Again, the Court is bound by both the letter and the spirit of Article 26(2) to recognize the divorce by mutual agreement in order to recapacitate the Filipino spouse to marry.

Recognizing the foreign divorce by mutual agreement will not violate public policy

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." [27] "The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy, or prejudicial to its interest. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it, as a part of the voluntary law of nations. . . . It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of municipal law are ascertained and guided." [28]

However, a foreign law, judgment, or contract shall not be applied or recognized by the Court when it would: (1) contravene a sound and established public policy of the forum; or (2) work undeniable injustice to the citizens or residents of the forum. [29]

Justice Hernando and Associate Justice Maria Filomena D. Singh (Justice Singh) submitted that recognizing the instant divorce by mutual agreement would be repugnant to the Philippines' policy against dissolving marriages based on "collusion" of the parties. I disagree.

First and foremost, I would like to emphasize again that Article 26(2) itself recognizes the validity of foreign divorces, without distinction as to both the form and the ground of the divorce. Recognizing divorces by mutual agreement cannot be contrary to public policy because it is recognized as valid by Article 26(2). Had it been the legislative intent to exclude divorces by mutual agreement from paragraph 2, the provision could have easily done so, as it did with its first paragraph by qualifying what types of foreign marriages will not be considered as valid in the Philippines. Unlike in paragraph 1 of Article 26, however, paragraph 2 did not specify what grounds or forms of divorce would not be recognized in the Philippines. Clearly, there was no intent to make a distinction between divorces obtained with the consent of both parties and those obtained without. The Court should not make a distinction or qualification in the absence of legislative intent to that effect.

Jurisprudence is clear that as long as the divorce is obtained by a foreign spouse, [30] terminates the marriage, and capacitates the foreign spouse to remarry, the Courts should give it effect pursuant to Article 26, paragraph 2.

Second, I submit that a divorce by mutual agreement is not a form of collusion. "Agreement" is not the same as "collusion." An "agreement" is defined as a "mutual understanding" or "a manifestation of mutual assent." [31] On the other hand, "collusion" is defined as a "secret agreement or cooperation especially for an illegal or deceitful purpose," [32] or "[a]n agreement to defraud another to do or obtain something forbidden by law." [33] In the context of divorce, it refers to "an agreement between a husband and wife to commit or to appear to commit an act that is grounds for divorce. For example, before the advent of no-fault divorce, a husband and wife might agree to make it appear that one of them had committed adultery." [34]

In *Ocampo v. Florenciano*, [35] the Court adopted the definition of "collusion" by American case law, that is "[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." [36]

From the foregoing definitions, it is clear that for there to be "collusion," there must be: (1) an agreement to circumvent the law; and (2) misrepresentation or suppression of evidence to obtain a divorce. This interpretation is consistent with the Family Code's treatment of "collusion" by parties in proceedings for annulment or declaration of nullity of marriage and legal separation. The Family Code guards against collusion between the parties in obtaining a decree of annulment, declaration of nullity, and legal separation, thus:

Article 48. 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)

....

Article 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; ...

...

Article 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

In any case, the court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. (101a) (Emphasis supplied)

Evidently, the Family Code seeks to prevent a situation where the parties would fabricate or suppress evidence in order to fool the court into issuing a decree of annulment, a declaration of nullity, or a decree of legal separation.

In the present case, the divorce by mutual agreement obtained by the spouses can hardly be considered as a form of collusion because: (1) this agreement appears to be sanctioned by the Japanese Civil Code as a mode of terminating a marriage and is recognized as valid by Article 26(2). Therefore, the agreement is not for the purpose of circumventing a law; and (2) there is no misrepresentation, fabrication, or suppression of evidence or a ground for divorce involved.

There being no collusion to begin with, the subject divorce by mutual agreement does not offend Articles 48 and 56 of the Family Code.

Notably, there may be instances when a divorce by mutual agreement is confirmed by a foreign court. For instance, in *Galapon v. Republic*,^[37] (Galapon) the couple therein obtained a "divorce by mutual agreement" in South Korea which was subsequently confirmed by a South Korean Local Court. If the Court equates "collusion" with "agreement," as implied by Justice Hernando and Justice Singh, then even those kinds of divorces would not be recognized in the Philippines even if a foreign tribunal has already satisfied itself that the divorce was warranted under its law.

That said, I do not see any substantial need for a foreign divorce based on mutual consent to first undergo judicial proceedings in a foreign court before it is recognized in the Philippines, especially when none of the parties deny consenting to such divorce. Such a judicial proceeding would likely only determine whether the parties did indeed consent to the divorce. Notably, Article 739^[38] (in relation to Articles 763 and 764) of the Japanese Civil Code encourages^[39] the notification of the divorce agreement to be witnessed by two other persons of full age. This safeguard should be more than sufficient to satisfy the Court that both spouses voluntarily consented to such divorce, in the absence of any indication or serious allegation that one of the spouses did not actually give his or her consent.

Third, the Court in *Manalo* ruled that Article 26(2) applies regardless of who between the spouses initiated the divorce. The Court held that the provision demands only that a valid divorce is obtained abroad. It does not require the foreign spouse to be the one to initiate the divorce.

In accordance with *Manalo*, the Court in *Galapon* recognized that Article 26(2) applies also to mixed marriages where the divorce decree is initiated by both the Filipino and foreign spouse. In that case, the couple therein obtained a "divorce by mutual agreement" in South Korea which was subsequently confirmed by a South Korean Local Court.

In the cases of *Racho v. Tanaka, et al.*,^[40] *Basa-Egami v. Bersales*,^[41] and *Republic v. Bayog-Saito*,^[42] the Court acknowledged and took no issue with Japanese divorces by mutual agreement.

The foregoing cases ultimately recognize that a foreign divorce need not always involve animosity or adversarial proceedings between the spouses. By its very nature, a no-fault divorce (such as the present divorce by mutual agreement under Japanese law) does not require that either or both of the spouses had committed a "fault" which constitutes a ground for divorce. In the words of the Court in *Abel v. Rule*,^[43] interpreting Article 26 to exclude "joint petitions for divorce" will "cause this Court to close its eyes to the fact that the laws in some foreign countries 'allow joint filing for a divorce decree to ensure that there be less incrimination among the spouses, a more civil and welcoming atmosphere for their children, and less financial burden for the families affected.'"^[44] I agree with Associate Justice Rodil V. Zalameda's opinion that "[w]ith a more viable alternative allowed by the divorce law of the foreign spouse, there is no rhyme or reason for this Court to complicate matters by compelling the estranged couple to further hurt each other's feelings with a needless court battle."^[45]

Should the Court exclude divorces by mutual agreement from the application of Article 26(2), the spouses would be encouraged to look for fault or ground, if only to have their divorce recognized in the Philippines. This would open the doors to, if not altogether induce, true collusion.

All told, I agree that the present divorce by mutual agreement should be recognized, so long as the relevant Japanese law on divorce is sufficiently proven by the respondent.

Accordingly, I vote to PARTLY GRANT the Petition and REMAND the case for reception of evidence of the Japanese law on divorce.

[1] 509 Phil. 108 (2005) [Per J. Quisumbing, First Division].

[2] *Id.* at 115. Note that in *Republic v. Manalo*, 831 Phil. 33 (2018) [Per J. Peralta, En Banc], the Court clarified that "obtained" does not mean "initiated," such that Article 26 would apply even if it was the Filipino spouse that initiated the divorce, since in the end the divorce was still "obtained" by the foreign spouse.

[3] *Id.*

[4] *Id.* at 57–59.

