Recognition of Foreign Divorce by Agreement: The Procedural and Substantive Issues from *Tanaka* to *Takahashi*

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I. INTRODUCTION

Hashtag "corona-divorce" went *viral* (pun intended) on social media and trended on Japanese Twitter during the quarantine period.[1] NHK of Japan even devoted a segment in a morning show discussing tips on how to avoid

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1. Kirsty Kawano, 'Corona Divorce' Threatens Marriages As Life Amid Virus Exposes Couples' Values, *available at* https://savvytokyo.com/corona-divorce-threatens-marriage (last accessed Sep. 30, 2020).

marriage-ending frustrations while stuck inside cramped Japanese apartments.[2] A 2016 Philippine Statistics Authority study on foreign marriages indicated that 35% of inter-racial marriages involve Filipino women married to Japanese men.[3] This Article deals with divorce, so it might be of interest to Filipinos with Japanese spouses in case the NHK morning show fails in its projected objective.

Apparently, there are four types of divorce in Japan: (1) divorce by decision of the family court; (2) divorce by judgment of a district court; (3) divorce by mediation in a family court; and (4) divorce by agreement, where only mutual agreement between the spouses is needed to affect a divorce.[4] Divorce based on the spouses' agreement without the intervention of a Japanese court is called "*Kyogi Rikon*."[5] In this type of divorce, "the spouses both fill out a Divorce Paper (... called '*Rikon-Todoke*' ...)"[6] to be submitted to the city hall's family registry.[7] Once granted, a Divorce Certificate is issued which is the record of the spouses' notification and acceptance. The Certificate of Acceptance of the Report of Divorce certifies that the divorce issued by the Mayor of the City has been accepted. This certificate must then be

2. May Masangkay, 'Corona divorce': Tokyo firm offers rooms to give people a break from their spouses, *available at* https://www.japantimes.co.jp/news/2020/04/26/national/social-issues/coronavirus-divorce-tokyo-marriage-japan/#.Xt8KQ2ozaRs (last accessed Sep. 30, 2020).

3. Philippine Statistics Authority, Number of Marriages by Nationality of Bride and Groom, Philippines: 2016, *available at* https://psa.gov.ph/sites/default/files/attachments/crd/specialrelease/Table%206.pdf (last accessed Sep. 30, 2020). However, as of 2017, intermarriages between Filipino women and Japanese men rank second only to intermarriages between Filipino women and American men. Philippine Statistics Authority, Marriage in the Philippines, 2017, *available at* https://psa.gov.ph/content/marriage-philippines-2017 (last accessed Sep. 30, 2020).

4. U.S. Embassy & Consulates in Japan, Divorce in Japan, *available at* https://jp.usembassy.gov/u-s-citizen-services/child-family-matters/divorce (last accessed Sep. 30, 2020).

5. *Id.* (emphasis supplied).

6. Yamagami International Law Offices, International Divorce in Japan, *available at* https://yilaw.jp/en/divorce-en (last accessed Sep. 30, 2020) (emphasis supplied).

7. *Id.*

authenticated by the consular officials of the Ministry of Foreign Affairs in Japan if the parties involve a Japanese and a foreign national.[8]

This Article discusses the case of *Racho v. Tanaka*,[9] and contends that, even if the Supreme Court may have granted the Petition for Recognition of Foreign Divorce involving a Japanese Divorce by Agreement,[10] it does not follow that a divorce by agreement may now be recognized as valid in this jurisdiction. This is because the Supreme Court granted the Petition for Recognition of Foreign Divorce in *Tanaka* on a procedural technicality, which means that the favorable decision therein may only be an exception to the general rule. The general rule under prevailing jurisprudence requires the submission of the foreign judgment, which is none other than the divorce decree, to prove the divorce as a fact.[11] As previously stated, however, there is no court involved in a Japanese divorce by agreement such that no decree will ever be issued, but only a divorce certificate and a certificate of acceptance of the report of divorce.[12]

In *Tanaka*, the Supreme Court considered the Certificate of Acceptance of the Report of Divorce admissible as evidence of the fact of divorce, but there was no categorical declaration on whether a certificate of acceptance of the report of divorce may now be submitted in lieu of a divorce decree in a petition for recognition of foreign divorce.[13] This is the procedural issue that must be resolved especially since, in the cases that followed *Tanaka* also involving Japanese Divorce by Agreement (as will be discussed), the Supreme Court withheld judgment on whether to grant or deny the Petition for Recognition of Foreign Divorce despite the submission of the Certificate of Acceptance of the Report of Divorce and the Divorce Certificate.

