



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

REGIE DAVID TSUTSUMI, G.R. No. 258130
Petitioner,

-versus-

Members:
LEONEN, S.A.J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO JR., JJ.

REPUBLIC OF THE
PHILIPPINES, Respondent.

Promulgated:

APR 17 2023

X-----X

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari*¹ seeks to reverse the following dispositions of the Court of Appeals in CA-G.R. CV No. 114426:

¹ Rollo, pp. 18-37.

- 1) **Decision**² dated January 7, 2021, reversing the trial court's decision which granted the Petition for Recognition of Foreign Divorce; and
- 2) **Resolution**³ dated November 8, 2021, denying petitioner's Motion for Reconsideration.

Antecedents

On August 17, 1995, after about a year of courtship, petitioner Regie David Tsutsumi⁴ and Ayahiro⁵ Tsutsumi (Ayahiro), a Filipino and Japanese national, respectively, got married in Tarlac City, Tarlac, Philippines. Their union was blessed with two children.⁶

But nearly 21 years after, on April 11, 2016, for reasons they deemed unresolved and irreconcilable, they mutually decided to file a divorce application.⁷

On March 7, 2018, they were issued a Divorce Certificate by the Embassy of Japan, duly authenticated by the Philippine Department of Foreign Affairs (DFA). Accordingly, this Divorce Certificate was recorded in the Civil Registry of the City of Manila, Philippines.⁸

Consequently, petitioner filed a Petition for Recognition of Foreign Divorce before the Regional Trial Court, Tarlac City, Tarlac,⁹ docketed as Special Proceeding Case No. 5491, and got raffled to Branch 64.

During the hearing, the trial court noted that no one came forward to interpose any objection to the petition. The trial court then called for the presentation of petitioner's evidence. Thus, petitioner, through her Attorney-in-fact Atty. Ronald O. Layawen (Atty. Layawen), offered the following exhibits:¹⁰

² *Id.* at 38–52. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Alfredo D. Ampuan.

³ *Id.* at 55–58.

⁴ Sometimes spelled as “TSUTUMI” and “TSUSUMI” in some parts of the records.

⁵ Sometimes spelled as “AYAHIIROS” in some parts of the records.

⁶ *Rollo*, p. 40.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 40–41.



- Exhibit “A” – Petition;
- Exhibit “B” – Order dated July 2, 2018;
- Exhibit “C” – Compliance;
- Exhibit “D” – Affidavit of Publication;
- Exhibit “E” – People’s Journal Tonight dated August 4, 2018;
- Exhibit “E-1” – Order as published;
- Exhibit “F” – Acknowledgment;
- Exhibit “G” – Special Power of Attorney;
- Exhibit “H” – Certificate of Marriage;
- Exhibit “I” – Authentication Certificate;
- Exhibit “J” – Certificate of Acceptance;
- Exhibit “K” – Certificate of Acceptance in Japanese translation;
- Exhibit “L” – Authentication Certificate;
- Exhibit “M” – Divorce Certificate;
- Exhibit “N” – Certification issued by City Civil Registry Office of Manila;
- Exhibit “O” – Civil Code of Japan; [and]
- Exhibit “P” – Civil Code (Part IV and V)¹¹

During the trial, Atty. Layawen took the witness stand and identified his Judicial Affidavit as well as its annexes. In his Judicial Affidavit, he stated that: (1) petitioner asked him to represent her because she is presently residing in Japan; (2) petitioner was married to Ayahiro and they were subsequently divorced in Japan; (3) a Certificate of Acceptance of Notification of Divorce in English translation and a Divorce Certificate, both duly authenticated by the DFA, were issued; (4) he learned through petitioner that her divorce from Ayahiro in Japan was recognized; (5) petitioner gave him a copy of Japanese Law with English translation; (6) thereafter, petitioner filed the Divorce Certificate with the Civil Registry Office of the City of Manila; and (7) petitioner prayed that judgment be rendered recognizing the foreign divorce she and Ayahiro obtained in Japan.¹²

The Trial Court’s Ruling

By Decision¹³ dated June 27, 2019, the trial court granted the petition, *viz.*:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Recognizing the divorce obtained in Japan between petitioner Regie David Tsutsumi and her Japanese husband, Ayahiro Tsutsumi on August 17, 1995;

¹¹ *Id.*

¹² *Id.* at 41.