[5] *Republic v. Bayog-Saito*, G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division]; *Kondo v. Civil Registrar General*, 872 Phil. 251 (2020) [Per J. Lazaro-Javier, First Division]; *In Re: Petition for Judicial Recognition of Divorce, etc.*, 867 Phil. 578 (2019) [Per J. Lazaro-Javier, First Division]; *Juego-Sakai v. Republic*, 836 Phil. 810 (2018) [Per J. Peralta, Second Division] and *Morisono v. Morisono, et al.*, 834 Phil. 823 (2018) [Per J. Perlas-Bernabe, Second Division].

[6] *Republic v. Manalo*, *supra* note 2, at 75.

[7] *Van Dorn v. Judge Romillo, Jr.*, 223 Phil. 357, 362 (1985) [Per J. Melencio-Herrera, First Division], citing *Recto v. Harden*, 100 Phil. 427 (1956) [Per J. Concepcion, En Banc]; *Paras*, Civil Code, 1971 ed., Vol. I, p. 52; and *Salonga*, Private International Law, 1979 ed., p. 231.

[8] See *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division]; *Garcia v. Recio*, 418 Phil. 723, 730–731 (2001) [Per J. Panganiban, Third Division]; and *Republic v. Orbecido III*, supra note 1, at 114–116.

[9] Ponencia, p. 14.

[10] Id.

[11] *Tsutsumi v. Republic*, G.R. No. 258130, April 17, 2023 [Per J. Lazaro-Javier, Second Division]; *Racho v. Tanaka, et al.*, 834 Phil. 21 (2018) [Per J. Leonen, Third Division].

[12] See <https://sc.judiciary.gov.ph/wp-content/uploads/2022/12/JAPAN.pdf>, last accessed on February 26, 2024.

[13] See *Tsutsumi v. Republic and Racho v. Tanaka, et al.*, supra note 11.

[14] See *Bolos v. Bolos*, 648 Phil. 630, 637 (2010) [Per J. Mendoza, Second Division].

[15] See *Colgate-Palmolive Philippines, Inc. v. Hon. Gimenez, etc., and Mathay, etc.*, 110 Phil. 874, 877 (1961) [Per J. Gutierrez David, En Banc].

[16] See *Federated LPG Dealers Association v. Del Rosario, et al.*, 799 Phil. 251, 272 (2016) [Per J. Del Castillo, Second Division]; citation omitted.

[17] See *Republic v. Manalo*, supra note 2, at 57.

[18] See *People v. Judge Purisima*, 176 Phil. 186 (1978) [Per J. Munoz-Palma, En Banc].

[19] *League of Cities of the Phils., et al. v. COMELEC, et al.*, 623 Phil. 531, 547–548 (2009) [Per J. Velasco, Jr., En Banc]; citation omitted.

[20] Executive Order No. 227 (1987), Amending Executive Order No. 229, Otherwise Known as the "Family Code of the Philippines."

[21] *Republic v. Orbecido III*, supra note 1, at 114, citing Judge Alicia Sempio-Diy, a member of the Civil Code Revision Committee.

[22] Supra note 7; See *Fujiki v. Marinay, et al.*, 712 Phil. 524 (2013) [Per J. Carpio, Second Division].

[23] *Van Dorn v. Judge Romillo*, supra note 7, at 363.

[24] Supra note 22.

[25] Id. at 555–556.

[26] Section 48. Effect of foreign judgments or final orders. — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (50a)

[27] *Sison v. Board of Accountancy and Ferguson*, 85 Phil. 276, 282–283 (1949) [Per J. Torres, En Banc], citing

Hilton v. Guyot, 159 U.S. 113 (1895).

[28] Hilton v. Guyot, id. at 165–166; emphasis supplied.

[29] 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 (1999) [Per J. Buena, Second Division].

[30] Republic v. Manalo, supra note 2.

[31] BLACK'S LAW DICTIONARY, (9[th] ed, 2009), p. 78.

[32] MERRIAM-WEBSTER DICTIONARY, "collusion," available at <https://www.merriam-webster.com/dictionary/collusion> (last accessed on February 26, 2024); emphasis supplied.

[33] BLACK'S LAW DICTIONARY, (9[th] ed. 2009), p. 300; emphasis supplied.

[34] Id., emphasis supplied.

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

[36] Id. at 39, citing Griffiths v. Griffiths, 69 N. J. Eq. 689 60 Atl. 1099 and Sandoz v. Sandoz, 107 Ore. 282, 214 Pas. 590.

[37] 869 Phil. 351 (2020) [Per J. Caguioa, First Division].

[38] See OCA Circular No. 157-2022-A, Compilation Of The Laws Of Foreign Countries On Marriage And Divorce (2022).

[39] Under Article 765(2), the validity of the divorce shall not be affected even when the notification of the divorce was accepted despite non-compliance with Article 739(2)—which requires the notification to be witnessed by the two other persons of full age.

[40] Supra note 11.

[41] Supra note 8.

[42] Supra note 5.

[43] G.R. No. 234457, May 12, 2021 [Per J. Leonen, Third Division].

[44] Id., citation omitted.

[45] J. Zalameda, Concurring Opinion, p. 6.

DISSENTING OPINION

HERNANDO, J.:

This case pertains to the Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry under Article 26 of the Family Code of the Philippines, filed by respondent Ruby Cuevas Ng a.k.a. Ruby Ng Sono with the Regional Trial Court of Quezon City, Branch 220 (RTC).

Respondent, a Filipino citizen, married Akihiro Sono, a Japanese national on December 8, 2004, in Quezon City. They have a child named Rieka Ng Sono.

After their marriage, they moved to Japan. On August 31, 2007, however, the spouses obtained a 'divorce decree

by mutual agreement' in Japan. The Divorce Certificate issued by the Embassy of Japan in the Philippines has been duly recorded and filed in the City Civil Registry Office of Manila, as evidenced by the Certification dated April 19, 2018, released by the said office. The fact of divorce was also duly recorded in the Civil Registry of Japan as per the original copy of the Family Registry of Japan bearing the official stamp of the Mayor of Nakano-Ku, Tokyo, Japan.

On May 28, 2018, respondent filed a petition for the recognition of the divorce decree and for the declaration of her capacity to remarry.

Finding that the divorce was validly obtained by the spouses abroad, the RTC granted the petition in its Decision dated January 3, 2019, pursuant to the second paragraph of Article 26 of the Family Code.

Petitioner Republic of the Philippines, represented by the Office of the Solicitor General (OSG), sought reconsideration of the RTC Decision, but the same was denied in an Order dated September 6, 2019.

Hence, the present petition.

Petitioner postulates that a 'divorce by mutual agreement' is not worthy of recognition in Our jurisdiction. It argues that a foreign divorce, to be recognized in the Philippines, must be decided by a court of competent jurisdiction. It also avers that respondent failed to prove the divorce law of Japan as she only presented an unauthenticated photocopy of the pertinent portions of the Japanese law on divorce and its corresponding English translation.

The ponencia agrees with the trial court that an out-of-court divorce process as in this case may be recognized in the country, so long as it complies with the documentary requirements under the Rules of Court. It upheld the divorce decree obtained by the Spouses Sono by mutual agreement pursuant to the rulings of the Court in *Racho v. Tanaka*,^[1] *Basag-Egami v. Bersales*,^[2] and *Republic v. Bayo-Saito*,^[3] holding that a divorce decree by mutual agreement obtained by both Japanese and Filipina spouses in Japan, in accordance with Japanese laws, may be recognized in Our jurisdiction.

I submit that the foreign divorce must be decided by a foreign court of competent jurisdiction, not merely agreed upon by the divorcing spouses, in order to be recognized in Our jurisdiction.

