



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

MAY 09 2019

THIRD DIVISION

MARLYN MONTON NULLADA,
 Petitioner,

G.R. No. 224548

Present:

- versus -

PERALTA, J.,
 Chairperson,
 LEONEN,
 A. REYES, JR.,
 HERNANDO, and
 CARANDANG, JJ.

**THE HON. CIVIL REGISTRAR OF
 MANILA, AKIRA ITO, SHIN ITO
 AND ALL PERSONS WHO HAVE
 OR CLAIM ANY INTEREST,**
 Respondents.

Promulgated:

January 23, 2019

Wilfredo V. Lapitan

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DECISION

A. REYES, JR., J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to assail the Decision¹ dated January 21, 2016 of the Regional Trial Court (RTC), Branch 43 of Manila in Special Proceedings Case No. 14-132832, that denied the recognition of a foreign divorce that was obtained by petitioner Marlyn Monton Nullada (Marlyn) with Japanese national Akira Ito (Akira).

^{*} Designated Member per Special Order No. 2624, dated November 29, 2018.

¹ Rendered by Presiding Judge Roy G. Gironella; *rollo*, pp. 25-29

Reyes

The Antecedents

The action arose from a Petition² for registration and/or recognition of foreign divorce decree and cancellation of entry of marriage that was filed under Rule 108 of the Rules of Court, in relation to Article 26 of the Family Code, by Marlyn in 2014 with the RTC of Manila. She claimed that on July 29, 1997, she and Akira got married in Katsushika-Ku, Tokyo, Japan, as evidenced by a Report of Marriage³ that was issued by the Philippine Embassy in Tokyo, Japan. The document was registered with both the Office of the Local Civil Registry of Manila and the then National Statistics Office, Civil Registry Division.⁴

The union of Marlyn and Akira resulted in the birth of a child, Shin Ito. Their relationship, however, eventually turned sour and so they later decided to obtain a divorce by mutual agreement. In 2009, Akira and Marlyn secured a divorce decree in Japan. The Divorce Certificate⁵ that was issued by the Embassy of Japan in the Philippines reads as follows:

Cert. No. **IB12-08573-12**

DIVORCE CERTIFICATE

Name:	MARLYN	MONTON
NULLADA		
Date of Birth:	SEPTEMBER 03, 1968	
Nationality:	FILIPINO	
Name of Spouse:	AKIRA ITO	
Date of Marriage:	JULY 29, 1997	
Date of Divorce:	NOVEMBER 16, 2009	

This is to certify that the above statement has been made on the basis of the Official Family Register issued by the Head of Katsushika-ku, Tokyo, Japan on February 06, 2013. This certificate is issued for the purpose of the process of Notification of Foreign Divorce in the Republic of the Philippines.

Marlyn and Akira's acceptance of the notification of divorce by agreement was supported by an Acceptance Certificate⁶ that was issued by

² Id. at 31-36.

³ Id. at 37.

⁴ Id. at 32.

⁵ Id. at 39.

⁶ Id. at 41.

Meyer

the Head of Katsushika-ku in Japan, an English translation of which forms part of the records.

As she sought a recognition of the divorce decree in the Philippines, Marlyn filed with the RTC the petition that ended with the following prayer:

WHEREFORE, premises considered, it is respectfully prayed that, after notice and hearing, judgment be rendered as follows:

1. Recognizing the divorce obtained by [Marlyn and Akira], which was validly decreed in Japan thus dissolving their marriage, to be likewise valid and effective in Philippine jurisdiction;
2. Ordering respondent Hon. Civil Registrar of Manila to cancel the entry of marriage of [Marlyn and Akira] recorded in the Office of the Local Civil Registry of Manila;
3. Ordering respondent Hon. Civil Registrar of Manila to register the Japan divorce decree of [Marlyn and Akira] in the entry of marriage recorded in the Office of the Local Civil Registry of Manila, and;
4. Declaring [Marlyn's] marriage to [Akira] as dissolved with a pronouncement that petitioner [Marlyn] shall have the capacity to remarry under Philippine law.