¹³ RTC Records 100–104. Penned by Presiding Judge Lijy C. De Vera-Vallo.

2. Declaring that the petitioner Regie David Tsutsumi has the legal capacity to remarry under Philippine law; [and]
3. Ordering the Office of the Civil Registrar General (National Statistics Office), and the Local Civil Registry of Tarlac City to annotate the divorce granted to the parties on April 11, 2016[,] on the Certificate of Marriage of Regie David Tsutsumi and Ayahiro Tsutsumi and to record this judgment of recognition in their Civil Registry of Divorce.

SO ORDERED.¹⁴

The trial court held that petitioner's divorce abroad was proven by the authenticated Report of Divorce and the Family Register of the Japanese husband, and the subsequent divorce obtained and authenticated Divorce Certificate issued by the Japanese Embassy in Manila.

Being an act of an official body or tribunal of a foreign country, the same must be proven under Sections 24¹⁵ and 25¹⁶ of Rule 132 of the Rules of Court either by: (1) an official publication; or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be: (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of his or her office.

On this basis, the trial court found that the testimonial and documentary evidence offered by the petitioner are sufficient to give efficacy to the existence of the foreign judgment/divorce obtained in Japan and for petitioner to be declared capacitated to remarry under Philippine law.

The Republic of the Philippines filed a Motion for Reconsideration which was denied under Resolution dated September 2, 2019.¹⁷

¹⁴ *Id.* at 104.

¹⁵ Rules of Court, Rule 132, sec. 24. *Proof of official record.* - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in 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.

¹⁶ Rules of Court, Rule 132, sec. 25. *What attestation of copy must state.* - Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

¹⁷ *Rollo*, p. 42.

Proceedings before the Court of Appeals

On appeal, the Republic faulted the trial court for finding that the evidence presented by petitioner was sufficient to recognize the alleged divorce in Japan. The Republic argued that petitioner merely presented a photocopy of the Divorce Certificate certified by the Japanese Embassy in Manila and the Civil Registrar of Manila in violation of Section 24, Rule 132 of the Rules of Court. The Divorce Certificate should have been certified by the equivalent local civil registrar in Japan where the parties obtained the said document. More, petitioner was not able to prove the relevant Japanese laws on divorce, nor was she able to properly authenticate any proof thereof in accordance with the Rules of Court.

On the other hand, petitioner defended the decision of the trial court and maintained that she was able to comply with Section 24, Rule 132 of the Revised Rules of Court through her presentation of the Certificate of Acceptance of Notification of Divorce and the Divorce Certificate, both authenticated by the DFA.

Ruling of the Court of Appeals

By assailed Decision¹⁸ dated January 7, 2021 in CA-G.R. CV No. 114426, the Court of Appeals reversed.

First, for Philippine courts to recognize a foreign judgment relating to the status of a marriage to a foreigner, a foreign judgment must be proved as a fact. Here, petitioner obtained a divorce by mutual agreement. She did not present a Japanese court-issued divorce decree of judgment.

Second, petitioner's Divorce Certificate and Certificate of Acceptance of Notice of Divorce were authenticated by the DFA which is not the proper authenticating officer required under Section 24, Rule 132 of the Rules of Court. It should be the proper diplomatic or consular officer from the Philippine Embassy stationed in Japan where the official record is kept, who should have done so.

Third, petitioner tried to circumvent the clear requirement of Rule 132 when she handed the custody of the "original" copy of the Divorce Certificate to the Civil Registrar of Manila who is also not the real custodian, issuer, or executor of the official record.

