115 OG No. 6, 1197 (February 11, 2019)

THIRD DIVISION

[G.R. No. 199515, June 25, 2018]

RHODORA ILUMIN RACHO, A.K.A. "RHODORA RACHO TANAKA," PETITIONER, VS. SEIICHI TANAKA, LOCAL CIVIL REGISTRAR OF LAS PIÑAS CITY, AND THE ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE, RESPONDENTS.

DECISION

LEONEN, J.:

Judicial recognition of a foreign divorce requires that the national law of the foreign spouse and the divorce decree be pleaded and proved as a fact before the Regional Trial Court. The Filipino spouse may be granted the capacity to remarry once our courts find that the foreign divorce was validly obtained by the foreign spouse according to his or her national law, and that the foreign spouse's national law considers the dissolution of the marital relationship to be absolute.

This is a Petition for Review on Certiorari[1] assailing the June 2, 2011 Decision[2] and October 3, 2011 Order[3] of Branch 254, Regional Trial Court, Las Piñas City, which denied Rhodora Ilumin Racho's (Racho) Petition for Judicial Determination and Declaration of Capacity to Marry.[4] The denial was on the ground that a Certificate of Divorce issued by the Japanese Embassy was insufficient to prove the existence of a divorce decree.

Racho and Seiichi Tanaka (Tanaka) were married on April 20, 2001 in Las Piñas City, Metro Manila. They lived together for nine (9) years in Saitama Prefecture, Japan and did not have any children.[5]

Racho alleged that on December 16, 2009, Tanaka filed for divorce and the divorce was granted. She secured a Divorce Certificate[6] issued by Consul Kenichiro Takayama (Consul Takayama) of the Japanese Consulate in the Philippines and had it authenticated[7] by an authentication officer of the Department of Foreign Affairs.[8]

She filed the Divorce Certificate with the Philippine Consulate General in Tokyo, Japan, where she was informed that by reason of certain administrative changes, she was required to return to the Philippines to report the documents for registration and to file the appropriate case for judicial recognition of divorce.[9]

She tried to have the Divorce Certificate registered with the Civil Registry of Manila but was refused by the City Registrar since there was no court order recognizing it. When

she went to the Department of Foreign Affairs to renew her passport, she was likewise told that she needed the proper court order. She was also informed by the National Statistics Office that her divorce could only be annotated in the Certificate of Marriage if there was a court order capacitating her to remarry.[10]

She went to the Japanese Embassy, as advised by her lawyer, and secured a Japanese Law English Version of the Civil Code of Japan, 2000 Edition.[11]

On May 19, 2010, she filed a Petition for Judicial Determination and Declaration of Capacity to Marry[12] with the Regional Trial Court, Las Piñas City.

On June 2, 2011, Branch 254, Regional Trial Court, Las Piñas City rendered a Decision, [13] finding that Racho failed to prove that Tanaka legally obtained a divorce. It stated that while she was able to prove Tanaka's national law, the Divorce Certificate was not competent evidence since it was not the divorce decree itself.[14]

Racho filed a Motion for Reconsideration,[15] arguing that under Japanese law, a divorce by agreement becomes effective by oral notification, or by a document signed by both parties and by two (2) or more witnesses.[16]

In an Order[17] dated October 3, 2011, the Regional Trial Court denied the Motion, finding that Racho failed to present the notification of divorce and its acceptance.[18]

On December 19, 2011, Racho filed a Petition for Review on Certiorari[19] with this Court. In its January 18, 2012 Resolution, this Court deferred action on her Petition pending her submission of a duly authenticated acceptance certificate of the notification of divorce.[20]

Petitioner initially submitted a Manifestation,[21] stating that a duly-authenticated acceptance certificate was not among the documents presented at the Regional Trial Court because of its unavailability to petitioner during trial. She also pointed out that the Divorce Certificate issued by ,the Consulate General of the Japanese Embassy was sufficient proof of the fact of divorce.[22] She also manifested that Tanaka had secured a marriage license on the basis of the same Divorce Certificate and had already remarried another Filipino. Nevertheless, she has endeavored to secure the document as directed by this Court.[23]