Petitioner prays for other relief just and equitable under the premises.⁷

The RTC found the petition to be in due form and substance, and thus, issued an Order of Hearing⁸ with order for publication. Copies of the petition were also ordered served upon the Office of the Solicitor General (OSG) and Office of the City Prosecutor of Manila.⁹ On February 12, 2015, the OSG entered its appearance for the Republic of the Philippines, and then deputized the City Prosecutor of Manila for assistance in all the hearings of the case.¹⁰ Given proof of compliance with the action's jurisdictional requirements, trial before the RTC ensued.¹¹

During the trial, Marlyn testified mainly to identify the following pieces of documentary evidence that were submitted to support the petition:

- (1) Report of Marriage¹² (Exhibit "H") that was issued by the Embassy of the Republic of the Philippines in Japan on the registration with

⁷ Id. at 34.

⁸ Records, pp. 23-25.

⁹ *Rollo*, p. 23.

¹⁰ Records, pp. 49-50.

¹¹ Id. at 59-60.

¹² Id. at 67.

Mejia

the embassy of Akira and Marlyn's marriage on July 29, 1997 in Japan;

- (2) Authentication Certificate of the Report of Marriage¹³ (Exhibit "H-1");
- (3) Divorce Certificate¹⁴ (Exhibit "J") issued by the Embassy of Japan in the Philippines on the basis of the Official Family Register issued by the Head of Katsushika-ku, Tokyo, Japan;
- (4) Authentication Certificate of the Divorce Certificate¹⁵ (Exhibit "J-1");
- (5) Acceptance Certificate¹⁶ (translated in English) (Exhibit "L"); and
- (6) Excerpts of the Japanese Civil Code¹⁷ (Exhibit "M").

Marlyn also identified and submitted a Judicial Affidavit¹⁸ (Exhibits "N," and "N-1"), which was adopted as her direct testimony.¹⁹ Mary Ann Chico, registration officer of the Local Civil Registrar of Manila, also testified in court to present original copies of the divorce and authentication certificates that were filed with local civil registry.²⁰

Akira did not file an Answer to the petition, notwithstanding summons by publication. The Republic also did not offer any evidence to rebut the case of Marlyn.²¹

Ruling of the RTC

On January 21, 2016, the RTC rendered its Decision denying the petition. The *fallo* of the RTC decision reads:

ACCORDINGLY, the Petition is DENIED.

Notify the parties/counsels/Trial Prosecutor and the Office of the Solicitor General.

SO ORDERED.²²

¹³ Id. at 66.

¹⁴ Id. at 69.

¹⁵ Id. at 68.

¹⁶ Id. at 70.

¹⁷ Id. at 71-78.

¹⁸ Id. at 79-83.

¹⁹ TSN, August 28, 2015, p. 16.

²⁰ TSN, October 23, 2015, pp. 6-7.

²¹ Records, p. 104.

²² Id. at 107.



Under the third paragraph of Article 17²³ of the New Civil Code is a policy of non-recognition of divorce. For the trial court, the fact that Marlyn also agreed to the divorce and jointly filed for it with Akira barred the application of the second paragraph of Article 26 of the Family Code, which would have otherwise allowed a Filipino spouse to remarry after the alien spouse had validly obtained a divorce.²⁴ While the intent of the law is to equalize Filipinos with their foreigner spouses who are free to marry again after the divorce, the Filipino spouse cannot invoke the intention of equity behind the law when he or she is an initiator or active participant in procuring the divorce.²⁵

Dissatisfied, Marlyn moved for reconsideration but her motion was denied by the trial court *via* an Order dated April 26, 2016.²⁶ This prompted Marlyn to file the present petition for review on *certiorari*.

The Present Petition

Marlyn seeks to justify her immediate recourse to the Court by explaining that the present petition involves a pure question of law based on a lone issue, as follows: Whether or not Article 26, paragraph 2 of the Family Code has a restrictive application so as to apply only in cases where it is the alien spouse who sought the divorce, and not where the divorce was mutually agreed upon by the spouses.²⁷

The Court's Ruling

The Court finds merit in the petition.