¹⁸ *Id.* at 38-52.

Fourth, petitioner was able to belatedly adduce an original copy of the English translation of Japanese laws with an accompanying Authentication Certificate from the Vice-Consul of the Philippine Embassy stationed in Tokyo, Japan. But these excerpt provisions of the Japanese Civil Code are not fully instructive of, if not irrelevant to, the nature and the legal effects of the divorce by agreement obtained by the parties in Japan. Petitioner must plead and prove the relevant Japanese laws on the kind of divorce being sought to be recognized as a fact in this jurisdiction to pave the way for the application of paragraph 2,¹⁹ Article 26 of the Family Code.

Petitioner's Motion for Reconsideration was subsequently denied under the assailed Resolution²⁰ dated November 8, 2021.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.²¹

She maintains that she had proven the fact of divorce between her and Ayahiro. The Divorce Certificate and the Certificate of Acceptance²² were duly presented and formally offered during the trial and their admissibility and relevance weighed without objection from anyone. More, the perceived insufficiency of proof of Japanese law warrants the remand of the case to the trial court to afford the petitioner a chance to adduce additional evidence.²³

Petitioner waxes poetic that she is still bound to a marriage that her foreign spouse is no longer bound to. She is shackled and chained to a barren wasteland with only prolonged misery and demise as an available option. While the family is the basic unit of the nation which should be made inviolable by the principles of the State, in her case, it no longer exists as the foreign spouse has been freed, leaving petitioner in suspended animation – a condition which most consider as worse than death.²⁴

¹⁹ Family Code, Art. 26, par. 2.

x x x x

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.

²⁰ *Rollo*, pp. 55–58.

²¹ *Id.* at 18–37.

²² *Id.* at 41.

²³ *Id.* at 18–37.

²⁴ *Id.* at 31.

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In its Comment²⁵ dated August 8, 2022, the Office of the Solicitor General defends the dispositions of the Court of Appeals and ripostes that: (a) petitioner merely presented photocopies of the Divorce Certificate certified by the Japanese Embassy in Manila, authenticated by the DFA and certified as a true copy by the Civil Registrar of Manila; and (2) petitioner's scheme of registering the Divorce Certificate with the Local Civil Registrar of Manila before it was judicially recognized, is a "mischievous ingenuity" that is not justified and legally improper.

Our Ruling

We reverse.

To begin with, we remind lower courts to approach petitions for recognition of foreign divorce under paragraph 2, Article 26 of the Family Code with a view to dispensing substantial justice. *Moraña v. Republic*²⁶ is *apropos*:

Finally, the Court has, time and again, held that the court's primary duty is to dispense justice; and procedural rules are designed to secure and not to override substantial justice. On several occasions, the Court relaxed procedural rules to advance substantial justice. More so here because what is involved is a matter affecting the lives of petitioner and her children; the case is meritorious; the belated issuance of the Divorce Certificate was not due to petitioner's fault; and the relaxation of the rules here will not prejudice the State.

True, marriage is an inviolable social institution and must be protected by the State. But in cases like these, there is no more "*institution*" to protect as the supposed institution was already legally broken. *Marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it.*²⁷ (Italics in the original)

In *Republic v. Manalo*,²⁸ the Court explained the realities moving forward and declared that for this kind of petition, the Filipino spouse should not be discriminated against in his or her own country if the ends of justice are to be served:

A prohibitive view of Paragraph 2 of Article 26 would do more harm than good. If We disallow a Filipino citizen who initiated and obtained a foreign divorce from the coverage of Paragraph 2 Article 26 and still require him or her to first avail of the existing "mechanisms" under the Family Code, any subsequent relationship that he or she would enter in the

²⁵ CA rollo, pp. 198–211

²⁶ 867 Phil. 578, 595 (2019) [Per J. Lazaro-Javier, First Division].