On March 16, 2012, petitioner submitted her Compliance,[24] attaching a duly authenticated Certificate of Acceptance of the Report of Divorce that she obtained in Japan.[25] The Office of the Solicitor General thereafter submitted its Comment[26] on the Petition, to which petitioner submitted her Reply.[27]

Petitioner argues that under the Civil Code of Japan, a divorce by agreement becomes effective upon notification, whether oral or written, by both parties and by two (2) or more witnesses. She contends that the Divorce Certificate stating "Acceptance

Certification of Notification of Divorce issued by the Mayor of Fukaya City, Saitama Pref., Japan on December 16, 2009" is sufficient to prove that she and her husband have divorced by agreement and have already effected notification of the divorce.[28]

She avers further that under Japanese law, the manner of proving a divorce by agreement is by record of its notification and by the fact of its acceptance, both of which were stated in the Divorce Certificate. She maintains that the Divorce Certificate is signed by Consul Takayama, whom the Department of Foreign Affairs certified as duly appointed and qualified to sign the document. She also states that the Divorce Certificate has already been filed and recorded with the Civil Registry Office of Manila. [29]

She insists that she is now legally capacitated to marry since Article 728 of the Civil Code of Japan states that a matrimonial relationship is terminated by divorce.[30]

On the other hand, the Office of the Solicitor General posits that the Certificate of Divorce has no probative value since it was not properly authenticated under Rule 132, Section 24[31] of the Rules of Court. However, it states that it has no objection to the admission of the Certificate of Acceptance of the Report of Divorce submitted by petitioner in compliance with this Court's January 18, 2012 Resolution.[32]

It likewise points out that petitioner never mentioned that she and her husband obtained a divorce by agreement and only mentioned it in her motion for reconsideration before the Regional Trial Court. Thus, petitioner failed to prove that she is now capacitated to marry since her divorce was not obtained by the alien spouse. She also failed to point to a specific provision in the Civil Code of Japan that allows persons who obtained a divorce by agreement the capacity to remarry. In any case, a divorce by agreement is not the divorce contemplated in Article 26 of the Family Code. [33]

In rebuttal, petitioner insists that all her evidence, including the Divorce Certificate, was formally offered and held to be admissible as evidence by the Regional Trial Court. [34] She also argues that the Office of the Solicitor General should not have concluded that the law does not contemplate divorce by agreement or consensual divorce since a discriminatory situation will arise if this type of divorce is not recognized.[35]

The issue in this case, initially, was whether or not the Regional Trial Court erred in dismissing the Petition for Declaration of Capacity to Marry for insufficiency of evidence. After the submission of Comment, however, the issue has evolved to whether or not the Certificate of Acceptance of the Report of Divorce is sufficient to prove the fact that a divorce between petitioner Rhodora Ilumin Racho and respondent Seiichi Tanaka was validly obtained by the latter according to his national law.

I

Under Article 26 of the Family Code, a divorce between a foreigner and a Filipino may

be recognized in the Philippines as long as it was validly obtained according to the foreign spouse's national law, thus:

> 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.*[36] (Emphasis supplied)

The second paragraph was included to avoid an absurd situation where a Filipino spouse remains married to the foreign spouse even after a validly obtained divorce abroad.[37] The addition of the second paragraph gives the Filipino spouse a substantive right to have the marriage considered as dissolved, and ultimately, to grant him or her the capacity to remarry.[38]

Article 26 of the Family Code is applicable only in issues on the validity of remarriage. It cannot be the basis for any other liability, whether civil or criminal, that the Filipino spouse may incur due to remarriage.