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8. *See generally* VisaNaviJapan, Divorce in Japan, *available at* http://visanavijapan.com/live-in-japan/divorce-in-japan (last accessed Sep. 30, 2020).

9. Racho v. Tanaka, 868 SCRA 25 (2018).

10. *See Tanaka*, 868 SCRA.

11. Genevieve Rosal Arreza, a.k.a. "Genevieve Arreza Toyo" v. Tetsushi Toyo, et al., G.R. No. 213198, July 1, 2019, at 1, *available at* http://sc.judiciary.gov.ph/5804 (last accessed Sep. 30, 2020).

12. *See* Akasaka International Law, Patent & Accounting Office, 4 Divorce Methods in Japan, *available at* https://ailaw.co.jp/en/blog-en/4-divorce-methods-in-japan (last accessed Sep. 30, 2020).

13. *Tanaka*, 868 SCRA at 42.

More significantly, the Supreme Court in *Tanaka* never addressed the issue of whether a divorce by agreement violates the public policy consideration in the third paragraph of Article 17 of the New Civil Code[14] which prohibits divorce jointly filed by the spouses. The public policy consideration is that a divorce jointly filed is tantamount to collusion between the spouses that desecrates marriage as an inviolable social institution protected by the Constitution.

The Supreme Court identified the issue in *Tanaka* to be whether the Certificate of Acceptance of the Report of Divorce was sufficient to prove the fact that a divorce was validly obtained by the Japanese spouse.[15] The Supreme Court ruled that the Certificate of Acceptance of the Report of Divorce was sufficient evidence of the fact of divorce and, thereafter, granted the Petition for Recognition of Foreign Divorce.[16] The Supreme Court may have considered the subject Divorce by Agreement as not a divorce jointly filed by the spouses since it identified Tanaka, the Japanese spouse, as the one who obtained the divorce. In the narration of facts, Rhodora Racho, the Filipino spouse, alleged that on 16 December 2009, Seiichi Tanaka filed for divorce which was, thereafter, granted in Japan.[17] Thus, there was a justification not to delve on whether the subject Divorce by Agreement violated Article 17 of the New Civil Code. However, the impression that the *Tanaka* ruling conveys is that the Supreme Court has practically recognized a divorce by agreement as valid despite the uncertainty of whether a certificate of acceptance of the report of divorce or a divorce certificate can now replace a divorce decree and notwithstanding Article 17 of the New Civil Code.

A. First Issue

There must be a definitive and unconditional resolution of the issue of whether a divorce certificate and/or certificate of acceptance of the report of divorce in a divorce by agreement may be proof of the foreign judgment in

14. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 17, para. 3 (1950). Article 17 provides that "[p]rohibitive laws concerning persons, their acts[,] or property, and those which have[,] for their object, public order, public policy[,] and good customs shall not be rendered ineffective by laws or judgments, promulgated, or by determinations or conventions agreed upon in a foreign country." *Id.*

15. *Tanaka*, 868 SCRA at 35.

16. *Id.* at 42.

17. *Id.* at 31.

lieu of a divorce decree since a decree can never be produced by the petitioner in a petition for recognition of foreign divorce by agreement.

A divorce by agreement, by its very name, presupposes that the spouses have amicably decided to separate and agreed to divorce such that it is immaterial which spouse initiated, filed, and, thereafter, obtained the Divorce by Agreement. In *Republic v. Manalo*,[18] the phrase "validly obtained abroad by the alien spouse" in the second paragraph of Article 26 Family Code[19] was interpreted to mean that there is a divorce validly obtained abroad regardless of who between the spouses initiated the divorce.[20] *Tanaka* and the subsequent petitions for recognition of foreign divorce by agreement interpreted this to include a divorce jointly filed by the spouses.

B. Second Issue

Tanaka and the subsequent decisions of the Supreme Court on petitions for recognition of foreign divorce by agreement never addressed the issue of the validity of a divorce by agreement per se or whether such divorce violates the public policy considerations under Article 17 of the New Civil Code. Hence, the issue of whether a divorce by agreement, which is consensual in nature, may amount to collusion between the spouses in violation of the third paragraph of Article 17 of the New Civil Code must also be resolved before a divorce by agreement may be recognized as valid in this jurisdiction.

