

Republic of the Philippines

Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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IN RE: PETITION FOR G.R. No. 254484
RECOGNITION OF FOREIGN Present:
JUDGMENT OF DIVORCE WITH LEONEN, J.,
PRAYER TO CHANGE CIVIL Chairperson,
STATUS OF JANEVIC ORTEZA CARANDANG,
ORDANEZA FROM MARRIED TO ZALAMEDA,
SINGLE, JANEVIC ORTEZA ROSARIO, and
ORDANEZA, REPRESENTED BY: MARQUEZ, JJ.
RICKY O. ORDANEZA, Petitioner,

- versus -

REPUBLIC OF THE PHILIPPINES,
Respondent.

Promulgated:

November 24, 2021

X-----X

[Signature]

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Rules), assailing the Decision² dated September 7, 2020 of the Court of Appeals (CA) in CA-G.R. CV No. 05087-MIN filed by petitioner Janevic Orteza Ordaneza (Janevic) through her representative, Ricky O. Ordaneza (Ricky).

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¹ Rollo, pp. 14-30.

² Penned by Associate Justice Evalyn M. Arellano-Morales, with the concurrence of Associate Justices Edgardo A. Camello and Angelene Mary W. Quimpo-Sale; id. at 38-48.

WHEREFORE, the Appeal is **GRANTED**. The Decision dated 28 December 2017 and Resolution dated 3 July 2018 of the Regional Trial Court, Branch 23, Kidapawan City, in Special Proceedings Case No. 318-2016, are hereby **REVERSED and SET ASIDE**.

SO ORDERED.²⁰

The CA ruled that Janevic failed to comply with the requirements under Rule 108. The CA explained that since the end sought to be achieved in the petition was the cancellation or correction of an entry in the Civil Registry (*i.e.*, change of civil status from “married” to “single”), Sections 1 and 3 of Rule 108 should strictly be observed.²¹ The CA noted that the petition should have been filed in the RTC where the Civil Registry in which the entry sought to be cancelled or corrected is located, Pasay City, and not Kidapawan City. The Local Civil Registrar, the Civil Registrar General, and other parties who would be affected by the grant of a petition for cancellation or correction of entries were also not impleaded.²²

The CA also held that there was no compliance with the requirements under Article 26 of the Family Code. The CA pointed out that while the Japanese law on divorce provides that a husband and wife may divorce by agreement, the Japanese husband’s capacity to remarry was not sufficiently established. There was nothing in the copy of the provisions of the Civil Code of Japan that Janevic submitted that states that the Japanese spouse is capacitated to remarry once the divorce decree is obtained. For the CA, the party seeking recognition of the divorce bears the burden of proving that the Japanese law allows her former spouse to remarry.²³

In the present Petition,²⁴ Janevic argues that the main action of her petition is the recognition of the foreign judgment on divorce that she and her Japanese husband validly obtained. While the Petition specifically prayed that her civil status be changed from “married” to “single,” she insists that this is merely incidental to her main prayer of judicial recognition of her foreign divorce decree. She also claims that the Court’s use of the permissive word “may” in *Republic v. Cote*²⁵ and *Fujiki v. Marinay*²⁶ implies that judicial recognition of divorce decree through a petition under Rule 108 is only directory and not mandatory. To date, there is no categorical pronouncement to the effect that Rule 108 shall be the proper proceeding to recognize foreign divorce decree and to annotate the same in the civil registry.²⁷

²⁰ Id. at 47.

²¹ Id. at 43.

²² Id. at 44-45.

²³ Id. at 45-47.

²⁴ Id. at 14-30.

²⁵ 828 Phil. 168 (2018).

²⁶ Supra note 15.

²⁷ *Rollo*, pp. 21-22.

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Following Janevic's position that compliance with the requirements of Rule 108 is not necessary when it comes to recognition of foreign judgments on divorce, she maintains that her petition need not be filed before the RTC where the Civil Registry in which the entry sought to be cancelled or corrected is located. She insists that the general rule on venue stated in Section 2, Rule 4 of the Rules should be observed. Being a resident of Makilala, Cotabato, Janevic avers that her petition was filed in the proper venue.²⁸ Janevic contends that the requirement of impleading the Local Civil Registrar and the Civil Registrar General finds no application in her petition since it was not filed pursuant to Rule 108. She adds that the respective interests of the Local Civil Registrar were protected since the Provincial Prosecutor of Cotabato, under the authority of the Solicitor General, actively participated in the proceedings of the case.²⁹ Janevic also asserts that she had satisfactorily proved the foreign divorce she obtained and its validity under the Japanese law pursuant to Sections 24 and 25 of Rule 132 of the Rules.³⁰