It is settled that foreign divorce decrees may be judicially enforced in the Philippines pursuant to Art. 26 of the Family Code, which provides:

Art. 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 a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have [the] capacity to remarry under Philippine law.

Further, jurisprudence has expanded the scope of Art. 26 to instances where the divorce is obtained jointly by the Filipino and the foreign spouse, and even solely by the Filipino spouse abroad. Art. 26 of the Family Code is a clear demonstration of the principle of comity of nations.

However, such means of recognizing a foreign divorce decree carries with it certain limitations. A full-blown judicial action is required to be instituted locally with strict documentary requirements to be complied with.

Notably, the entire process of a petition for recognition of foreign divorce is akin to a normal court proceeding

where evidence, testimonial and documentary, ought to be presented to prove the fact of divorce and the pertinent divorce law of the issuing country. In short, a judicial recognition may be granted only after a judicial hearing.

It is, thus, ironic that We impose a more stringent rule in the recognition of the foreign divorce, that is, to go through a tedious judicial process, when the divorce decree itself sought to be recognized was conveniently and quickly obtained by mutual consent of the spouses, without the imprimatur of a court of competent jurisdiction.

Moreover, it is settled that in Our jurisdiction, "a valid judgment rendered by a foreign tribunal may be recognized insofar as the immediate parties and the underlying cause of action are concerned[,] so long as it is convincingly shown that there has been an opportunity for a full and fair hearing before a court of competent jurisdiction; that the trial upon regular proceedings has been conducted, following due citation or voluntary appearance of the defendant and under a system of jurisprudence likely to secure an impartial administration of justice; and that there is nothing to indicate either a prejudice in court and in the system of laws under which it is sitting[,] or fraud in procuring the judgment." [4]

In the case at bench, the divorce obtained by the spouses is the "divorce by agreement" under Art. 763 of the Japanese Civil Code. It is undeniably the simplest and most expeditious type of divorce available in Japan as it is effected by mere notification.[5] The spouses simply register their "mutual consent divorce" in the Ward Office. Thereafter, the corresponding Certificate of Acceptance of Notification of Divorce is issued by administrative officials of Japan showing its acceptance of the consensual divorce. A mutual consent divorce, therefore, lacks some form of a judicial proceeding or judicial intervention, as required by law. Certainly, this is not the valid judgment contemplated by Our local rules that is worthy of recognition within Our jurisdiction.

It is likewise worth mentioning that Our public policy against absolute divorce remains in force. It is Our State's policy to disallow annulment of marriages and even legal separation obtained through collusion by the parties.

We note that the rationale in validating a foreign divorce decree is to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage. This approach shows a paramount concern to avoid the deleterious consequences of limping marriages.

I applaud this equitable intent of our jurisprudential rulings on the matter of divorce. However, I submit that We cannot compromise our policy against absolute divorce by only banking on the reasoning that it would be unjust for the Filipino spouse to deem him/her still married with the foreign spouse, who, in turn, is no longer married to him/her.

Significantly, by allowing Filipino nationals to secure a divorce by mutual agreement, instead of one obtained by judicial process, We are encouraging them to circumvent our own law which prohibits annulment of marriages procured through collusion by the parties.

It is to be noted that extrajudicial refers to something that has occurred outside of, or without the authorization of the judicial system. As such, it might not follow proper legal procedures, or might not carry adequate legal authority. For example, an extrajudicial statement would be something said outside of the courtroom. Such a statement would need to comply with the hearsay rule to be entered as evidence in court proceedings.

In the same vein, an extrajudicial foreign divorce, or those obtained without court proceedings, are blatantly the fruit of a consensual arrangement expressly and practically forbidden by the Philippines' public policy. To validate this type of foreign divorce is tantamount to allowing the parties to treat their marriage contracts with the same indifference they treat their commercial contracts.

It is my view that rules extending recognition to a foreign divorce should still be scrutinized vis-à-vis public

policy considerations of possible prejudice to the state and its citizens. It should be in conformity with the laws of the jurisdiction in which such recognition is sought. Otherwise stated, in order for a foreign divorce to be judicially recognized in the Philippines, the mode in which it is obtained should not be repugnant to the public policy and morality of the forum state.

Jurisprudence provides for the twin elements for the application of paragraph 2 of Art. 26 of the Family Code, as follows:

1.

There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and

2.

A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.[6]

I submit that the "valid divorce" contemplated in the second element should be interpreted to mean a 'judicial foreign divorce' or a 'foreign divorce decree issued by a court of competent jurisdiction'. This is not only formally sound, but is also in keeping with Our national policy.

In the United States, the general rule is that a decree of divorce valid where rendered is valid everywhere, and will be recognized under the "full faith and credit" clause of their Constitution, or in the case of divorces rendered in foreign countries, under the principle of comity, provided that recognition would not contravene public policy.[7]

In the case of *Haydee De Pena v. Fredy De Pena*,^[8] the Supreme Court of the United States upheld the refusal of the New York County Family Court to accord recognition to the foreign divorce decree obtained by the husband in the Dominican Republic, on the ground that the same contravened the public policy of the State.

Similarly, in *Mayer v. Mayer*,^[9] the North Carolina Court of Appeals refused to recognize the foreign divorce decree issued by the Dominican Republic, holding that the Dominican Republic's court had insufficient jurisdiction to issue a divorce decree to two persons domiciled in North Carolina. It stressed that recognition of a foreign divorce decree may be withheld when the public policy of the forum has been evaded in obtaining the divorce, thus:

Recognition of foreign decrees by a State of the Union is governed by principles of comity. Consequently, based on notions of sovereignty, comity can be applied without regard to a foreign country's jurisdictional basis for entering a judgment. More often than not, however, "many of the American states are likely to refuse recognition [to deny comity] to a divorce decree of a foreign country not founded on a sufficient jurisdictional basis." . . . That is, "a foreign divorce decree will be recognized, if at all, not by reason of any obligation to recognize it, but upon considerations of utility and mutual convenience of nations. Recognition may be withheld in various circumstances, as where the jurisdiction or public policy of the forum has been evaded in obtaining the divorce." . . .^[10] (Emphasis supplied)

Further, in the United States, every state has different requirements in terms of how to complete a divorce, but all require a judge to review and approve the divorce settlement or, if the spouses can't agree to a settlement, decide how property will be divided, and how parenting time will be shared. Until there is a court order signed by a judge, the parties are not officially divorced and consequently, cannot remarry.^[11] Even the United States does not have a procedure for extrajudicial divorce, and the legality of this procedure in various states in the U.S. is uncertain.

While I commiserate with Filipino spouses who are tied in a marriage which has already been dissolved in the

eyes of the country which granted the foreign divorce, We ought to respect Our State's public policy against absolute divorce. To be sure, a consensual divorce obtained without judicial intervention offends the Philippines' declared policy disallowing annulment of marriages and legal separation obtained through collusion by the parties.

Thus, I find that the present case is a perfect occasion for the Court, sitting en banc, to re-examine the doctrines laid down in *Racho*, *Bersales*, and *Bayog-Saito*, which allowed the recognition of foreign divorce decrees obtained outside the court or extrajudicially. To my mind, the Court's rulings in these cases are repugnant to Our substantive law as they in effect allow divorce by mutual consent as a proper basis for the termination of the marriage.

Even if the approach taken is a clever way for the courts to avoid the harshness of Our statute, it is inappropriate for the Court to assume this function and adopt this method to bring about the result. At the risk of sounding repetitive, Our legislature prohibits annulment of marriages obtained through collusion of the parties, but what the Court has done in the above-cited cases is to assume the power to sanction it. If Our laws do not reflect modern thinking, then the laws ought to be revised. But changing these laws, especially if it exceeds the norms of established public policy, is a job for the legislature. The Court is not licensed to override a public policy declared by the legislature.