The said issue may be exactly what the Office of the Solicitor General had in mind when it argued that a divorce by agreement is not the divorce contemplated in Article 26.[21] Had the Office of the Solicitor General argued

18. Republic v. Manalo, 862 SCRA 580 (2018).

19. Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, art. 26 (1987). The provision states —

> 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.

Id.

20. *Manalo*, 862 SCRA at 606.

21. *Tanaka*, 868 SCRA at 35.

on the basis of Article 17 of the New Civil Code, there might have been a different outcome in *Tanaka*.

In the case after *Tanaka*, or in *Stephen Juego-Sakai v. Republic*,[22] the narration of facts clearly stated that the divorce was by agreement of the spouses.[23] However, the Supreme Court in *Sakai* withheld judgment on whether to grant or deny the Petition for Recognition of Foreign Divorce and remanded the case instead to the Regional Trial Court for reception of further evidence to prove the Japanese law.[24]

Three more petitions for recognition of foreign divorce involving Japanese divorce by agreement that followed *Sakai* were also clear cases where the divorces were by agreement of the spouses. In *Marlyn M. Nullada v. Civil Registrar of Manila, et al.*,[25] the Supreme Court again remanded the Petition for Recognition of Foreign Divorce to the Regional Trial Court to prove the Japanese law on divorce,[26] while in the subsequent case of *Arreza v. Toyo, et al.*,[27] the case was remanded to the Court of Appeals for appropriate action.[28] In the last case, *In re: Petition for judicial recognition of divorce between Minuro Takahashi and Juliet Rendora Moraña v. Republic of the Philippines*,[29] decided on 5 December 2019, the Supreme Court held that the Divorce Report is equivalent to a divorce decree,[30] but the ruling there was hardly unconditional.

22. Juego-Sakai v. Republic, 873 SCRA 83 (2018).

23. *Id.* at 86.

24. *Id.* at 91-92.

25. Marlyn M. Nullada v. Civil Registrar of Manila, et al., G.R. No. 224548, Jan. 23, 2019, *available at* http://sc.judiciary.gov.ph/3431 (last accessed Sep. 30, 2020).

26. *Id.* at 9.

27. Genevieve Rosal Arreza, a.k.a. "Genevieve Arreza Toyo" v. Tetsushi Toyo, et al., G.R. No. 213198, July 1, 2019, *available at* http://sc.judiciary.gov.ph/5804 (last accessed Sep. 30, 2020).

28. *Id.* at 8-9.

29. In re: Petition for judicial recognition of divorce between Minuro Takahashi and Juliet Rendora Moraña v. Republic of the Philippines, G.R. No. 227605, Dec. 5, 2019, *available at* http://sc.judiciary.gov.ph/10220 (last accessed Sep. 30, 2020).

30. *Id.* at 9.

These five petitions for recognition foreign divorce by agreement only addressed the issue of whether the subject Divorce Certificates and/or Certificates of Acceptance of the Report of Divorce are sufficient evidence of the fact of divorce as to capacitate the spouses to remarry under the exception provided in the second paragraph of Article 26 of the New Civil Code.

Still, any resolution on whether a divorce certificate and/or certificate of acceptance of the report of divorce is admissible as proof of a foreign judgment, in lieu of a divorce decree, and whether the Japanese law on divorce by agreement, capacitating the spouses to remarry, has been established may nevertheless prove irrelevant if it turns out that a divorce by agreement violates public policy considerations under Article 17 of the New Civil Code. "Thus, when [a] foreign law, judgment[,] or contract is contrary to a sound and established public policy of the forum, the said foreign law, judgment[,] or order shall not be applied."[31]

II. REQUIREMENTS IN A PETITION FOR RECOGNITION OF FOREIGN DIVORCE

In order to extend the effect of a foreign judgment in the Philippines, the party seeking judicial recognition thereof needs only to prove the following: (1) "the foreign judgment and its authenticity ... as facts under our rules on evidence[;]"[32] and (2) "the alien's applicable national law to show the effect of the judgment on the alien himself or herself."[33]

In the case of *Fujiki v. Marinay*,[34] the Supreme Court ruled —

> For Philippine courts to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To be more specific, a copy of the foreign judgment may be

31. Bank of America, NT and SA v. American Realty Corp., 321 SCRA 659, 674 (1999) (citing EDGARDO L. PARAS, PHILIPPINE CONFLICT OF LAWS 46 (8th ed. 1996)).