In its Comment,³¹ the OSG posits that since the Petition of Janevic includes a prayer for the cancellation or correction of an entry in the civil registry, it must comply with the requirements of Rule 108 on venue, and the parties to be impleaded.³² The OSG also emphasizes that Janevic failed to comply with the requirements of Article 26 because she failed to sufficiently establish that the divorce decree allows the alien spouse to remarry.³³ While Janevic cited Articles 732 and 733 of the Civil Code of Japan which purportedly enumerated the restrictions imposed on "Japanese people [to] remarry,"³⁴ these provisions were not included in the authenticated documents she submitted during trial. Therefore, the OSG maintains that the foreign spouse's capacity to remarry under the Civil Code of Japan cannot be proven as a fact under the Rules.³⁵

Issues

The core issues for the Court's resolution are:

1. Whether the petition for judicial recognition of foreign divorce should be treated as a petition for cancellation or correction of entries under Rule 108; and
2. Whether Janevic sufficiently established that her foreign divorce decree complied with the requirements of Article 26.

²⁸ Id. at 23-24.

²⁹ Id. at 24.

³⁰ Id. at 26-29.

³¹ Id. at 125-142.

³² Id. at 132-139.

³³ Id. at 139-141.

³⁴ Id. at 19.

³⁵ Id. at 140-141.

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Ruling of the Court

Janevic's petition for judicial recognition of foreign divorce decree should not be treated as a petition for cancellation or correction of entries under Rule 108 of the Rules.

In resolving the first issue, it is worthy to highlight A.M. No. 15-02-10-SC (*Re: Report of the Committee on Family Courts and Juvenile Concerns on the Budget Proposal for the Formal Organization of Family Courts for 2016*) wherein the Court adopted the following guidelines:

I. CIVIL CASES

A. Recognition of Foreign Judgment Order or Decree of Divorce

Pursuant to Rule 39, Section 48 of the Rules of Court on "Effect of foreign judgments or final orders," the Regional Trial Courts shall hear and decide all petitions for Recognition of Foreign Judgment, Order or Decree of Divorce, regardless of any prayer by the petition for a court declaration of his/ her capacity to remarry under Article 26, paragraph 2 of the Family Code.

x x x x

C. Raffle of Cases and Rules of Procedure

The above-mentioned petitions shall be raffled to the regular Regional Trial Courts and not to the designated or regular Family Courts.

The Regional Trial Courts shall be guided by the procedure provided in (a) Rule 108 of the Rules of Court on the "Cancellation or Correction of Entries in the Civil Registry" and (b) as to proof Rule 39, Section 48 (b) on "Effect of foreign judgments or final orders" and Rule 132, Sections 24 and 25 on "Proof of official record" and "What attestation of copy must state," in accordance with *Fujiki v. Marinay* (G.R. No. 196049, June 26, 2013) and *Corpuz v. Sto. Tomas* (G.R. No. 186571, August 11, 2010). (Emphases, italics, and underscoring supplied)

The foregoing guidelines must be harmonized with the Court's pronouncements in relation to recognition of foreign divorce decrees, especially the rulings in *Fujiki v. Marinay*³⁶ and *Corpuz v. Sto. Tomas*.³⁷

In *Corpuz v. Sto. Tomas*,³⁸ the Court categorically acknowledged that

³⁶ Supra note 15.
³⁷ 642 Phil. 420 (2010).
³⁸ Id.

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a petition for recognition of a foreign judgment in relation to the second paragraph of Article 26 of the Family Code is not the same as a petition for cancellation of entries in the civil registry under Rule 108 of the Rules. The Court explained that:

Another point we wish to draw attention to is that the recognition that the RTC may extend to the Canadian divorce decree does not, by itself, authorize the cancellation of the entry in the civil registry. A petition for recognition of a foreign judgment is not the proper proceeding, contemplated under the Rules of Court, for the cancellation of entries in the civil registry.

Article 412 of the Civil Code declares that "no entry in a civil register shall be changed or corrected, without judicial order." The Rules of Court supplements Article 412 of the Civil Code by specifically providing for a special remedial proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 of the Rules of Court sets in detail the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry. It also requires, among others, that the verified petition must be filed with the RTC of the province where the corresponding civil registry is located; that the civil registrar and all persons who have or claim any interest must be made parties to the proceedings; and that the time and place for hearing must be published in a newspaper of general circulation. As these basic jurisdictional requirements have not been met in the present case, we cannot consider the petition Gerbert filed with the RTC as one filed under Rule 108 of the Rules of Court.

