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

HERNANDO, *J.*:

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

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

After their marriage, they moved to Japan. On August 31, 2007, however, the spouses obtained a '*divorce decree by mutual agreement*' in Japan. The Divorce Certificate issued by the Embassy of Japan in the Philippines has been duly recorded and filed in the City Civil Registry Office of Manila, as evidenced by the Certification dated April 19, 2018, released by the said office. The fact of divorce was also duly recorded in the Civil Registry of Japan as per the original copy of the Family Registry of Japan bearing the official stamp of the Mayor of Nakano-Ku, Tokyo, Japan.

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

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

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

Hence, the present petition.

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

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

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

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

> Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.
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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 [the] capacity to remarry under Philippine law.

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

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

Notably, the entire process of a petition for recognition of foreign divorce is akin to a normal court proceeding where evidence, testimonial and documentary, ought to be presented to prove the fact of divorce and the pertinent

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[1] 834 Phil. 21, 47 (2018) [Per SAJ Leonen, Third Division].
[2] G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].
[3] G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].

divorce law of the issuing country. In short, a judicial recognition may be granted only after a judicial hearing.

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

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

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

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

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

I applaud this equitable intent of our jurisprudential rulings on the matter of divorce. However, I submit that We cannot compromise our policy against absolute divorce by only banking on the reasoning that it would be unjust for

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

[5] JAPANESE CIVIL CODE, art. 765.

the Filipino spouse to deem him/her still married with the foreign spouse, who, in turn, is no longer married to him/her.

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

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

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

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

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

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

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

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

In the United States, the general rule is that a decree of divorce valid where rendered is valid everywhere, and will be recognized under the "full faith and credit" clause of their Constitution, or in the case of divorces rendered in foreign

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

countries, under the principle of comity, **provided that recognition would not contravene public policy.**[7]

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

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

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

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

While I commiserate with Filipino spouses who are tied in a marriage which has already been dissolved in the eyes of the country which granted the foreign divorce, We ought to respect Our State's public policy against absolute divorce. To be sure, a consensual divorce obtained without judicial intervention offends the Philippines' declared policy disallowing annulment of marriages and legal separation obtained through collusion by the parties.

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7 27B C.J.S., Divorce, sections 326-3 (1959). Emphasis supplied.
8 298 N.Y.S.2d 188, 31 A.D.2d 415, March 18, 1969.
9 66 N.C. App. 522 (1984).
10 *Id.*
11 DivorceNet,/Divorse Basics/, available at https://www.divorcenet.com/topics/dissolution-marriage (last accessed on January 23, 2024).

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

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

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

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

RAMON PAUL L. HERNANDO
Associate Justice