In sum, I agree with the OSG's position that a valid divorce worthy of recognition in Our jurisdiction is the one obtained via a court judgment, finding that all of the legal requirements have been met, and not one secured by agreement or acquiescence of the Filipino spouse, whose laws do not recognize absolute divorce. The same must be faithfully observed until a statutory legislation is passed to cure the current lacuna.

I therefore vote to dismiss the Petition for Judicial Recognition of Foreign Divorce and Declaration of Capacity to Remarry of respondent Ruby Cuevas Ng a.k.a. Ruby Ng Sona on the basis of the foregoing reasons.

[1] 834 Phil. 21, 47 (2018) [Per SAJ Leonen, Third Division].

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

[3] G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].

[4] *Asiavest Merchant Bankers (M) Berhad v. Court of Appeals*, 414 Phil. 13, 27–28 (2001) [Per J. De Leon, Jr., Second Division].

[5] JAPANESE CIVIL CODE, art. 765.

[6] *Republic v. Orbecido III*, 509 Phil. 108, 115 (2005) [Per J. Quisumbing, First Division].

[7] 27B C.J.S., *Divorce*, sections 326–3 (1959). Emphasis supplied.

[8] 298 N.Y.S.2d 188, 31 A.D.2d 415, March 18, 1969.

[9] 66 N.C. App. 522 (1984).

[10] *Id.*

[11] *DivorceNet/Divorce Basics*, available at <https://www.divorcenet.com/topics/dissolution-marriage> (last accessed on January 23, 2024).

CONCURRING OPINION

ZALAMEDA, J.:

The Court is faced with the task of determining the effect of a divorce by mutual agreement in our jurisdiction, brought about by respondent Ruby Cuevas Ng a.k.a. Ruby Ng Sono's petition for recognition of foreign divorce. The ponencia upheld respondent's right to invoke Article 26(2) of the Family Code, recognizing that a divorce by mutual agreement is within the purview of said provision. I concur.

Legal landscape of divorce in the Philippines

Apart from Vatican City, the Philippines is the only country that does not allow absolute divorce. Since Philippine law does not provide for absolute divorce, our courts cannot grant it.[1] However, the migration of countless Filipinos to other countries and the reality that many of us have entered into mixed unions ultimately paved the way for the inclusion of Article 26(2) into the Family Code, a provision allowing relative divorce in this jurisdiction, thus:

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 have capacity to remarry under Philippine law.

The Court has repeatedly pointed out that the second paragraph was introduced as a corrective measure to resolve an absurd situation where the Filipino spouse remains married to the alien spouse even after their marital bond has been severed by the divorce decree obtained abroad. Through Article 26(2) of the Family Code, Philippine courts are given the authority to extend the effect of a foreign divorce decree to Filipino spouses and to determine the validity of the dissolution of the marriage without undergoing trial. It bestowed upon Filipino spouses the substantive right to have their marriages considered dissolved, capacitating them to remarry like their foreign spouses.[2]

Settled is the rule that the divorce decree and the governing personal law of the alien spouse must first be pleaded and proven as a fact because courts cannot take judicial notice of foreign laws and judgments.[3] Indeed, 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.[4] 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.[5]

With a divorce validly obtained abroad, Filipinos can almost taste the freedom from the shackles of a failed marriage. They can have a fresh start in life and another chance in love since it capacitates them to remarry.

Unfortunately, a foreign divorce notwithstanding, a new beginning remains elusive to some. It is rather agonizing to note that even with the existence of Article 26(2) and a divorce validly obtained abroad, the vast majority of petitions for recognition of foreign divorce are nonetheless being denied by Philippine courts.

The reasons for the denial are varied and evolving. In the past, the usual reason was the ambiguity in the law and the Court's interpretation that it should be the foreign spouse who should initiate the divorce proceeding under Article 26(2). Then there came the influx of cases where the issue was proving the existence of the divorce decree and the divorce law of the foreign spouse, including the provision in the foreign divorce law capacitating the alien spouse to remarry.[6] After the seminal case of *Republic v. Manalo (Manalo)*,^[7] the denial of petitions for recognition by the lower courts were due to the divorce being obtained by both spouses through joint filing, supposedly in transgression of the requirement of the law that the divorce should be obtained solely by the foreign

spouse.[8] Corollary to this, the Office of the Solicitor General (OSG) now argues that a divorce by mutual consent should not be recognized in this jurisdiction because Article 26(2) only contemplates divorce obtained through judicial and adversarial proceedings.

With a myriad of reasons blocking the door to freedom from a failed mixed marriage, the Filipino spouse ultimately ends up being continuously locked up in the unfair situation that Article 26(2) seeks to avoid.[9]

Worth emphasizing, however, is the fact that the current trend in jurisprudence has eliminated seemingly insurmountable obstacles that have forestalled Filipino spouses from finally getting out of their predicament of being divorcees who cannot remarry.

In *Manalo*, the Court En Banc settled once and for all the longstanding query of, who should initiate and obtain a valid divorce decree. It emphatically declared that Article 26(2) only requires that there be a divorce validly obtained broad capacitating the foreigner spouse to remarry, without regard as to who initiated it. As acknowledged in *Basa-Egami v. Bersales (Basa-Egami)*,[10] *Manalo* was a salutary paradigm shift in jurisprudence, eliminating a huge hurdle often faced by Filipino divorcees in their quest to obtain recognition of their divorce from Philippine courts. *Manalo* laid the groundwork and was followed by a series of its iterations.

A validly obtained divorce by mutual consent falls under the purview of Article 26(2) of the Family Code

With many significant developments in favor of Filipinos, I commend the esteemed ponente for not bucking this positive trend with the recognition of a divorce by mutual consent validly obtained by a Filipino and Japanese national in Japan.

Indeed, there should be no question that a divorce by mutual consent validly obtained abroad should be recognized here under the principle of comity. To be sure, a perusal of Article 26(2) shows no distinction on the kind of proceeding taken by the estranged couple to obtain their divorce. Again, as emphasized in *Manalo*, based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad and the Court is bound by the words of the statute. Where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos*. [11]

Thus, in *Galapon v. Republic*, [12] the Court stressed that pursuant to *Manalo*, Article 26(2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) obtained jointly by the Filipino and foreign spouse and (iii) obtained solely by the Filipino spouse. Thus, a divorce decree obtained by mutual consent, with or without the conformity of the Filipino spouse, or whether at their behest or acquiescence, falls within the scope of Article 26(2) and merits recognition in this jurisdiction. [13]

True, there is always the possibility that some estranged couples in mixed marriages could resort to collusion to legally end their marriage by way of mutual agreement. The possibility of collusion alone, however, should not be not sufficient justification to automatically prevent the recognition of a valid divorce by mutual consent. For one, the fact that the parties opted for divorce by mutual consent does not necessarily mean that they resorted to machinations like collusion. For another, such sweeping generalization is anathema to the principle of good faith:

It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof, thereof, the presumption of good faith prevails. [14] (Emphasis supplied)

Withal, even in nullity cases in this jurisdiction, there is a possibility of collusion between the parties, as when one of the parties decides not to answer and participate in the proceeding, despite due notice. Nonetheless, there exists no policy for courts to summarily dismiss petitions where such a situation exists. Instead, the Office of the Prosecutor is first required to conduct an investigation to determine the existence of collusion.

The Court is also not keen on declaring the existence of collusion by the mere fact that the spouses have exhibited certain acts that may communicate a mutual desire to dissolve or annul their marriage. The case of *Puyat v. Puyat* (Puyat)[15] and the vintage En Banc case of *Ocampo v. Florenciano* (Ocampo)[16] come to mind.