Mere presentation of the divorce decree before a trial court is insufficient.[39] In *Garcia v. Recio*,[40] this Court established the principle that before a foreign divorce decree is recognized in this jurisdiction, a separate action must be instituted for that purpose. Courts do not take judicial notice of foreign laws and foreign judgments; thus, our laws require that the divorce decree and the national law of the foreign spouse must be pleaded and proved like any other fact before trial courts.[41] Hence, in *Corpuz v. Sto. Tomas*:[42]

> 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.[43]

II

Respondent's national law was duly admitted by the Regional Trial Court. Petitioner presented "a copy [of] the English Version of the Civil Code of Japan (Exh. "K") translated under the authorization of the Ministry of Justice and the Code of Translation Committee."[44] Article 728(1) of the Civil Code of Japan reads:

> Article 728. 1. The matrimonial relationship is terminated by divorce.[45]

To prove the *fact* of divorce, petitioner presented the Divorce Certificate issued by Consul Takayama of Japan on January 18, 2010, which stated in part:

> This is to certify that the above statement has been made on the basis of the Acceptance Certification of Notification of Divorce issued by the Mayor of Fukaya City, Saitama Pref., Japan on December 16, 2009.[46]

This Certificate only certified that the divorce decree, or the Acceptance Certification of Notification of Divorce, exists. It is not the divorce decree itself. The Regional Trial Court further clarified:

> [T]he Civil Law of Japan recognizes two (2) types of divorce, namely: (1) judicial divorce and (2) divorce by agreement.
>
> Under the same law, the divorce by agreement becomes effective by notification, orally or in a document signed by both parties and two or more witnesses of full age, in accordance with the provisions of Family Registration Law of Japan.[47]

Thus, while respondent's national law was duly admitted, petitioner failed to present sufficient evidence before the Regional Trial Court that a divorce was validly obtained according to the national law of her foreign spouse. The Regional Trial Court would not have erred in dismissing her Petition.

III

Upon appeal to this Court, however, petitioner submitted a Certificate of Acceptance of the Report of Divorce,[48] certifying that the divorce issued by Susumu Kojima, Mayor of Fukaya City, Saitama Prefecture, has been accepted on December 16, 2009. The seal on the document was authenticated by Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan.[49]

The probative value of the Certificate of Acceptance of the Report of Divorce is a question of fact that would not ordinarily be within this Court's ambit to resolve. Issues in a petition for review on certiorari under Rule 45 of the Rules of Court[50] are limited to questions of law.

In *Garcia* and *Corpuz*, this Court remanded the cases to the Regional Trial Courts for the reception of evidence and for further proceedings.[51] More recently in *Medina v. Koike*,[52] this Court remanded the case to the Court of Appeals to determine the national law of the foreign spouse:

> Well entrenched is the rule that this Court is not a trier of facts. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect and are in fact binding subject to certain exceptions. In this regard, it is settled that appeals taken from judgments or final orders rendered by RTC in the exercise of its original

jurisdiction raising questions of fact or mixed questions of fact and law should be brought to the Court of Appeals (CA) in accordance with Rule 41 of the Rules of Court.

Nonetheless, despite the procedural restrictions on Rule 45 appeals as above-adverted, the Court may refer the case to the CA under paragraph 2, Section 6 of Rule 56 of the Rules of Court, which provides:

> SEC. 6. Disposition of improper appeal. - . . .
>
> An appeal by certiorari taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred to the Court of Appeals for decision or appropriate action. The determination of the Supreme Court on whether or not issues of fact are involved shall be final.[53]

The court records, however, are already sufficient to fully resolve the factual issues.[54] Additionally, the Office of the Solicitor General neither posed any objection to the admission of the Certificate of Acceptance of the Report of Divorce[55] nor argued that the Petition presented questions of fact. In the interest of judicial economy and efficiency, this Court shall resolve this case on its merits.