We hasten to point out, however, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry — one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.³⁹ (Citations and emphasis omitted; underscoring supplied)

In *Fujiki v. Marinay*,⁴⁰ the Court explicitly stated that:

³⁹ Id. at 436-437.

⁴⁰ Supra note 15.

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Since the recognition of a foreign judgment only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court.⁴¹

More recently, in *Republic v. Cote*,⁴² the Court reiterated the differentiation made in *Corpuz v. Sto. Tomas*⁴³ between the nature of recognition proceedings under Rule 39 and cancellation or correction of entries under Rule 108.

The import of the recent rulings of the Court is that there is more than one remedy to judicially recognize a foreign divorce decree in the Philippines and availing one remedy does not automatically preclude the institution of another remedy.

Here, it is clear from the prayer that Janevic intended to cancel or correct her civil status entry in the civil registry aside from the judicial recognition of the divorce decree. The cancellation or correction of her civil status cannot be done through a petition for recognition under Article 26 (2) without complying with the requirements of Rule 108. In *Fujiki v. Marinay*,⁴⁴ the Court stressed that:

Rule 1, Section 3 of the Rules of Court provides that “[a] special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.” Rule 108 creates a remedy to rectify facts of a person's life which are recorded by the State pursuant to the Civil Register Law or Act No. 3753. These are facts of public consequence such as birth, death or marriage, which the State has an interest in recording. As noted by the Solicitor General, in *Corpuz v. Sto. Tomas* this Court declared that “[t]he recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact.”⁴⁵ (Citation omitted; italics in the original; underscoring supplied)

An individual seeking the change of his or her civil status must adhere to the requirements governing a petition for cancellation or correction of entries in the civil registry under Rule 108. There are underlying objectives and interests that the State seeks to protect in imposing the requirements in Rule 108, including *inter alia* the requirements on venue (Section 1 of Rule 108) and parties to implead (Section 3 of Rule 108), that the Court cannot simply disregard in favor of expediency.

⁴¹ Id. at 548.

⁴² Supra note 26.

⁴³ 642 Phil. 420 (2010).

⁴⁴ Supra note 15.

⁴⁵ Id. at 548-549.

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Section 1 of Rule 108 specifically states that the petition must be filed:

x x x with the Court of First Instance [now Regional Trial Court] of **the province where the corresponding civil registry is located.** (Emphasis supplied)

Meanwhile, Section 3 of Rule 108 provides that:

Section 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, **the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.** (Emphasis supplied)

Compliance with these requirements is necessary because inherent in the petition under Rule 108 is a prayer that the trial court order the concerned local civil registrar to make the necessary correction or cancellation in entries of documents in its custody.

Here, the interested parties referred to in Section 3 of Rule 108 include *inter alia* the Local Civil Registrar of Pasay City and Masayoshi. The RTC of Kidapawan City does not possess any authority to instruct the Local Civil Registrar of Pasay City to reflect the change in civil status of Janevic considering that it was not impleaded in her petition.

While the change in Janevic's civil status is an expected consequence of the judicial recognition of her foreign divorce, it does not automatically follow that the Petition she filed is the petition contemplated under Rule 108. Janevic herself acknowledged in her Petition that “[t]he court does not altogether preclude the filing of the separate proceedings to effect the same.”⁴⁶ Since Rule 108 pertains to a special proceeding, its particular provisions on venue and the parties to implead must be observed to vest the Court with jurisdiction.⁴⁷ Therefore, the Court cannot take cognizance of Janevic's prayer for the cancellation or correction of her civil status from “married” to “single” as this may only be pursued and granted in the proper petition filed in compliance with the specific requirements of Rule 108.

The foreign law capacitating the foreign spouse to remarry must be proven as a fact during trial and in accordance with the Rules.

To date, Philippine laws do not provide for absolute divorce.⁴⁸ Nevertheless, jurisdiction is conferred on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing

⁴⁶ Rollo, p. 22.

⁴⁷ *Fox v. Philippine Statistics Authority*, G.R. No. 133520, March 6, 2019.

⁴⁸ *Medina v. Koike*, 791 Phil. 645 (2016).

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trial to determine the validity of the dissolution of the marriage.⁴⁹ Article 26 of the Family Code 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)

Under the second paragraph of the quoted provision and the seminal case of *Republic v. Manalo*,⁵⁰ twin elements must be established: (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.⁵¹ The Court has recognized the second paragraph of Article 26 of the Family Code 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 his or her country.”⁵²

It is settled 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. This must be alleged and proven in accordance with the Rules.⁵³ Here, Janevic was able to prove the Japanese law permitting her and Masayoshi to obtain a divorce by agreement. The pertinent provision of the Civil Code of Japan that was properly presented during trial states: Article 763. A husband and wife may divorce by agreement.⁵⁴

While Janevic was able to allege and prove as a fact the divorce by agreement and the Japanese law supporting its validity, the OSG insists that the provision of the Civil Code of Japan capacitating the foreign spouse to remarry was not properly alleged and proven in accordance with the Rules. The OSG contends that the relevant provisions of the Civil Code of Japan duly proven during trial allegedly did not explicitly state that the divorce obtained abroad permits the parties to remarry. Janevic alleged in her petition Articles 732 and 733 of the Civil Code of Japan, to wit:

⁴⁹ Id., citing *Fujiki v. Marinay*, supra note 15.