Puyat involved a petition for declaration of nullity of marriage and the Court of Appeals (CA) declared the existence of collusion because the wife failed to attend the hearing of the presentation of her evidence and did not question the propriety of the trial court's decision. In reversing the CA, the Court ratiocinated in this wise:

Simply because they mutually desire to have their marriage declared null and void does not mean that they have colluded to trick the court. To rule otherwise would be to unfairly foreclose the remedy under Article 36 to all individuals who are similarly situated as Gil Miguel and Ma. Teresa. To the Court's mind, the CA failed to demonstrate the presence of collusion or that evidence was suppressed or fabricated by any of the parties.

In *Juliano-Llave v. Rep. of the Phils.*, the Court held that the respondent spouse was not deprived of her right to due process when judgment was issued without her answer and without having presented her evidence. The Court reasoned that "[h]er failure to file and answer and her refusal to present her evidence were attributable only to herself and she should not be allowed to benefit from her own dilatory tactics to the prejudice of the other party."

Although the case of *Juliano-Llave* is not in all fours as the circumstances surrounding the present case, the Court finds it relevant to the present case. While collusion was not an issue in *Juliano-Llave*, it is significant to underscore that the Court affirmed the judgment of the trial court declaring the marriage of the parties void ab initio despite the failure of the respondent spouse to file her answer and present her evidence. These factors should not be automatically equated to collusion.[17] (Citations omitted; Emphasis supplied)

Ocampo, on the other hand, was a case where the CA denied the legal separation of the spouses because the wife readily expressed her conformity to the filing of the petition and confessed her extra-marital affairs to the investigating prosecutor. In reversing the CA the Court quoted an American jurisprudence that says, "collusion may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it"[18] and that "proof that the defendant desires the divorce and makes no defense, is not by itself collusion." [19]

On a related point, I am of the view that Filipino spouses who validly obtained a divorce decree by mutual consent should not be unduly discriminated by their own country, no less. They do not opt for a divorce by mutual consent out of whim. Be it stressed that it is an option given to them by the national law of their foreign spouse. The Court has already duly pointed out in *Racho v. Tanaka* (Racho)[20] that the national law of Japan does not prohibit the Filipino spouse from initiating or participating in the divorce proceedings. Thus, it would be inherently unjust for Filipino spouses to be prohibited by Philippine laws from something that a foreign law allows. Parenthetically, the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals. Significantly, *Racho* likewise pointed out that it is not an ideal option and should be eschewed:

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.

Truly, choosing the path of least resistance, so to speak, should not be taken against Filipino spouses. Certainly, it

is more reasonable than a divorce by judicial and adversarial proceeding. A judicial divorce, almost always, becomes a war by attrition between the parties. When tensions flare up, courtroom drama may easily arise, leading to an acrimonious divorce. It is ridiculously expensive and tedious, as well. With a more viable alternative allowed by the divorce law of the foreign spouse, there is no rhyme or reason for this Court to complicate matters by compelling the estranged couple to further hurt each other's feelings with a needless court battle. As the great Lao Tzu said, "war should be avoided at all costs"[21] and "war is only justifiable when all possible alternatives have been completely exhausted."[22]

A divorce by mutual consent is almost a staple in recent jurisprudence. We have expressly ruled in *Basa-Egami, Racho, and Republic v. Bayog-Saito (Bayog-Saito)*[23] that such type of divorce may be given recognition in jurisdiction. Further, there is an implicit acknowledgment as to the propriety of a divorce by mutual consent outside those cases. To be sure, We mostly deny petitions or remand cases only because of the failure of the Filipino spouse's failure to prove the fact of divorce or the foreign law. For instance, in *Republic v. Kikuchi (Kikuchi)*,[24] there was no divorce judgment to speak of as the divorce was not coursed through Japanese courts but through the Mayor of Sakado City, Saitama Prefecture. Echoing the ruling in *Moraña v. Republic (Moraña)*,[25] *Kikuchi* ruled that the Filipino spouse still proved the fact of divorce with the presentation of the Divorce Report (not a judgment divorce). Nevertheless, the case was remanded to the trial court as the other document submitted by the Filipino spouse did not prove the existing divorce law of Japan:

Not being an official translation, the document submitted by Jocelyn does not prove the existing law on divorce in Japan. Unfortunately, without such evidence, there is nothing on record to establish that the divorce between Jocelyn and Fumio was validly obtained and is consistent with the Japanese law on divorce.

Given that Jocelyn 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.

Additionally, questions regarding the disregard of our national law on divorce and the Constitutional mandate for the State to afford protection to marriage have already been extensively threshed out in the negative by the Court in *Manalo* and there appears no cogent reason to discuss the same anew. As *Manalo* emphatically enunciated:

Conveniently invoking the nationality principle is erroneous. Such principle, found under Article 15 of the Civil Code, is not an absolute and unbending rule. In fact, the mere existence of Paragraph 2 of Article 26 is a testament that the State may provide for an exception thereto. Moreover, blind adherence to the nationality principle must be disallowed if it would cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law. The courts have the duty to enforce the laws of divorce as written by the Legislature only if they are constitutional.

I agree that marriage should remain an inviolable social institution. However, the Constitutional mandate to protect marriage should not unjustly tie the hands of the Court. Recognizing foreign divorce by mutual agreement does not undermine the institution of marriage. As poignantly expressed in *Moraña*, "in cases like these, there is no more 'institution' to protect as the supposed institution was already legally broken. Marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it."

The ruling in the present case is in line with our continuing efforts to afford protection to the interest of Filipino spouses who have already validly secured a divorce decree abroad. Indeed, We should not adopt a stand that unduly discriminates against divorces obtained by mutual consent. The pronouncement in *Quita v. Court of Appeals (Quita)*,[26] while not about recognition of divorce by mutual agreement may be applied in this case analogously. To borrow the words in *Quita*, "[i]f we are to give meaning to the legislative intent to avoid the

absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce decree is no longer married to the Filipino spouse, then the instant case [recognizing divorce by mutual consent] must be deemed as coming within the contemplation of Paragraph 2 of Article 26." [27]

To have a strained interpretation of Article 26(2) and not recognize divorce by mutual agreement will lead to iniquitous and deleterious results. As Basa-Begami points out until the divorce validly obtained abroad is recognized by Philippine courts, Filipino spouses remain in legal limbo because while they may have already validly secured a divorce abroad, they still cannot remarry.

Even worse, We can unintentionally push Filipino spouses down to another circle of hell. With a declaration in this case that a divorce by mutual agreement should not be recognized, We will unjustly create and alienate a class of Filipinos — divorcees that can never remarry unless they become citizens of other countries that recognize divorce by mutual agreement. Until then, these Filipinos will be virtually in a perpetual state of grief and torment, as they are unable to escape the chains that still unfairly bind them to a marriage that no longer exists in the eyes of the law of the countries of their former spouses. This could further lead to the proliferation of relationships that carry the stigma of being labeled as illicit with their sires' status as illegitimate. Meanwhile, the alien spouses have full autonomy to chart their next course, with the right to remarry or love again without any impediment. These disheartening situations are not only iniquitous for Filipino spouses, but they also severely compromise the sanctity of marriage and the welfare of children.

The fervent pleas and judiciary's response

The bleak picture I paint here is not an idea of a playful mind but something that is truly happening to our overseas Filipino divorcees. Just recently, Hon. Mylene J. Garcia-Albano (Hon. Garcia-Albano), Philippine Ambassador to Japan, sent a Letter [28] dated November 9, 2023, where she communicated about the growing remonstrance of Filipinos in Japan on the matter of judicial recognition of foreign divorce. Not long after, Hon. Charmaine A. Serna-Chua (Hon. Serna-Chua), the Minister and Consul General of the Philippine Embassy in Tokyo, sent an electronic mail, [29] asking for assistance on how to help the cause of our Filipino divorcees.