²⁷ *Id.*

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

meantime shall be considered as illicit in the eyes of the Philippine law. Worse, any child born out such “extra-marital” affair has to suffer the stigma of being branded as illegitimate. Surely, these are just but a few of the adverse consequences, not only to the parent but also to the child, if we are to hold a restrictive interpretation of the subject provision. The irony is that the principle of inviolability of marriage under Section 2, Article XV of the Constitution is meant to be tilted in favor of marriage and against unions not formalized by marriage, but without denying State protection and assistance to live-in arrangements or to families formed according to indigenous customs.

This Court should not turn a blind eye to the realities of the present time. With the advancement of communication and information technology, as well as the improvement of the transportation system that almost instantly connect people from all over the world, mixed marriages have become not too uncommon. Likewise, it is recognized that not all marriages are made in heaven and that imperfect humans more often than not create imperfect unions. Living in a flawed world, the unfortunate reality for some is that the attainment of the individual’s full human potential and self-fulfillment is not found and achieved in the context of a marriage. Thus it is hypocritical to safeguard the quantity of existing marriages and, at the same time, brush aside the truth that some of them are rotten quality.

Going back, we hold that marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it. In reiterating that the Filipino spouse should not be discriminated against in his or her own country if the ends of justice are to be served...²⁹

Verily, in matters pertaining to petitions for recognition of foreign divorce under paragraph 2, Article 26 of the Family Code, courts should endeavor to give all the leeway to the petitioner to prove the matter of divorce, even going to lengths to instruct and use every provision of the rules for the petitioner to obtain a favorable ruling or at least provide a relaxation of rules.

Divorce has been sufficiently proved

In the proceedings before the trial court, Atty. Layawen identified, presented, and formally offered in evidence the Certificate of Acceptance of Notice of Divorce written in Japanese³⁰ and its official English Translation,³¹ viz.:

²⁹ *Id.* at 72–73.

³⁰ Records, p. 18.

³¹ *Id.* at 17. Official English Translation of Certificate of Acceptance of Notice of Divorce written in Japanese, Annex “C.”

CERTIFICATE OF ACCEPTANCE

Notification		Divorce	Date of Notification	April 11, 2016
Informant	Qualification:	Husband		
	Name:	Ayahiro Tsutsumi		
	Permanent Domicile:	3-44 Komukainishi Machi, Saiwai Ku, Kawasaki City, Kamagawa Prefecture		
		Ayahiro Tsutsumi		
	Qualification:	Wife		
	Name:	Regie Cabigting David		
	Nationality:	Philippines		
Persons subjected in this case	Qualification:	Husband	Date of Birth:	August 16, 1969
	Name:	Ayahiro Tsutsumi		
	Permanent Domicile:	3-44 Komukainishi Machi, Saiwai Ku, Kawasaki City, Kamagawa Prefecture		
		[Ayahiro] Tsutsumi		
	Qualification:	Wife	Date of Birth:	April 2, 1969
	Name:	Regie Cabigting David		
	Nationality:	Philippines		
Gist of Matters of Notification		[Name of Child whom Father performs parental authority] Akiko Tsutsumi, Yuki Tsutsumi		
		Hereinafter Blank		

This is to certify that the above mentioned notification was accepted on April 11, 2016.

September 22, 2017

[Sealed]

Head of Saiwai Ku, Kawasaki City Nobuyuki Ishiwatari

Date of Translation: Feb 15, 2018 Translator: Kenichi Usuki [Japanese]

305 Cokol Bldg., Patio Madrigal Compound, 2550, Roxas Boulevard Pasay City M.M.³²

³² *Id.*

This official English Translation of Certificate of Acceptance of Notice of Divorce written in Japanese was accompanied by a Certificate of Translation by Kenichi Usuki:³³

Date: Mar[.] 7, 2018

I, the undersigned, do hereby solemnly and sincerely declare and certify that I am acquainted with the Japanese and English languages and that the attached document(s) is true and faithful translation of the relevant part of the attached Japanese document (s).

