EN BANC

G.R. No. 249238 – REPUBLIC OF THE PHILIPPINES, Petitioner, **v. RUBY CUEVAS NG A.K.A. RUBY NG SONO,** Respondent.

Promulgated:

February 27, 2024

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DISSENTING OPINION

SINGH, *J.*:

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

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

> Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 3637 and 38.
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> **Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.** (Emphasis supplied)

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1 834 Phil. 21 (2018) [Per J. Leonen, Third Division].
2 G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].
3 G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].

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

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

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

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

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

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

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

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

> Justice [Ricardo] Puno suggested that, in line with Justice [Eduardo] Caguioa's view that as much as possible they should make the Proposed Family Code as acceptable as possible and **since they are not touching on divorce which is one of the big issues and they are leaving it to future legislation, they omit Article 26 temporarily and take it up when they take up the matter of absolute divorce.**[5]
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> . . . .
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> Dr. [Irene] Cortes proposed that, as a compromise, they can retain Article 26 but they should limit to marriage abroad. Prof. Romero commented that only the rich will benefit from the provision. Dr. Cortes stated that it will also protect the Filipino citizen, who may have married and divorced abroad.
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> **Justice [JBL] Reyes remarked that this article is an implicit recognition of foreign divorce, with which Justice Caguioa concurred. Prof. [Esteban] Bautista and Prof. [Flerida Ruth] Romero pointed out that the article will only cover exceptional cases and special situations and that there is a reasonable and substantial basis for making it an exception.**
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> After further discussion, Justice Puno rephrased Article 26 in accordance with Dr. Cortes' suggestion as follows:
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> > Where a marriage between a Filipino citizen and a foreigner is validly celebrated abroad and a divorce is thereafter validly obtained abroad capacitating such foreigner to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.
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> Prof. Bautista remarked that, as rephrased, it would be better if they delete the above provision. On the other hand, Dr. Cortes was for deferring action on the above provision. **Justice Puno suggested that it be deleted temporarily and it be taken up if and when absolute divorce is adopted.**
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> Having sufficiently discussed the matter, the Committee decided to put the issue to a vote.
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> The members voted as follows:
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> (1) Justice Puno, Justice Caguioa, Dr. Cortes, Dean Carale, Dean Gupit and Prof. Baviera were for the deletion of Article 26.
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> (2) Judge Diy, Prof. Bautista, Prof. Romero and Director Eufemio were for its retention.[6] (Emphases supplied)

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

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

6 *Id.* at 13–15.

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

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

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

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

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

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

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

> Section 48. *Effect of foreign judgments or final orders.* — **The effect of a judgment or final order of a tribunal of a foreign country**, having jurisdiction to render the judgment or final order is as follows:
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> (a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and
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> (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.
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> In either case, **the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.** (Emphasis supplied)

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[8] *Id.* at 89.

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

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

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

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

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

Section 48, Rule 39 of the Rules of Court implements a generally accepted principle of international law, which, as no less than the Constitution provides, forms part of the law of the land.[11] This is the legal anchor which allows for the enforcement and recognition of the judgments of foreign countries in this jurisdiction. Such foreign judgments would necessarily

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

10 *Id.* at 382.

11 CONST., Article II, sec. 2.

include divorce decrees. Stated more simply, foreign divorce decrees obtained through judicial proceedings can be recognized and enforced in the Philippines precisely because the generally accepted principles of international law and, necessarily, our domestic law, mandates the recognition and enforcement of the judgment of foreign courts. There is no similar legal underpinning for the recognition of a divorce by mutual consent, where the spouses do not submit the matter before any foreign court.

Public policy against absolute divorce

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

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

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

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

> Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.
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> In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

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

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

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

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

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

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

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

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

To this extent, a proper resolution of this issue must balance the interests involved here – *i.e.*, the importance of granting parity to Filipino

spouses and the imperative of upholding the country's fundamental policies concerning marriage.

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

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

Finally, I believe that this interpretation, even as it distinguishes between a foreign divorce obtained through a judicial proceeding and a foreign divorce obtained by mutual consent, does not violate the equal protection clause. It is fundamental that equal protection does not demand absolute equality. It only requires that all persons shall be treated alike under similar circumstances and conditions. It does not forbid discrimination as to things that are different.[12]

There is a substantial distinction between former spouses whose divorce was obtained by judicial proceedings and those whose divorce was obtained by mutual consent. The recognition of the foreign divorce in the former case is rooted in the Philippines' recognition of the authority of a foreign court to make a judicial determination as to the propriety of divorce. It is, more importantly, anchored on the international law principle of comity among nations, which mandates the recognition and enforcement of foreign

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

judgments. To reiterate, this legal underpinning does not exist in cases where a foreign divorce is obtained by mere mutual consent.

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

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

MARIA FILOMENA D. SINGH
Associate Justice