IV

Under Rule 132, Section 24 of the Rules of Court, the admissibility of official records that are kept in a foreign country requires that it must be accompanied by a certificate from a secretary of an embassy or legation, consul general, consul, vice consul, consular agent or any officer of the foreign service of the Philippines stationed in that foreign country:

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

The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication[56] issued by Consul Bryan Dexter B. Lao of the Embassy of the Philippines in Tokyo, Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of

the *fact* of divorce between petitioner and respondent.

The Regional Trial Court established that according to the national law of Japan, a divorce by agreement "becomes effective by notification."[57] Considering that the Certificate of Acceptance of the Report of Divorce was duly authenticated, the divorce between petitioner and respondent was validly obtained according to respondent's national law.

V

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:

> 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.*[58] (Emphasis supplied)

Considering that Article 26 states that divorce must be "validly obtained abroad by the alien spouse," the Office of the Solicitor General posits that only the foreign spouse may initiate divorce proceedings.

In a study on foreign marriages in 2007 conducted by the Philippine Statistics Authority, it was found that "marriages between Filipino brides and foreign grooms comprised 5,537 or 66.7 percent while those between Filipino grooms and foreign brides numbered 152 or 1.8 percent of the total marriages outside the country."[59] It also found that "[a]bout four in every ten interracial marriages (2,916 or 35.1%) were between Filipino brides and Japanese grooms." Statistics for foreign marriages in 2016 shows that there were 1,129 marriages between Filipino men and foreign women but 8,314 marriages between Filipina women and foreign men.[60] Thus, empirical data demonstrates that Filipino *women* are more likely to enter into mixed marriages than Filipino *men*. Under Philippine laws relating to mixed marriages, Filipino women are twice marginalized.

In this particular instance, it is the Filipina spouse who bears the burden of this narrow interpretation, which may be unconstitutional. Article II, Section 14 of our Constitution provides:

> Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the

context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue "affirmative ways and means to battle the patriarchy-that complex of political, cultural, and economic factors that ensure women's disempowerment."[61]

In 1980, our country became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[62] Under Articles 2(f) and S(a) of the treaty, the Philippines as a state party, is required:

> Article 2
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> . . . .
>
> (f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
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> . . . .
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> Article 5
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> . . . .
>
> (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]

By enacting the Constitution and signing on the CEDAW, the State has committed to ensure and to promote gender equality.

In 2009, Congress enacted Republic Act No. 9710 or the Magna Carta for Women, which provides that the State "shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."[63] This necessarily includes the second paragraph of Article 26 of the Family Code. Thus, Article 26 should be interpreted to mean that it is irrelevant for courts to determine if it is the foreign spouse that procures the divorce abroad. Once a divorce decree is issued, the divorce becomes "validly obtained" and capacitates the foreign spouse to marry. The same status should be given to the Filipino spouse.

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.

Absolute divorce was prohibited in our jurisdiction only in the mid-20th century. The Philippines had divorce laws in the past. In 1917, Act No. 2710[64] was enacted which allowed a wife to file for divorce in cases of concubinage or a husband to file in cases of adultery.[65]

Executive Order No. 141, or the New Divorce Law, which was enacted during the Japanese occupation, provided for 11 grounds for divorce, including "intentional or unjustified desertion continuously for at least one year prior to the filing of [a petition for divorce]" and "slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable."[66]

At the end of World War II, Executive Order No. 141 was declared void and Act No. 2710 again took effect.[67] It was only until the enactment of the Civil Code in 1950 that absolute divorce was prohibited in our jurisdiction.

It is unfortunate that legislation from the past appears to be more progressive than current enactments. Our laws should never be intended to put Filipinos at a disadvantage. Considering that the Constitution guarantees fundamental equality, this Court should not tolerate an unfeeling and callous interpretation of laws. To rule that the foreign spouse may remarry, while the Filipino may not, only contributes to the patriarchy. This interpretation encourages unequal partnerships and perpetuates abuse m intimate relationships.[68]

In any case, the Solicitor General's argument has already been resolved in *Republic v. Manalo*,[69] where this Court held:

> Paragraph 2 of Article 26 speaks of "*a divorce . . . validly obtained abroad by the alien spouse 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 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. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."

> Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes. As held in *League of Cities of the Phils., et al. v. COMELEC, et al.*:
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> > The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.
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> 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.[70] (Emphasis in the original)

Recent jurisprudence, therefore, holds that a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, *regardless of who among the spouses initiated the divorce proceedings*.

The question in this case, therefore, is not who among the spouses initiated the proceedings but rather if the divorce obtained by petitioner and respondent was valid.

The Regional Trial Court found that there were two (2) kinds of divorce in Japan: judicial divorce and divorce by agreement. Petitioner and respondent's divorce was considered as a divorce by agreement, which is a valid divorce according to Japan's national law.[71]

The Office of the Solicitor General likewise posits that while petitioner was able to prove that the national law of Japan allows absolute divorce, she was unable to "point to a specific provision of the Japan[ese] Civil Code which states that both judicial divorce and divorce by agreement will allow the spouses to remarry."[72]

To prove its argument, the Office of the Solicitor General cites *Republic v. Orbecido III*,[73] where this Court stated:

> [R]espondent must also show that the divorce decree allows his former wife to remarry as specifically required in Article 26. Otherwise, there would be no evidence sufficient to declare that he is capacitated to enter into another marriage.
>
> Nevertheless, we are unanimous in our holding that Paragraph 2 of Article 26 of the Family Code (E.O. No. 209, as amended by E.O. No. 227), should be interpreted to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry. However, considering that in the present petition there is no sufficient evidence submitted and on record, we are unable to declare, based on respondent's bare allegations that his wife, who was naturalized as an American citizen, had obtained a divorce decree and had remarried an American, that respondent is now capacitated to remarry. Such declaration could only be made properly upon respondent's submission of the aforecited evidence in his favor.[74]

The Office of the Solicitor General pointedly ignores that in *Orbecido III*, the respondent in that case neither pleaded and proved that his wife had been naturalized as an American citizen, nor presented any evidence of the national law of his alleged foreign spouse that would allow absolute divorce.

In this case, respondent's nationality was not questioned. The Regional Trial Court duly admitted petitioner's presentation of respondent's national law. Article 728 of the Civil Code of Japan as quoted by the Office of the Solicitor General states:

> Article 728 of the Japan Civil Code reads:
>
> 1. The matrimonial relationship is terminated by divorce.
>
> 2. The same shall apply also if after the death of either husband or wife, the surviving spouse declares his or her intention to terminate the matrimonial relationship.[75]

The wording of the provision is absolute. The provision contains no other qualifications that could limit either spouse's capacity to remarry.

In *Garcia v. Recio*,[76] this Court reversed the Regional Trial Court's finding of the Filipino spouse's capacity to remarry since the national law of the foreign spouse stated certain conditions before the divorce could be considered absolute:

> In its strict legal sense, divorce means the legal dissolution of a lawful union for a cause arising after marriage. But divorces are of different types. The two basic ones are (1) absolute divorce or a *vinculo matrimonii* and (2) limited divorce or a *mensa et thoro*. The first kind terminates the marriage, while the second suspends it and leaves the bond in full force. There is no showing in the case at bar which type of divorce was procured by respondent.
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> Respondent presented a decree *nisi* or an interlocutory decree - a conditional or provisional judgment of divorce. It is in effect the same as a separation from bed and board, although an absolute divorce may follow after the lapse of the prescribed period during which no reconciliation is effected.
>
> Even after the divorce becomes absolute, the court may under some foreign statutes and practices, still restrict remarriage. Under some other jurisdictions, remarriage may be limited by statute; thus, the guilty party in a divorce which was granted on the ground of adultery may be prohibited from marrying again. The court may allow a remarriage only after proof of good behavior.
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> On its face, the herein Australian divorce decree contains a restriction that reads:
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> > "1. A party to a marriage who marries again before this decree becomes absolute (unless the other party has died) commits the offence of bigamy."
>
> This quotation bolsters our contention that the divorce obtained by respondent may have been restricted. It did not absolutely establish his legal capacity to remarry according to his national law. Hence, we find no basis for the ruling of the trial court, which erroneously assumed that the Australian divorce *ipso facto* restored respondent's capacity to remarry despite the paucity of evidence on this matter.[77]

Here, the national law of the foreign spouse states that the matrimonial relationship is terminated by divorce. 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.