Signature: [SGD.]
 Printed Name: KENICHI USUKI
 Date of Birth: May 19, 1980
 Passport No.: T20770298
 Date of Issue: Aug[.] 03, 2011
 Place of Issue: MANILA³⁴

EMBASSY OF JAPAN
 2627 Roxas Boulevard
 Pasay City 1300
 Philippines
 P.O. Box 414
 Pasay Central Post Office

Cert. No. **IB17-08780**

CERTIFICATE

This is to certify that the signature of **KENICHI USUKI**, Japanese national, affixed above is genuine.

[SGD. and SEALED]
SHUICHI NISHIMURA
 Vice Consul

Manila, 07 March 2018

(Fee: 750.00)

NOTE: NO RESPONSIBILITY IS ACCEPTED BY THE EMBASSY OF JAPAN AS TO THE CONTENTS OF THE DOCUMENTS.³⁵

In turn, the Certificate of Translation by Kenichi Usuki was authenticated by DFA Authentication Officer Manuel B. Duran, Jr.:³⁶

³³ *Id.* at 16. Kenichi Usuki Certificate of Translation of Certificate of Acceptance of Notice of Divorce written in Japanese, Annex "B-1" with attestation of authenticity of Kenichi Usuki signature by Vice Consul for the Embassy of Japan, Shuishi Nishimura.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 19.

DEPARTMENT OF FOREIGN AFFAIRS
KAGAWARAN NG UGNAYANG PANLABAS
MANILA, PHILIPPINES

S.N. 17A-0683076

AUTHENTICATION CERTIFICATE

To All Whom These Presents Shall Come, Greetings:

I, **MANUEL B. DURAN, JR.**, Authentication Officer of the Department of Foreign Affairs, do hereby certify that **SHUICHI NISHIMURA**, whose name appears signed in the attached certification/document, was at the time of signing, Vice Consul, Embassy of Japan, Pasay City, duly appointed and qualified to sign the certification/document and that full faith and credit may be given to her/his acts.

For the contents of the annexed document(s), the Department assumes no responsibilities.

I further certify that I am familiar with her/his handwriting and verily believe that the signature and seal affixed to the said certification/document are genuine.

IN WITNESS HEREOF, I have hereunto set my hand at the City of Manila, Philippines, this 3rd day of April, 2018.

[SGD. with SEAL]
MANUEL B. DURAN, JR.
Authentication Officer

Annexed document(s) is/are:

Certificate of All Matters issued to
AYAHIRO TSUTSUMI
DRC0078411³⁷

Atty. Layawen also presented a Certified True Copy of the Divorce Certificate issued by the Vice-Consul Shuichi Nishimura of the Embassy of Japan, issued by Registration Officer V Rosario B. Dionisio-Francisco of the City of Manila Civil Registry:³⁸

³⁷ *Id.*

³⁸ *Id.* at 20.

Cert No. **IB17-08779-18****DIVORCE CERTIFICATE**

Name : **REGIE CABIGTING DAVID**
Date of Birth : APRIL 02, 1969
Nationality : FILIPINO
Name of Spouse : AYAHIRO TSUTSUMI
Date of Marriage : AUGUST 17, 1995
Date of Divorce : APRIL 11, 2016

This is to certify that the above statement has been made on the Official Family Register issued by the Head of Saiwai [K]u, Kawasaki City, Kanagawa Pref., Japan on September 22, 2017. This certificate is issued for the purpose of the process of Notification of Foreign Divorce in the Republic of the Philippines.

[SGD. and SEALED]
SHUICHI NISHIMURA
Vice Consul

Manila, 7 March 2018

(Fee: P900.00)³⁹

This Divorce Certificate was authenticated by DFA Authentication Officer Manuel B. Duran, Jr.,⁴⁰ and later filed with the Office of the Civil Registry of the City of Manila. The latter Office issued its own Certification dated April 24, 2018, attesting that the Divorce Certificate has been filed and recorded in their office under Reg. No. 14762, Series of 2018:⁴¹

Republic of the Philippines
City Civil Registry Office
City of Manila

April 24, 2018

CERTIFICATION

TO WHOM IT MAY CONCERN:

³⁹ *Id.*

⁴⁰ *Id.* at 19.