32. Corpuz v. Sto. Tomas, 628 SCRA 266, 281-82 (2010) (citing Republic v. Orbecido III, 472 SCRA 114, 123 (2005); Garcia v. Recio, 366 SCRA 437, 448 (2001); & Bayot v. Court of Appeals, 570 SCRA 472, 488 (2008)).

33. *Id.*

34. Fujiki v. Marinay, 700 SCRA 69 (2013).

> admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48 (b) of the Rules of Court.[35]

In the case of *Medina v. Koike*,[36] the Supreme Court explicitly stated that the foreign judgment being referred to is the divorce decree, to wit —

> [I]n order for a divorce obtained abroad by the alien spouse to be recognized in our jurisdiction, it must be shown that the divorce decree is valid according to the national law of the foreigner. Both the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Since our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven like any other fact.[37]

Vda. de Catalan v. Catalan-Lee[38] held that

> [u]nder Sections 24 and 25 of Rule 132 [of the Rules of Court], a [piece of] writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by

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35. *Id.* at 89 (citing 1989 REVISED RULES ON EVIDENCE, rule 132, §§ 24-25 & 1997 RULES OF CIVIL PROCEDURE, rule 39, § 48 (b)). The Rules on Evidence provide —

> 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.
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> 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.*

1989 REVISED RULES ON EVIDENCE, rule 132, §§ 24-25 (emphases supplied).

36. Medina v. Koike, 798 SCRA 733 (2016).

37. *Id.* at 740 (citing *Garcia*, 366 SCRA at 442).

38. Vda. de Catalan v. Catalan-Lee, 665 SCRA 487 (2012).

> 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 office.[39]

III. THE FIVE RECENT CASES INVOLVING JAPANESE DIVORCE BY AGREEMENT

A. The Tanaka Case (25 JUNE 2018)

In *Racho v. Tanaka*, petitioner Rhodora Racho presented a Divorce Certificate issued by the Consul of Japan[40] and a copy of an English version of the Japanese Civil Code.[41] The Regional Trial Court ruled that the Japanese law was proven, but that the Divorce Certificate is not the divorce decree contemplated by law; so it denied the Petition for Recognition of Foreign Divorce.[42] Racho went straight to the Supreme Court, manifesting that the Certificate of Acceptance of the Report of Divorce — which she submitted to the Supreme Court — had not been available during the trial at the lower court.[43] The Office of the Solicitor General raised no objection to the admission of the Certificate of Acceptance of the Report of Divorce, but argued that the said certificate did not comply with Section 24 of Rule 132 of the Rules of Court.[44] The Office of the Solicitor General also argued that Racho failed to cite any provision in the Japanese Civil Code stating that the Divorce Certificate and the Divorce by Agreement allow the divorced spouses to remarry.[45] Likewise, the Office of the Solicitor General averred that the Divorce by Agreement is not the divorce contemplated under Article 26.[46]

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39. *Id.* at 497 (citing San Luis v. San Luis, 514 SCRA 294, 313-14 (2007)).
40. *Tanaka*, 868 SCRA at 31.
41. *Id.* at 32.
42. *Id.*
43. *Id.* at 32-33.
44. *Id.* at 34-35 (citing REVISED RULES ON EVIDENCE, rule 132, § 24).
45. *Tanaka*, 868 SCRA at 35.
46. *Id.*

The Supreme Court in *Tanaka* held that the Office of the Solicitor General espoused a narrow interpretation of Article 26 where the wife is incapable of agreeing to the dissolution of the marital bond.[47] It was likewise stated that such interpretation may be unconstitutional as it violates the equality of women and men before the law.[48] The Supreme Court also ruled that the Office of the Solicitor General erred in relying on the *Recio* case which involved a restricted divorce such that the spouses' capacity to remarry was never proven under the foreign law.[49] The Supreme Court held that the Certificate of Acceptance of the Report of Divorce in the *Tanaka* case is an absolute divorce that terminated the marital tie allowing the spouses to remarry.[50]

Also, the Supreme Court held that the Regional Trial Court was correct that the Divorce Certificate is not the divorce decree.[51] However, the Certificate of Acceptance of the Report of Divorce was presented to the Supreme Court and the Office of the Solicitor General did not object to its admission.[52] Thus, the Supreme Court held that the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the fact of divorce.[53] The Supreme Court further noted that the Regional Trial Court had admitted the copy of the English version of the Japanese Civil Code, translated under the authorization of the Ministry of Justice and the Code of Translation Committee, as proof of the Japanese law, but nevertheless reversed the Regional Trial Court and granted the Petition for Recognition of Foreign Divorce.[54]

The *Marinay* case required the submission of the foreign judgment relating to the status of the marriage,[55] which is none other than the divorce decree, as specified in the *Koike* case.[56] A divorce certificate or a certificate of acceptance of the report of divorce is not a decree as it is merely a report/certificate. Petitioners in a petition for recognition of foreign divorce

47. *Id.* at 45-46.