Even under our laws, the effect of the absolute dissolution of the marital tie is to grant both parties the legal capacity to remarry. Thus, Article 40 of the Family Code provides:

> Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

Petitioner alleges that respondent has since remarried, the National Statistics Office having found no impediment to the registration of his Marriage Certificate.[78] The

validity of respondent's subsequent marriage is irrelevant for the resolution of the issues in this case. The existence of respondent's Marriage Certificate, however, only serves to highlight the absurd situation sought to be prevented in the 1985 case of *Van Dorn v. Romillo, Jr.*:[79]

> 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.[80]

The ruling in *Van Dorn* was eventually codified in the second paragraph of Article 26 of the Family Code through the issuance of Executive Order No. 227 in 1987. The grant of substantive equal rights to the Filipino spouse was broad enough that this Court, in the 1985 case of *Quita v. Court of Appeals*,[81] "hinted, by way of *obiter dictum*"[82] that it could be applied to Filipinos who have since been naturalized as foreign citizens.

In *Republic v. Orbecido III*,[83] this Court noted the obiter in *Quita* and stated outright that Filipino citizens who later become naturalized as foreign citizens may validly obtain a divorce from their Filipino spouses:

> 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.[84]

To insist, as the Office of the Solicitor General does, that under our laws, petitioner is still married to respondent despite the latter's newfound companionship with another cannot be just.[85] Justice is better served if she is not discriminated against in her own country.[86] As much as petitioner is free to seek fulfillment in the love and devotion of another, so should she be free to pledge her commitment within the institution of marriage.

WHEREFORE, the Petition is **GRANTED**. The Regional Trial Court June 2, 2011 Decision and October 3, 2011 Order in SP. Proc. No. 10-0032 are **REVERSED** and **SET ASIDE**. By virtue of Article 26, second paragraph of the Family Code and the Certificate of Acceptance of the Report of Divorce dated December 16, 2009, petitioner Rhodora Ilumin Racho is declared capacitated to remarry.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Martires, and *Gesmundo, JJ.*, concur.

September 27, 2018

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **June 25, 2018** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 27, 2018 at 2:11 p.m.

Very truly yours,

(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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[1] *Rollo*, pp. 3-31.

[2] Id. at 32-37. The Decision, docketed as SP. Proc. No. 10-0032, was penned by Presiding Judge Gloria Butay Aglugub.

[3] Id. at 38-39. The Order was penned by Presiding Judge Gloria Butay Aglugub.

[4] Id. at 40-48.

[5] Id. at 33.

[6] Id. at 50.

[7] Id. at 51.

[8] Id. at 33.

[9] Id. at 6.

[10] Id. at 33.

[11] Id. at 33-34.

[12] Id. at 40-48.

[13] Id. at 32-37.

[14] Id. at 36.

[15] Id. at 53-63.

[16] Id. at 56-57.

[17] Id. at 38-39.

[18] Id. at 39.

[19] Id. at 3-31.

[20] Id. at 64-65.

[21] Id. at 66-72.

[22] Id. at 67.

[23] Id. at 69-70.

[24] Id. at 82-86.

[25] Id. at 87-89.

[26] Id. at 126-151.

[27] Id. at 176-197. All notices to respondent Tanaka were returned unserved (*rollo*, pp. 216-217).

[28] Id. at 14-15.

[29] Id. at 16-17.

[30] Id. at 22, as cited in the Petition:

TERMINATION OF MATRIMONIAL RELATIONSHIP

Article 728. 1. The matrimonial relationship is terminated by divorce.