It turns out that while Filipino divorcees welcome a highly efficient and exceedingly economical process of divorce by mutual consent, the procedure of having such divorce recognized here becomes another vicissitude of life for them. Hon. Garcia-Albano stated in her letter that "[m]any Filipino women divorcees come to the Philippine Embassy in Tokyo to bemoan the high legal cost and long legal procedure concomitant with the filing of a petition for judicial recognition of foreign divorce. For many of them the complexity of the legal process often leads them to losing their status as they are unable to enter into another marriage in Japan." Thus, Hon. Garcia-Albano exhorts the Court to consider ways that would abbreviate and stream line the pertinent legal proceeding.

Also, according to Hon. Serna-Chua, the same sentiment is echoed in the letter from a Filipino community leader addressed to the President of the Philippines, airing the collective sentiment of Filipino divorcees who lose their legal immigrant status as they are unable to remarry in Japan. On this score, I find it apropos to quote:

"[T]here are laws that are being implemented which our lawmakers think would be helpful but in reality make Filipinos living abroad suffer.

I am talking about JRD or Judicial Recognition of Foreign Divorce. Dati po, kapag nagdidiborsyo ang isang Pilipina at Hapon, kinakailangan lang magprocess ng mga papeles sa ating Philippine Embassy o Philippine Consulate upang makakuha ng tinatawag na Report of Divorce. . . I can't recall when it started but now the Philippine Consulate is requiring every divorced Filipina to secure a judicial recognition of divorce in the Philippines to be able to marry again. Alam nyo po ba na magmula 250,000 hanggang 500,000 pesos ang

sinisingil ng mga abogado at itinakbo ang mga downpayment na kanilang ibibinigay. [sic] Napakahirap pong kitain ang pera at hindi basta-basta ang halagang 250,000 pesos. Hindi lang tungkol sa pera but also, about the time frame needed to secure this judicial recognition which takes a minimum of 6 months pwera pa po ang kinakailangang pag-uwi ng Pilipina para humarap sa korte na bukod na gastos at pagliban sa trabaho. Hindi po kinakaya ang gastos kaya ang nagyayari po, dahil hindi makapag-pakasal ulit, nawawalan ng visa ang Pilipina at nagiging overstay o kung hindi naman ay mapapauwi na lamang. Marami rin pong mga kaso na nagpapakasal ulit ang Pilipina sa ibang Hapon subalit ang kasal na ito ay hanggang sa Japan lamang ni rerecognize at maging sa Japan man ay hindi rin magagamit ng Pilipina ang kanyang bagong apelyido dahil hindi pa naayos ang kanyang Judicial Recognition of Foreign Divorce sa Pilipinas. Lalo po lamang dumami ang problema at naging kawawa ang buhay pati na ang kanyang pamilya.

. . . If they are considered modern heroes, may I request our beloved President to do something about this problem? An immediate action is needed as this affects the lives of the Filipinas not only in Japan but also in other countries. Can we not suspend the implementation of this law and go back to the old system I mentioned earlier, even temporarily until a revision is made which would not make people's lives difficult to handle? Otherwise, can I make a suggestion to please create a body composed of Public Attorneys in the Philippines through which the Filipinas can process the JRD (without spending exorbitant amount for private attorneys) much more cheaply and easily?

Aside from that, Hon. Serna-Chua manifested a harrowing and pitiful situation of Filipina victims of trafficking in Japan. Apparently, during a March 23, 2023 seminar on trafficking in persons organized by the International Organization for Migration in Tokyo, it was revealed that Filipino trafficking victims in Japan are being further oppressed because they continue to bear their abuser's names in their records, including their passports, until they obtain judicial recognition of their divorce.

The Court is relentless in implementing judicial reforms to carry out its mandate. Pursuant to its rule-making power under the Constitution,[30] the Court has promulgated new rules and amended old ones in furtherance of its commitment to deliver efficient and responsive justice to all.

As part of its efforts, the Court may indeed examine its rules on recognition of foreign divorce with the goal of providing a more streamlined and economical procedure, such as a summary proceeding, perhaps one that is ex-parte, where the submission of the required documents may be done by an authorized representative without the need for personal appearance of petitioner or a lawyer. Also, in tandem with OCA Circular No. 157-2022-A,[31] further collaboration with the Department of Foreign Affairs may be explored to enable online application for authenticated copies of the divorce law of the foreign spouse. Palpably, this has been the most difficult evidence to obtain for the Filipino spouse, and the reason for much delays or even denials of their petitions. Finally, I agree with Associate Justice Maria Filomena A. Singh that the possible amendment of Rule 39, Section 48 of the Rules of Court should be taken into consideration, at the very least "[t]o the extent that there is a need to provide a definitive set of rules governing the recognition of divorce decrees, whether obtained through judicial proceeding or by mutual consent." [32] Nonetheless, even without the amendment the Court is not precluded by the language of Rule 29, Section 48 from making a definitive declaration that the evidence of the fact of divorce by mutual agreement, not being a court judgment, may be proved in accordance with Rule 132, Section 24[33] of the Rules of Court.

With all the foregoing considered, I register my concurrence with the ponencia.

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

[2] See *Arreza v. Toyo*, 855 Phil. 522, 529 (2019) [Per J. Leonen, Third Division].

- [3] See *Racho v. Tanaka*, 834 Phil. 21, 30 (2018) [Per J. Leonen, Third Division].
- [4] See *Arreza v. Toyo*, 855 Phil. 522, 530 (2019) [Per J. Leonen, Third Division].
- [5] See *Corpuz v. Tirol*, 642 Phil. 420, 432 (2010) [Per J. Brion, Third Division].
- [6] See *In Re: Petition for Recognition of Foreign Judgment of Divorce of Ordaneza*, G.R. No. 254484, November 24, 2021 [Per J. Carandang, Third Division].
- [7] 831 Phil. 33 (2018) [Per J. Peralta, En Banc].
- [8] See *Nullada v. The Hon. Civil Registrar in Manila*, 846 Phil. 96, 105 (2019) [Per J. A. Reyes, Jr., Third Division]; see also *Abel v. Rule*, G.R. No. 234457, May 12, 2021 [Per J. Leonen, Third Division].
- [9] *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].
- [10] *Id.*
- [11] See *Ambrose v. Suque-Ambrose*, G.R. No. 206761, June 23, 2021 [Per J. Gaerlan, First Division].
- [12] 869 Phil. 351 (2020) [Per J. Caguioa, First Division].
- [13] See *id.* at 365; *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].
- [14] *Heirs of Gregorio v. Court of Appeals*, 360 Phil. 753 (1998) [Per J. Purisima, Third Division].
- [15] G.R. No. 181614, June 30, 2021 [Per J. Carandang, First Division].
- [16] 107 Phil. 35 (1960) [Per J. Bengzon, En Banc].
- [17] *Id.*
- [18] *Id.*; Citations omitted.
- [19] *Pohlman v. Pohlman*, [N.J.] 46 Atl. Rep. 658.
- [20] See *Racho v. Tanaka*, 834 Phil. 21, 30 (2018) [Per J. Leonen, Third Division].
- [21] *The Art of War*.
- [22] *Id.*
- [23] G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].
- [24] G.R. No. 243646, June 22, 2022 [Per J. Hernando, First Division].
- [25] 867 Phil. 578 (2019) [Per J. Lazaro-Javier, First Division].
- [26] 360 Phil. 601 (1998) [Per J. Bellosillo, Second Division].
- [27] *Republic v. Orbecido III*, 509 Phil. 108 (2005) [Per J. Quisumbing, First Division].
- [28] Circulated to the Members of the En Banc during deliberations.
- [29] *Id.*
- [30] 1987 Constitution, Article VIII, sec. 5(5).
- [31] *Compilation of the Laws of Foreign Countries on Marriage and Divorce*, July 7, 2022.