48. *Id.* at 43-44.

49. *Id.* at 51-52 (citing *Garcia*, 366 SCRA at 453).

50. *Tanaka*, 868 SCRA at 52.

51. *Id.* at 39.

52. *Id.* at 41.

53. *Id.* at 42.

54. *Id.*

55. *Marinay*, 700 SCRA at 89 (citing REVISED RULES ON EVIDENCE, rule 132, § 24).

56. *Koike*, 798 SCRA at 739.

involving a Japanese divorce by agreement must somehow prove that the report/certificate is the divorce decree in itself under Japanese law that capacitates the spouses to remarry, if that is even possible.

To repeat, in *Tanaka*, the Supreme Court noted that the Regional Trial Court was correct in ruling that the Divorce Certificate was not a decree, but the Certificate of Acceptance of the Report of Divorce was belatedly submitted before the Supreme Court and the Office of the Solicitor General did not object to its admission.[57] Thus, the Certificate of Acceptance of the Report of Divorce was ruled admissible as evidence of the fact of divorce.[58] In other words, the Certificate of Acceptance of the Report of Divorce is still not the divorce decree as contemplated in the *Koike* ruling, but was considered admissible as an evidence of the fact of divorce. It must be stressed that even the Supreme Court stated that the Regional Trial Court was correct in ruling that the Divorce Certificate is not the divorce decree and, had the Office of the Solicitor General objected to the admission of the Certificate of Acceptance of the Report of Divorce, then both the Divorce Certificate and the Certificate of Acceptance of the Report of Divorce would not have had any probative value. After all, Racho herself explained that the Certificate of Acceptance of the Report of Divorce is a certification that the Divorce Certificate, which is the record of the divorce notification, had been accepted by the spouses.[59]

The question, therefore, is how could a mere certification or the Certificate of Acceptance of the Report of Divorce have more probative value than the document it is certifying or the Divorce Certificate that has been rejected? This is why *Tanaka* cannot be cited as having recognized all divorce by agreement as already valid in this jurisdiction as it is contingent on the Office of the Solicitor General not objecting to the admission of the Certificate of Acceptance of the Report of Divorce.

In addition, the petitioner in *Tanaka* presented a mere copy of an English version of the Japanese Civil Code as proof of the Japanese law.[60] However, what must be presented is the official publication or a copy of the Japanese Civil Code that logically ought to be in the Japanese language in the first place. Sections 24 and 25 of Rule 132 of the Rules of Court do not mention the submission of an English translation of a writing or document to prove a public

57. *Tanaka*, 868 SCRA at 41.

58. *Id.* at 42.

59. *Id.* at 39.

60. *Id.* at 32.

or official record of a foreign country.[61] Of course, an officially authorized translated version of the pertinent Japanese law is equally imperative for obvious reasons of interpretation by local courts. However, the very first document required is the official publication or authenticated copy of the Japanese Civil Code itself before any other document. Nonetheless, the Supreme Court noted that the Regional Trial Court had admitted the copy of an authorized translated English version of the Japanese Civil Code as proof of the Japanese law but went on to reverse the Regional Trial Court and then granted the Petition for Recognition of Foreign Divorce.[62] Thus, the ruling in *Tanaka* with respect to the foreign law was again contingent on the Regional Trial Court admitting the documentary proof for the Japanese law on divorce by agreement.

As previously stated, the *Tanaka* case never addressed Article 17 of the New Civil Code since the Office of the Solicitor General had argued that the subject Divorce by Agreement was not the divorce contemplated under Article 26. The Supreme Court held that the Office of the Solicitor General's narrow interpretation of Article 26 "disregard[ed] any agency on the part of the Filipino spouse."[63] The Supreme Court found that this interpretation "presumes that the Filipino spouse is incapable of agreeing to the dissolution of the marital bond."[64] In arriving at this conclusion, the Supreme Court held that, "[c]onsidering 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 [alien] spouse may initiate the divorce proceedings."[65] The Office of the Solicitor General's main argument against Racho was that she "failed to point to a specific provision in the [Japanese Civil Code] that [gives] persons who obtained a divorce by agreement the capacity to remarry [and that i]n any case, a divorce by agreement is not the divorce contemplated in Article 26 ... ."[66] It seems that the divorce contemplated in Article 26, as far as the Office of the Solicitor General is concerned, is the traditional manner of divorce, which is not subject to any agreement by the spouses whatsoever. This is not consistent with the practice in Japan where there is a judicial divorce and there is a divorce by agreement. As far as the Office of the Solicitor General is concerned, the traditional judicial divorce is the only divorce contemplated in