⁴¹ *Id.* at 21.

This is to certify that a **DIVORCE CERTIFICATE** issued by **Vice Consul, Embassy of Japan, Pasay City** on **March 7, 2018**, with **Cert. No. IB17-08779-18** between **REGIE CABIGTING DAVID and AYAHIRO TSUTSUMI**, has been filed and recorded in this Office under **Reg. No. 14762, Series of 2018**.

This **CERTIFICATION** is issued upon the request of the interested party.

[SGD.]

MARIA JOSEFA ENCARNACION A. OCAMPO
City Civil Registrar

O.R. No. : 7384117
DATE : 04/24/18⁴²

The trial court admitted these pieces of evidence and ruled that petitioner's divorce which was obtained abroad had been duly proved. The Court of Appeals, however, set them aside as the same were merely authenticated by the DFA and that petitioner should have presented a Japanese court-issued divorce decree of judgment.

The Court is not persuaded.

In previous cases, we have already ruled that Japanese laws allow divorce by mutual agreement. By whatever name it may be called, the Divorce Certificate supported by Certificate of Acceptance of Notice of Divorce, as authenticated by the Japanese Embassy in Manila is the best evidence of the fact of divorce obtained by petitioner from her husband, Ayahiro. More, the State did not question the existence of these pieces of evidence and the fact of divorce between the petitioner and her husband. In *Republic v. Manalo*,⁴³ if the opposing party fails to properly object, as in this case, the divorce report and divorce certificate is rendered admissible as written acts of the foreign official body.

The law of divorce in Japan has been sufficiently proven

As ordained by *Republic v. Manalo*,⁴⁴ the Japanese law on divorce must still be proved, viz.:

Nonetheless, the Japanese law on divorce must still be proved.

⁴² *Id.*

⁴³ *Supra* note 28.

⁴⁴ *Id.* at 76-77.

. . . The burden of proof lies with the “party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action.” In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introduce new matters. . .

It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must be alleged and proved . . . The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative.

Since the divorce was raised by Manalo, the burden of proving the pertinent Japanese law validating it, as well as her former husband’s capacity to remarry, fall squarely upon her. Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.⁴⁵

On this score, the Court of Appeals ruled that while petitioner was able to belatedly adduce an original copy of the English translation of Japanese laws, it is not fully instructive of, if not irrelevant to, the nature and the legal effects of the divorce by agreement obtained by the parties in Japan. Petitioner must plead and prove the relevant Japanese laws on the kind of divorce being sought to be recognized as a fact in this jurisdiction to pave the way for the application of Article 26 of the Family Code.

We do not agree.

Records show that petitioner presented and formally offered in evidence the Japanese law on divorce in its official English translation,⁴⁶ viz.:

DECLARATION

[A]ttached document is a true English translation from the original Japanese text.

SGD: TSUTSUMI REGIE DAVID

Civil Code (Part IV and Part V)

Law number: Act No. 89 of 1896

Last Version: Amendment of Act No. 94 of 2013

Section 4 Divorce

(Subsection 1 Divorce by Agreement)

Article 763 A husband and wife may divorce by agreement.

⁴⁵ *Id.* at 76–77.

⁴⁶ Records pp. 79–87, Authenticated English Translation of Japanese Law Act No. 89 of 1896.

(Application Mutatis Mutandis of Marriage Provisions)

Article 764 The provisions of Articles 738, 739, and 747 shall apply mutatis mutandis to divorce by agreement.

(Acceptance of Notification of Divorce)

Article 765 (1) Notification of divorce may not be accepted unless the divorce has been found not to violate the provision of paragraph (2) of Article 739 applied mutatis mutandis to the preceding Article, paragraph (1) of Article 819, or the provisions of any other laws and regulations.