At the outset, the Court explains that it allows the direct recourse from the decision of the RTC on the ground that the petition raises a pure question of law on the proper application of Article 26 of the Family Code. “[D]irect recourse to this Court from the decisions and final orders of the RTC may be taken where only questions of law are raised or involved.”²⁸ In this case, the RTC’s resolve to dismiss the petition filed before it delved solely on its application of the statutory provision to the facts undisputed before it. This question of law was directly resolved by the Court in the recent case of

²³ Art. 17. x.x x.
x x x x

Prohibitive laws concerning persons, their acts or property, and those which have, for their object, public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

²⁴ *Rollo*, p. 28.

²⁵ *Id.*

²⁶ *Records*, p. 131.

²⁷ *Rollo*, pp. 13-20.

²⁸ *Rep. of the Phils. v. Olaybar*, 726 Phil. 378, 384 (2014).

Keyes

Republic of the Philippines v. Marelyn Tanedo Manalo,²⁹ which was promulgated by the Court subsequent to the filing of the present petition.

The legal provision that is pertinent to the case is Article 26 of the Family Code, which states:

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. (Underscoring ours)

The facts in *Manalo* are similar to the circumstances in this case. A divorce decree between a Filipino and a Japanese national was obtained by the spouses upon a case that was filed in Japan by Manalo, the Filipino spouse. Initially, the recognition of the divorce decree in the Philippines was rejected by the RTC where the petition for recognition and enforcement of a foreign judgment was filed, as the trial court cited Article 15 of the New Civil Code and reasoned that as a rule, “the Philippine law ‘does not afford Filipinos the right to file for a divorce, whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country x x x[.]’” On appeal to the Court of Appeals (CA), however, the RTC decision was overturned. The appellate court held that Article 26 of the Family Code should apply even if it was Manalo who filed for divorce. The decree made the Japanese spouse no longer married to Manalo; he then had the capacity to remarry. It would be unjust to still deem Manalo married to the Japanese who, in turn, was no longer married to her. The fact that it was Manalo who filed the divorce was inconsequential. This ruling of the CA was then affirmed by the Court in *Manalo* upon a petition for review on *certiorari* that was filed by the Republic of the Philippines.

Applying the same legal considerations and considering the similar factual milieu that attended in *Manalo*, the present case warrants a reversal of the RTC’s decision that refused to recognize the divorce decree that was mutually obtained by Marlyn and her foreigner spouse in Japan solely on the ground that the divorce was jointly initiated by the spouses. The Court finds no reason to deviate from its recent disposition on the issue, as made in *Manalo*, thus:

²⁹ G.R. No. 221029, April 24, 2018.

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Now, the Court is tasked to resolve whether, under the same provision [Art. 26], a Filipino citizen has the capacity to remarry under Philippine law after initiating a divorce proceeding abroad and obtaining a favorable judgment against his or her alien spouse who is capacitated to remarry. x x x.

We rule in the affirmative.

In the *Manalo* decision, the Court went on to cite jurisprudence wherein the legal effects of a foreign divorce decree, albeit obtained by a Filipino spouse, were acknowledged in our jurisdiction but limited on the issues of child custody³⁰ and property relations.³¹ In several other jurisprudence,³² recognition of the effects of a foreign divorce was also implied from the Court's disposition of the cases. The specific issue on the binding effect of a divorce decree obtained by a Filipino spouse on one's marital status was then expressly and directly tackled by the Court. In determining whether a divorce decree obtained by a foreigner spouse should be recognized in the Philippines, it is immaterial that the divorce is sought by the Filipino national. The Court reasoned:

There is no compelling reason to deviate from the above-mentioned rulings. When this Court recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, it should not stop short in likewise acknowledging that one of the usual and necessary consequences of absolute divorce is the right to remarry. Indeed, there is no longer a mutual obligation to live together and observe fidelity. When the marriage tie is severed and ceased to exist, the civil status and the domestic relation of the former spouses change as both of them are freed from the marital bond.

x x x x

Paragraph 2 of Article 26 speaks of "*a divorce x x x validly obtained abroad by the alien capacitating him or her to remarry.*" Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. **The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted.** It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers. "The legislature is presumed to know that 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. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."

x x x x

³⁰ *Dacasin v. Dacasin*, 625 Phil. 494, 502 (2010).