⁵⁰ 831 Phil. 33, 51 (2018).

⁵¹ Id.; *Racho v. Tanaka*, 834 Phil. 21 (2018).

⁵² *Republic v. Manalo*, supra note 49 at 58.

⁵³ *Garcia-Recio v. Garcia*, 418 Phil. 723 (2001).

⁵⁴ *Rollo*, p. 106.

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Japanese people can remarry, however there are restrictions, to wit:

(Period of Prohibition of Remarriage)

“Article 733. A woman may not remarry unless six months have elapsed from the dissolution or annulment of her previous marriage.

2. In cases [*sic*] a woman is pregnant from before dissolution or annulment of her previous marriage, the preceding paragraph shall cease to apply as from the day of her delivery.”

(Prohibition of Bigamous Marriage)

“Article 732. A person who has a spouse may not effect an additional marriage.”⁵⁵

The Court is mindful that it cannot simply take judicial notice of the foreign law purportedly capacitating the foreign spouse to remarry without being properly presented during trial.

In *Racho v. Tanaka*,⁵⁶ the Court found that the national law of the foreign spouse absolutely and completely terminated the spouses marital relationship, thereby concluding that they are not restricted from remarrying. The Court explained that the “Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties. There can be no other interpretation than that the divorce procured by petitioner and respondent is absolute and completely terminates their marital tie.”⁵⁷

In the present case, Janevic alleged in her petition, though not properly presented and proven during trial, that there are restrictions to remarrying in Japan but these restrictions apply only to women, and not the male foreign spouse. Similar to the case of *Racho*, the fact remains that the divorce by agreement severed the marital relationship between the spouses and the Japanese spouse is capacitated to remarry. Moreover, the official document Janevic submitted to prove the fact of divorce, the Divorce Notification,⁵⁸ did not indicate any restriction on the capacity of either spouse to remarry. Therefore, the Court deems it prudent to adopt its ruling in *Racho*, which involved the same foreign law, in holding that the capacity to remarry of the foreign spouse had been established.

Accordingly, the petition of Janevic is granted only insofar as her foreign divorce decree by agreement is recognized. The other relief prayed for, that her civil status be changed from “married” to “single” cannot be

⁵⁵ Id. at 85.

⁵⁶ 834 Phil. 21 (2018).

⁵⁷ Id.

⁵⁸ *Rollo*, pp. 101-102.

given due course and awarded in this petition. This ruling is without prejudice to the filing of a petition for cancellation or correction of entries in compliance with the requirements outlined in Rule 108 where the appropriate adversarial proceeding may be conducted.

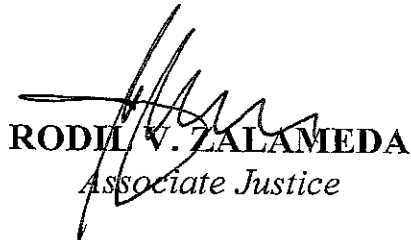
WHEREFORE, premises considered, the Decision dated September 7, 2020 of the Court of Appeals in CA-G.R. CV No. 05087-MIN is **SET ASIDE**. The petition for review on *certiorari* of Janevic Orteza Ordaneza is **PARTIALLY GRANTED** only insofar as her foreign divorce decree by agreement is judicially recognized.

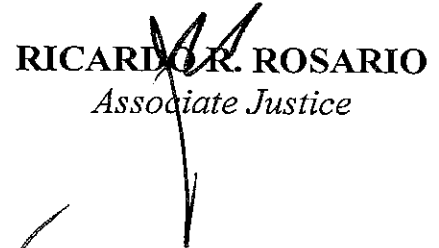
SO ORDERED.

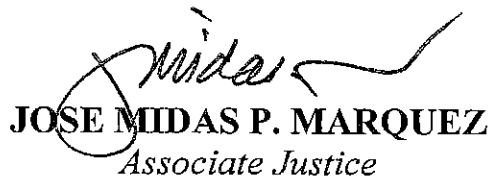

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
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.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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.


ALEXANDER G. GESMUNDO
Chief Justice