(2) If notification of divorce has been accepted despite the violation of the provisions of the preceding paragraph, the effect of the divorce shall not be prevented because of this violation.

(Determination of Matters regarding Custody of Child after Divorce etc.)

Article 766 (1) If parents divorce by agreement, the matter of who will have custody over a child and any other necessary matters regarding custody shall be determined by that agreement. If agreement has not been made, or cannot be made, this shall be determined by the family court.

(2) If the family court finds it necessary for the child's interests, it may change who will take custody over the child and order any other proper disposition regarding custody.

(3) The rights and duties of parents beyond the scope of custody may not be altered by the provisions of the preceding two paragraphs.

(Reversion to Previous Surname by Divorce)

Article 767 (1) The surname of a husband or wife who has taken a new name by marriage shall revert to the surname used before marriage by divorce by agreement.

(2) A husband or wife whose surname has reverted to the surname before marriage pursuant to the provisions of the preceding paragraph may use the surname he/she used at the time of divorce by notification pursuant to the Family Register Act within three months of the time of divorce.

(Distribution of Property)

Article 768 (1) One party to a divorce by agreement may claim a distribution of property from the other party.

(2) If the parties do not, or cannot, settle on agreement with regard to the distribution of property pursuant to the provision of the preceding paragraph, either party may claim to the family court for a disposition in lieu of agreement; provided that this claim for distribution of property shall be extinguished at the expiration of two years from the day of divorce.

(3) In the case referred to in the preceding paragraph, the family court shall determine whether to make a distribution, and the amount and method of that distribution, taking into account the amount of property obtained through the cooperation of both parties and all other circumstances.

(Assumption of Rights upon Reversion to Previous Surname by Divorce)

Article 769 (1) If a husband or wife who has taken a new surname by marriage divorces by agreement after inheriting the rights contained in paragraph (1) of Article 897, the matter of who will be the successor of those rights shall be determined by agreement of the parties and any other interested persons.

(2) If the agreement of the preceding paragraph is not, or cannot be, made, the family court shall determine who will be the successor of the rights in that paragraph.

Subsection 2 Judicial Divorce

(Judicial Divorce)

Article 770 (1) Only in the cases stated in the following items may either husband or wife file a suit for divorce:

- (i) if a spouse has committed an act of unchastity;
- (ii) if abandoned by a spouse in bad faith;
- (iii) if it is not clear whether a spouse is dead or alive for not less than three years;
- (iv) if a spouse is suffering from severe mental illness and there is no prospect of recovery; or
- (v) if there is any other grave cause making it difficult to continue the marriage.

(2) A court may dismiss a suit for divorce if it finds continuing the marriage reasonable taking into account all circumstances, even in the case where there is a cause listed in items (i) to (iv) inclusive of the preceding paragraph.

(Application Mutatis Mutandis of Divorce by Agreement Provisions)

Article 771. The provisions of Articles 766 to 769 inclusive shall apply mutatis mutandis to the case of judicial divorce.

I certify that the foregoing is a correct translation.

Translator's Name : [Japanese Name & Seal]
Date : April 15, 2019

Registered No. 1017



NOTARIAL CERTIFICATE

This is to certify that Ms. REGIE DAVID TSUTSUMI has signed in my very presence the attached document.

Dated this 8th day of MAY, 2019

[SGD. & SEAL]

KAORU TOKUDA

Notary

Tokyo Legal Affairs Bureau

CERTIFICATE

This is to certify that the signature affixed above has been provided by Notary, duly authorized by the Tokyo Legal Affairs Bureau and that the Official Seal appearing on the same is genuine.

Date MAY - 8, 2019

Shinji IWAYAMA

Director of the Tokyo Legal Affairs Bureau

For legalization by the foreign consul in Japan, this is to certify that the Seal affixed hereto is genuine.