. . . .

[31] RULES OF COURT, Rule 132 sec. 24 provides:

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

[32] *Rollo*, p. 138.

[33] Id. at 138-147.

[34] Id. at 182-183.

[35] Id. at 188.

[36] As amended by Exec. Order No. 227 (1987).

[37] *See Van Dorn v. Romillo, Jr.*, 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division] and *Republic v. Orbecido III*, 509 Phil. 108 (2005) [Per J. Quisumbing, First

Division].

[38] *See Corpuz v. Sto, Tomas*, 642 Phil. 420 (2010) [Per J. Brion, Third Division].

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

[40] 418 Phil. 723 (2001) [Per J. Panganiban, Third Division].

[41] *See Medina v. Koike*, G.R. No. 215723, July 27, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/215723.pdf> 3 [Per J. Perlas-Bernabe, First Division].

[42] 642 Phil. 420 (2010) [Per J. Brion, Third Division].

[43] Id. at 432-433, *citing* II REMEDIAL LAW, Rules 23-56, 529 (2007); *Republic v. Orbecido III*, 509 Phil. 108 (2005) [Per J. Quisumbing, First Division]; *Garcia v. Recio*, 418 Phil. 723 (2001) [Per J. Panganiban, Third Division]; and *Bayot v. Court of Appeals*, 591 Phil. 452 (2008) [Per J. Velasco, Jr., Second Division].

[44] *Rollo*, p. 36.

[45] Id. at 22.

[46] Id. at 50.

[47] Id. at 39.

[48] Id. at 88-89. The original Japanese document and an English translation by Byunko Visa Counseling Office, Tokyo, Japan are attached.

[49] Id. at 87.

[50] RULES OF COURT, Rule 45, sec. 1 provides:

Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. *The petition shall raise only questions of law which must be distinctly set forth.* (Emphasis supplied)

[51] *See also Amor-Catalan v. Court of Appeals*, 543 Phil. 568 (2007) [Per J. Ynares-Santiago, Third Division] and *San Luis v. San Luis*, 543 Phil. 275 (2007) [Per J. Ynares-Santiago, Third Division] where this Court remanded the cases to the trial courts to determine the validity of the divorce decrees.

[52] G.R. No. 215723, July 27, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/215723.pdf> [Per J. Perlas-Bernabe, First Division].

[53] Id. at 5, *citing Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*, 715 Phil. 420, 433-435 (2013) [Per J. Perlas-Bernabe, Second Division]; *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 766-767 (2013) [Per J. Brion, Second Division]; and RULES OF COURT, Rule 56, sec. 6.

[54] *See Cathay Metal Corporation v. Laguna Metal Multi-purpose Cooperative*, 738 Phil. 37 (2014) [Per J. Leonen, Third Division] where this Court resolved the issues of the case despite being factual in nature due to the sufficiency of the court records. In this case, the records of the Regional Trial Court were received by this Court on November 19, 2014 (*rollo*, p. 214).

[55] *Rollo*, p. 138.

[56] Id. at 87.

[57] Id. at 39.

[58] As amended by Exec. Order No. 227 (1987).

[59] Philippine Statistics Authority, *Foreign Marriages of Filipinos: 2007*, March 11, 2011 <https://psa.gov.ph/old/data/sectordata/sr11566tx.html> (last accessed June 1, 2018).

[60] See Philippine Statistics Authority, *Number of Nationalities of Bride and Groom, Philippines: 2016* <https://psa.gov.ph/sites/default/files/attachments/crd/specialrelease/Table%206.pdf> (last accessed June 1, 2018).

[61] Concurring Opinion of J. Leonen in *Republic v. Manalo*, G.R. No. 221029, April 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/221029_leonen.pdf> 2 [Per J. Peralta, En Banc].

[62] The Philippines became a signatory on July 15, 1980. The treaty was ratified on August 5, 1981. <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en>.