³¹ *Van Dorn v. Judge Romillo, Jr.*, 223 Phil. 357, 360 (1985).

³² *Fujiki v. Marinay, et al.*, 712 Phil. 524 (2013); and *Medina v. Koike*, 791 Phil. 645 (2016).

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is 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 his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law. (Emphasis ours)

While opposition to the foregoing interpretation is commonly raised on the basis of the nationality principle, such principle is not an absolute and unbending rule. The second paragraph of Article 26 of the Family Code should be deemed an exception to the general rule.³³

Applying the foregoing to the present case, the assailed Decision of the RTC warrants the Court's reversal. The dismissal of Marlyn's petition based on the trial court's interpretation of Article 26 of the Family Code is erroneous in light of the Court's disposition in *Manalo*. The fact that the divorce was by the mutual agreement of Marlyn and Akira was not sufficient ground to reject the decree in this jurisdiction.

While Marlyn and Akira's divorce decree was not disputed by the OSG, a recognition of the divorce, however, could not extend as a matter of course. Under prevailing rules and jurisprudence, the submission of the decree should come with adequate proof of the foreign law that allows it. The Japanese law on divorce must then be sufficiently proved. "Because our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven x x x like any other fact."³⁴ In *ATCI Overseas Corp., et al. v. Echin*,³⁵ the Court reiterated the following rules on proof of foreign laws:

³³ *Republic of the Philippines v. Marelyn Tanedo Manalo*, supra note 29.

³⁴ *Ando v. Department of Foreign Affairs*, 742 Phil. 37, 48 (2014).

³⁵ 647 Phil. 43 (2010).

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To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court which read:

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, if there be any, or if he be the clerk of court having a seal, under the seal of such court.³⁶

Marlyn failed to satisfy the foregoing requirements. The records only include a photocopy of excerpts of The Civil Code of Japan, merely stamped LIBRARY, Japan Information and Culture Center, Embassy of Japan, 2627 Roxas Boulevard, Pasay City 1300.³⁷ This clearly does not constitute sufficient compliance with the rules on proof of Japan's law on divorce. In any case, similar to the remedy that was allowed by the Court in *Manalo* to resolve such failure, a remand of the case to the RTC for further proceedings and reception of evidence on the laws of Japan on divorce is allowed, as it is hereby ordered by the Court.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated January 21, 2016 of the Regional Trial Court, Branch 43 of Manila in Special Proceedings Case No. 14-132832 is **REVERSED and SET ASIDE**. The case is **REMANDED** to the court of origin for further proceedings and reception of evidence as to the relevant Japanese law on divorce.

³⁶ Id. at 50.

³⁷ Records, pp. 71-78.



SO ORDERED.

Reyes
ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Chairperson


MARVIC M.V.F. LEONEN
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

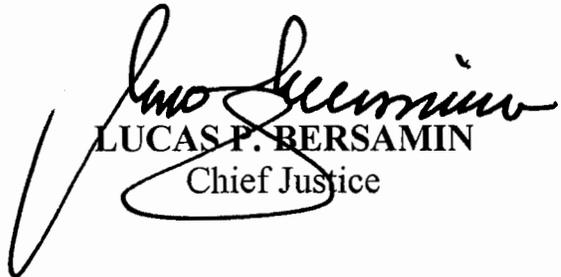
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

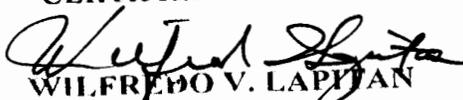

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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


LUCAS P. BERSAMIN
Chief Justice

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WILFREDO V. LAPID
Division Clerk of Court
Third Division

MAY 09 2019