Date MAY - 8, 2019

Tokyo, Toshie TANAKA [SGD. & SEAL]

Official

Ministry of Foreign Affairs

(Consular Service Division)⁴⁷

This English translation of Japanese law was accompanied by an Authentication Certificate issued by Vice Consul Domini N. Fañgon-Kitade in Tokyo, Japan at the Embassy of the Republic of the Philippines:⁴⁸

EMBASSY OF THE REPUBLIC OF THE PHILIPPINES
TOKYO, JAPAN

EMBASSY OF THE REPUBLIC OF THE PHILIPPINES)
CONSULAR SECTION) S.S.
TOKYO, JAPAN)

⁴⁷ *Id.*

⁴⁸ Records, p. 78. Authentication issued by Vice Consul Domini N. Fañgon-Kitade in Tokyo, Japan at the Embassy of the Republic of the Philippines.

AUTHENTICATION

I, **DOMINI N. FAÑGON-KITADE**, VICE CONSUL of the Republic of the Philippine, in and for Tokyo, Japan, duly commissioned and qualified to act as such, do hereby CERTIFY THAT

TOSHIE TANAKA
Official, Consular Service Division
Ministry of Foreign Affairs, Japan

before whom the annexed instrument has been executed was, at the time he/she signed the certificate, an Official in and for Japan, and verily believe that the signature affixed thereto is genuine.

The Embassy of the Republic of the Philippines assumes no responsibility for the contents of the document/s.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Embassy of Republic of the Philippines at the City of Tokyo, Japan, this 8th day of MAY 2019.

[SGD. with SEAL]
DOMINI N. FAÑGON-KITADE
VICE CONSUL

Annexed document(s) is/are:

DECLARATION
ACKNOWLEDGED TO HAVE
BEEN SIGNED BY REGIE DAVID
TSUTSUMI, dated 08 MAY 2019.

Doc. No. : 5619002994
Service No. : 21201
Series of : 2019
Fee Paid : Y3250
O.R. No. : 8945012⁴⁹

Upon careful consideration, the English translation of the Japan Civil Code, insofar as the nature and legal effects of the divorce agreement, is deemed sufficient. For one, Article 763 thereof clearly states that a husband and wife may divorce by agreement. Petitioner has duly established the consequences of divorce by agreement on the custody of her child with her former spouse under Article 766; reversion to her previous surname under Article 767; distribution of property under Article 768; and assumption of rights upon reversion to her previous surname by divorce under Article 769.

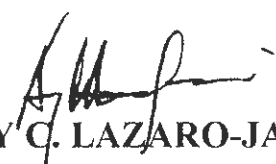
⁴⁹ *Id.*

In *Kondo v. Civil Registrar General*,⁵⁰ the Court emphasized that, time and again it grants liberality in cases involving the recognition of foreign decrees to Filipinos in mixed marriages and free them from a marriage in which they are the sole remaining party. After all, procedural rules are designed to secure and not override substantial justice, especially here where what is involved is a matter affecting the lives of families.

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated January 7, 2021 and Resolution dated November 8, 2021 of the Court of Appeals in CA-G.R. CV No. 114426 are **REVERSED**. The Decision of the Regional Trial Court, Branch 64 of Tarlac City, Tarlac, is **REINSTATED**:

1. Recognizing the divorce obtained in Japan between petitioner Regie David Tsutsumi and her Japanese husband, Ayahiro Tsutsumi, on April 11, 2016;
2. Declaring that petitioner Regie David Tsutsumi has the legal capacity to remarry under Philippine law; and
3. Ordering the Office of the Civil Registrar General (Philippine Statistics Authority), and the Local Civil Registry of Tarlac City, Tarlac, to annotate the divorce granted to the parties on the Certificate of Marriage of petitioner Regie David Tsutsumi and Ayahiro Tsutsumi and to record this judgment of recognition in their Civil Registry.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

⁵⁰ G.R. No. 223628. March 4, 2020, [Per J. Lazaro-Javier, First Division].

WE CONCUR:



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson



MARIO Y. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
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 M.V.F. LEONEN
Chairperson
Second Division



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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