[63] Rep. Act No. 9710 (2008), sec. 19.

[64] An Act to Establish Divorce (1917).

[65] Section 1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband committed in any of the forms described in article four hundred and thirtyseven of the Penal Code, cited in Valdez v.

Tuason, 40 Phil. 943, 948 (1920) [Per J. Street, En Banc].

[66] *Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per J. Ozaeta, En Banc].

[67] Id. at 462-463.

[68] *See* Concurring Opinion of J. Leonen, *Republic v. Manalo*, G.R. No. 221029, April 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/221029_leonen.pdf> 4 [Per J. Peralta, En Banc].

[69] G.R. No. 221029, April 24, 2018 <http://sc.judieiary.gov.ph/pdf/web/viewer.html?file=/jurisprudenee/2018/april2018/221029.pdf> [Per J. Peralta, En Banc].

[70] Id. at 11-12, *citing Commissioner of Customs v. Manila Star Ferry, Inc.*, 298 Phil. 79, 86 (1993) (Per J. Quiason, First Division]; *Globe-Mackay Cable and Radio Corp. v. NLRC*, 283 Phil. 649, 660 (1992) [Per J. Romero, En Banc]; *Victoria v. Commission on Elections*, 299 Phil. 263, 268 (1994) (Per J. Quiason, En Banc]; *Enjay, Inc. v. NLRC*, 315 Phil. 648, 656 (1995) [Per J. Quiason, First Division]; *Pioneer Texturizing Corp. v. NLRC*, 345 Phil. 1057, 1073 (1997) [Per J. Francisco, En Banc]; *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 251 (2005) [Per J. Ynares-Santiago, First Division]; *Rural Bank of San Miguel, Inc. v. Monetary Board*, 545 Phil. 62, 72 (2007) [Per J. Corona, First Division]; *Rep. of the Phils. v. Lacap*, 546 Phil. 87, 100 (2007) [Per J. Austria-Martinez, Third Division]; *Phil. Amusement and Gaming Corp. (PAGCOR) v. Phil. Gaming Jurisdiction, Inc. (PEJI), et al.*, 604 Phil. 547, 553 (2009) (Per J. Carpio Morales, Second Division]; *Mariano, Jr. v. COMELEC*, 312 Phil. 259, 268 (1995) [Per J. Puno, En Banc]; *League of Cities of the Phils., et al. v. COMELEC, et al.*, 623 Phil. 531, 564-565 (2009) [Per J. Velasco, Jr., En Banc]; and *Fujiki v. Marinay*, 712 Phil. 524, 555 (2013) [Per J. Carpio, Second Division].

[71] *Rollo*, p. 39.

[72] Id. at 142.

[73] 509 Phil. 108 (2005) (Per J. Quisumbing, First Division].

[74] Id. at 116-117.

[75] *Rollo*, p. 142.

[76] 418 Phil. 723 (2001) [Per J. Panganiban. Third Division].

[77] Id. at 735-736, *citing* 27A CJS, 15-17, §I, 611-613, §161 and 27A CJS, 625, §162.

[78] *See Rollo*, pp. 69-70.

[79] 223 Phil. 357 (1985) [Per J. Melencio-Herrera, First Division].

[80] Id. at 362-363, *citing Recto vs. Harden*, 100 Phil. 427 (1956) [Per J. Concepcion, En Banc]; I PARAS, CIVIL CODE 52 (1971); SALONGA, PRIVATE INTERNATIONAL LAW 231 (1979).

[81] 360 Phil. 601 (1998) [Per J. Bellosillo, Second Division].

[82] *Republic v. Orbecido III*, 509 Phil. 108, 114 (2005) [Per J. Quisumbing, First Division].

[83] 509 Phil. 108 (2005) [Per J. Quisumbing, First Division].

[84] Id. at 114-115, *citing Lopez & Sons, Inc. v. Court of Tax Appeals*, 100 Phil. 850, 855 (1957) [Per J. Montemayor, En Banc].

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

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