[32] See p. 3, Reflections of Associate Justice Maria Filomena A. Singh.

[33] The record of public document 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 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.

DISSENTING OPINION

SINGH, J.:

The ponencia resolves, among others, the issue of whether a foreign divorce decree obtained by mutual agreement of the divorcing spouses can be recognized in the Philippines. The ponencia concludes that such a foreign divorce decree can be recognized, on the strength of the Court's prior rulings in *Racho v. Tanaka, et al. (Racho)*,^[1] *Basa-Egami v. Bersales (Basa-Egami)*,^[2] and *Republic v. Bayog-Saito (Bayog-Saito)*.^[3] While these cases did allow the recognition of a foreign divorce decree obtained by mutual consent, I humbly submit that there is a need to revisit this legal issue and thoroughly consider the various aspects involved in resolving this question. Thus, as the ponencia concludes that foreign divorces obtained by mutual consent between the parties may be recognized here, I am compelled to register my dissent.

The rule that a foreign divorce which capacitates a foreign spouse to remarry should be recognized in this jurisdiction so as to allow the Filipino spouse to also remarry under Philippine law is anchored on the second paragraph of Article 26 of the Family Code of the Philippines (Family Code). Article 26 provides:

Art. 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 a 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. (Emphasis supplied)

Significantly, Article 26 refers to a divorce that is "validly obtained abroad" and does not distinguish as to any type of divorce. A plain reading of the second paragraph of Article 26 would thus imply that whether a foreign divorce was obtained through a judicial proceeding or by mutual consent (a no-fault divorce in other jurisdictions), Philippine law will recognize and enforce this divorce in order to allow a Filipino to remarry where the foreign spouse has a similar capacity to remarry under the relevant foreign law.

This interpretation, which the Court essentially espoused in *Racho*, *Basa-Egami*, and *Bayog-Saito*, follows a line of cases where the Court has taken a liberal approach in the recognition of foreign divorce to afford parity to the Filipino spouse, starting with *Van Dorn v. Romillo (Van Dorn)*.^[4] Indeed, the importance of these cases cannot be denied. They have ensured that our laws protect the interests of a Filipino spouse who would otherwise be trapped in a marriage notwithstanding the fact that their foreign spouse is already free to remarry under the laws of their own country.

However, I believe that reading Article 26 (2) to cover even foreign divorces obtained by mutual consent conflicts

with, first, the intent animating the inclusion of Article 26 (2) in the Family Code; second, the fundamental precepts through which the judgments of foreign courts may be recognized in the Philippines; third, the rule enshrined under the Civil Code of the Philippines (Civil Code) that personal laws follow Filipinos wherever they may be; and, fourth, the prevailing public policy against divorce as expressed in the Constitutional protection granted to marriage.

I submit that a proper consideration of the foregoing factors should lead to the conclusion that Article 26 (2) of the Family Code should be read to cover only foreign divorces obtained through a judicial proceeding.

The legislative intent behind Article 26 (2) of the Family Code

Article 26 (2) of the Family Code was first introduced during the deliberations of the Joint Civil Code and Family Code Law Committee. Significantly, the members of the Committee originally voted to delete the provision. It was also not included in the first version of the Family Code when it was signed into law on July 6, 1987. It was eventually added as an amendment on July 17, 1987.

The discussions of the members of the Committee on the matter are particularly relevant:

Justice Puno suggested that, in line with Justice [Eduardo] Caguioa's view that as much as possible they should make the Proposed Family Code as acceptable as possible and since they are not touching on divorce which is one of the big issues and they are leaving it to future legislation, they omit Article 26 temporarily and take it up when they take up the matter of absolute divorce.[5]

....

Dr. [Irene] Cortes proposed that, as a compromise, they can retain Article 26 but they should limit to marriage abroad. Prof. Romero commented that only the rich will benefit from the provision. Dr. Cortes stated that it will also protect the Filipino citizen, who may have married and divorced abroad.

Justice [JBL] Reyes remarked that this article is an implicit recognition of foreign divorce, with which Justice Caguioa concurred. Prof. [Esteban] Bautista and Prof. [Flerida Ruth] Romero pointed out that the article will only cover exceptional cases and special situations and that there is a reasonable and substantial basis for making it an exception.

After further discussion, Justice Puno rephrased Article 26 in accordance with Dr. Cortes' suggestion as follows:

Where a marriage between a Filipino citizen and a foreigner is validly celebrated abroad and a divorce is thereafter validly obtained abroad capacitating such foreigner to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Prof. Bautista remarked that, as rephrased, it would be better if they delete the above provision. On the other hand, Dr. Cortes was for deferring action on the above provision. Justice Puno suggested that it be deleted temporarily and it be taken up if and when absolute divorce is adopted.

Having sufficiently discussed the matter, the Committee decided to put the issue to a vote.

The members voted as follows:

(1) Justice Puno, Justice Caguioa, Dr. Cortes, Dean Carale, Dean Gupit and Prof. Baviera were for the deletion of Article 26.

(2) Judge Diy, Prof. Bautista, Prof. Romero and Director Eufemio were for its retention.[6] (Emphases supplied)

As aptly observed by Associate Justice Caguioa in his dissent in *Republic v. Manalo*:^[7]

While Article 26(2) was reinstated by executive fiat, it is nevertheless clear that the true spirit behind the provision remains explicit in the Committee deliberations - Article 26(2) had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code.^[8] (Emphasis in the original)

The Committee members recognized that Article 26 (2) could be interpreted as a step towards recognizing absolute divorce and, thus, its application requires careful consideration and restraint, rather than liberality.

Further, the factual milieu within which Article 26 (2) was conceived and proposed to be included in the Family Code is very relevant. It was intended to remedy the unfair situation brought about by cases like *Van Dorn*, where a Filipino, under Philippine law, is still considered married while the foreign spouse is capacitated to remarry under his or her law after obtaining a divorce decree from a foreign court. It is obvious that the members of the Committee did not have in mind a scenario where spouses can simply execute a divorce agreement and have it registered in a government office, without judicial intervention.

These considerations must inform the Court's interpretation of this provision.

Recognition of foreign judgments as basis for recognizing divorce decrees obtained through a judicial proceeding

The procedural rule that governs the recognition of foreign judgments (the same set of rules invoked in cases involving the recognition of foreign divorce), is Section 48, Rule 39 of the Rules of Court. Section 48 provides:

Section 48. Effect of foreign judgments or final orders. — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (Emphasis supplied)

As the title itself of Section 48 states, it applies only to "judgments or final orders." This suggests that it covers only issuances by foreign courts or judicial tribunals. This view is supported by the last paragraph of Section 48 which provides that a foreign judgment or final order may be repelled by evidence of "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." Notably, all these are elements of a judicial proceeding. Thus, a reading of Section 48 would show that, in so far as the recognition of foreign divorce decrees is concerned, it would only cover divorce decrees issued by a judicial tribunal in a judicial proceeding, and would exclude divorce decrees obtained by mutual consent.

Stated more simply, while the Court has taken a consistent liberal stance in the recognition of foreign divorce, this position appears to be at odds with the procedural rules governing the recognition of foreign divorce decrees. To be sure, procedural rules must give way to substantive law. In this case, Article 26, as interpreted by the Court, should prevail over Section 48, Rule 39 of the Rules of Court. To the extent that there is a need to provide a definitive set of rules governing the recognition of divorce decrees, whether obtained through a judicial proceeding or by mutual consent, Section 48 should therefore be amended accordingly.

To be sure, Article 26 is a substantive and special law while Section 48, Rule 39 is a remedial and general law. Generally, a substantive law ought to prevail over remedial law. However, while it is true that Section 48 is a procedural rule, it is, nonetheless, rooted in substantive law, and one that is critical to the Philippine government's

recognition and enforcement of the judicial acts of foreign countries.

Our jurisprudence has established that the recognition and enforcement of foreign judgments is a generally accepted principle of international law. In *Mijares v. Hon. Rañada*,^[9] this Court held:

The rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries.^[10] (Citation omitted)

Section 48, Rule 39 of the Rules of Court implements a generally accepted principle of international law, which, as no less than the Constitution provides, forms part of the law of the land.^[11] This is the legal anchor which allows for the enforcement and recognition of the judgments of foreign countries in this jurisdiction. Such foreign judgments would necessarily include divorce decrees. Stated more simply, foreign divorce decrees obtained through judicial proceedings can be recognized and enforced in the Philippines precisely because the generally accepted principles of international law and, necessarily, our domestic law, mandates the recognition and enforcement of the judgment of foreign courts. There is no similar legal underpinning for the recognition of a divorce by mutual consent, where the spouses do not submit the matter before any foreign court.

Public policy against absolute divorce

Even assuming that Section 48, Rule 39 of the Rules of Court may be amended to include foreign divorces obtained by mutual consent, there are, nevertheless, far greater considerations that cannot be resolved by such an amendment. There are a number of factors that call for a more nuanced interpretation and application of the second paragraph of Article 26 of the Family Code.

Section 2, Article XV of the Constitution lays out the State policy on the importance of marriage in society. It reads:

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

In relation to this, the Philippines has no law recognizing absolute divorce, much less divorce by mutual consent. In fact, even as the Family Code allows the declaration of nullity and the annulment of a marriage under specific grounds, it nevertheless zealously guards against collusion. Article 48 of the Family Code provides:

Art. 48. 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.

Foreign divorces obtained by mutual consent, where no court has examined the evidence and heard the parties, are rife with opportunities for collusion. At its worst, it is a tool to circumvent our public policy against absolute divorce. This is the very concern expressed by the members of the Committee when they considered the inclusion of Article 26 (2). It should not be used as a means for the recognition of absolute divorce in the Philippines, where there is, at present, no law authorizing it because public policy is against it.

Our laws on marriage and its dissolution form part of the body of laws that follow Filipino citizens wherever they may be. Article 15 of the Civil Code of the Philippines provides:

ARTICLE 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

Thus, Filipinos, regardless of where they may be and who they choose to marry, continue to be bound by Philippine law which prohibits absolute divorce. To be sure, the second paragraph of Article 26, and the jurisprudence which interpreted it, carves out an exception to the general rule set out in Article 15 of the Civil Code. As mentioned, this was done to ensure that Filipino spouses are not disadvantaged and that our laws do not work to treat them unfairly and discriminatorily. But it is, nonetheless, still only an exception. Moreover, it is an exception borne out of the unique circumstances facing Filipino spouses of foreign nationals who would be left at a disadvantage if our laws on marriage and its dissolution remain inflexible.

The general rule remains to be that there is a Constitutional mandate enshrining the status of marriage as an inviolable social institution; that there is no absolute divorce in the Philippines; that the Family Code limits the means by which a marriage can be dissolved and, in this regard, categorically prohibits collusion; and that laws pertaining to marriage and family follow a Filipino citizen wherever they may be.

Thus, while it is important to ensure that our family laws accord Filipino spouses the protection that they deserve and that they be granted parity in the eyes of the law, these interests must be balanced with other equally important considerations such as the Constitutional mandate for the State to protect the inviolability of marriage as an institution and the prevailing public policy, as reflected in our laws, prohibiting absolute divorce.

This means that when faced with questions such as that presented to the Court in this case, the Court must not pursue an interpretation of the law that would completely disregard one State interest for another, one that would prioritize one State policy over another, or one that would allow a circumvention of the laws that it is duty bound to obey and enforce.

I submit that it is important for the Court to pursue a position that would prevent local courts from indiscriminately recognizing foreign divorces without regard to our public policy on absolute divorce.

To this extent, a proper resolution of this issue must balance the interests involved here – i.e., the importance of granting parity to Filipino spouses and the imperative of upholding the country's fundamental policies concerning marriage.

Thus, I take the view that the application of the second paragraph of Article 26 should be nuanced in that it should be interpreted to mean that only foreign divorces obtained through judicial proceedings may be recognized in this jurisdiction. This view achieves the purpose of protecting the interests of Filipino spouses without relaxing the rules too much so as to facilitate the circumvention of our prevailing law against absolute divorce. This interpretation also imposes a reasonable standard for what kinds of divorce decrees may be recognized in the Philippines – only those which a judicial tribunal has examined and confirmed to be meritorious, and not one that was arrived at by mere agreement of the parties.

In addition, this approach limits the points by which the second paragraph of Article 26 disagrees with the essential features of our laws on marriage and its dissolution. Specifically, while a Filipino national, who would normally not be allowed to obtain divorce, would be able to have their foreign divorce recognized in the country, they would still nonetheless be prohibited from colluding with their foreign spouse. This narrow interpretation would also be consistent with the purpose for which the second paragraph of Article 26 was included in the Family Code – to address a specific issue as a carve out to the general rule. I further submit that this interpretation would not disadvantage Filipino spouses. They would still be free to obtain a foreign divorce, provided that it is one that is issued after judicial proceedings.

Finally, I believe that this interpretation, even as it distinguishes between a foreign divorce obtained through a judicial proceeding and a foreign divorce obtained by mutual consent, does not violate the equal protection clause.

It is fundamental that equal protection does not demand absolute equality. It only requires that all persons shall be treated alike under similar circumstances and conditions. It does not forbid discrimination as to things that are different.[12]

There is a substantial distinction between former spouses whose divorce was obtained by judicial proceedings and those whose divorce was obtained by mutual consent. The recognition of the foreign divorce in the former case is rooted in the Philippines' recognition of the authority of a foreign court to make a judicial determination as to the propriety of divorce. It is, more importantly, anchored on the international law principle of comity among nations, which mandates the recognition and enforcement of foreign judgments. To reiterate, this legal underpinning does not exist in cases where a foreign divorce is obtained by mere mutual consent.

To be sure, spouses similarly situated as the spouses in this present case are not left without a remedy. They can opt to seek annulment or the declaration of the nullity of their marriage in this jurisdiction. They can also choose to file for divorce before a foreign court.

I respectfully reiterate that the role of the Court is to ensure that our laws are upheld and, when necessary, to bridge any gaps in the law. It is not, however, within the Court's authority to override established public policy.

[1] 834 Phil. 21 (2018) [Per J. Leonen, Third Division].

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

[3] G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].

[4] 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

[5] Minutes of the 149th Joint Meeting of the Civil Code and Family Law Committees dated August 2, 1986, p. 14.

[6] Id. at 13-15.

[7] 831 Phil. 33 (2018) [Per J. Peralta, En Banc].

[8] Id. at 89.

[9] 495 Phil. 372 (2005) [Per J. Tinga, Second Division].

[10] Id. at 382.

[11] CONST., Article II, sec. 2.

[12] Zomer Development Co, Inc. v. Special Twentieth Division of the Court of Appeals, 868 Phil. 93 (2020) [Per J. Leonen, En Banc].

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