61. REVISED RULES ON EVIDENCE, rule 132, §§ 24-25.

62. *Tanaka*, 868 SCRA at 38-39.

63. *Id.* at 45.

64. *Id.*

65. *Id.* at 43.

66. *Id.* at 35.

Article 26. It appears that the Office of the Solicitor General is inherently arguing against the consensual nature of a divorce by agreement, and not that the Filipino spouse cannot even agree to the divorce so as to make it a case of both spouses obtaining the divorce and not the alien spouse alone. Besides, it is clear from the narration of facts and the identified issue by the Supreme Court that it was Tanaka who obtained the divorce.[67] Hence, there was never any issue that Racho was at the same time "obtaining" the divorce by merely agreeing thereto, contrary to the second paragraph of Article 26.

At any rate, the Supreme Court ruled that the Office of the Solicitor General's objections on the basis of Article 26 had been resolved in *Republic v. Manalo*.[68] The Supreme Court held that "[t]o 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. Justice is better served if she is not discriminated against in her own country[,]"[69] citing the case of *Van Dorn v. Romillo, Jr.*[70]

*B. The Sakai Case (*23 JULY 2018*)*

In *Juego-Sakai v. Republic*, petitioner Sakai alleged that she and her husband Toshiharu obtained a divorce by agreement.[71] Sakai claimed this was more practical and that, if she would be required to get a judicial divorce to avail of the benefit under the second paragraph of Article 26, she would be disadvantaged as her divorce had already been granted.[72] Sakai asserted that, even if she consented to the divorce, this does not prevent the application of Article 26 which does not prohibit its application to cases where the consent of the Filipino spouse was obtained in the divorce.[73] Sakai cited the case of *Republic v. Orbecido III*,[74] where the Supreme Court held that "a Filipino spouse is allowed to remarry in the event that he or she is divorced by a Filipino spouse who had acquired foreign citizenship."[75] Likewise, Sakai explained that she was unable to present authenticated copies of the provisions

67. *Id.* at 31.

68. *Tanaka*, 868 SCRA at 47.

69. *Id.* at 55 (citing Van Dorn v. Romillo, 139 SCRA 139, 144 (1985)).

70. *See* Van Dorn v. Romillo, Jr., 139 SCRA 139 (1985).

71. *Sakai*, 873 SCRA at 86.

72. *Id.* at 88.

73. *Id.*

74. Republic v. Orbecido III, 472 SCRA 114 (2005).

75. *Sakai*, 873 SCRA at 88 (citing *Orbecido III*, 472 SCRA).

of the Japanese Civil Code as she was pregnant, so she was unable to go to Japan.[76] Instead, she went to the library of the Japanese Embassy in Manila to photocopy the Japanese Civil Code.[77] "There, she was issued a document which states that diplomatic missions of Japan overseas do not issue certified true copies of Japanese law nor process translation certificates of Japanese law ... ."[78]

The Regional Trial Court granted the Petition for Recognition of Foreign Divorce, and the Court of Appeals affirmed the recognition.[79] The Court of Appeals reversed its decision and ruled that the divorce is consensual and not obtained by Sakai alone.[80] The Court of Appeals held that Sakai, a Filipino citizen, also obtained the divorce, so the Divorce by Agreement cannot be recognized in the Philippines.[81] Also, the Court of Appeals ruled that Sakai's "failure to present authenticated copies of the [Japanese Civil Code] was fatal to her cause."[82] Sakai filed a petition for review on certiorari to the Supreme Court.[83]

Citing the *Manalo* case, the Supreme Court ruled that, despite Sakai having participated in the divorce proceedings and even if she had initiated it, she can still benefit from the exception provided under the second paragraph of Article 26.[84] Also, the Supreme Court held that the Office of the Solicitor General did not dispute the existence of the divorce decree, and it was, therefore, admissible.[85] Nonetheless, the Supreme Court ruled that strict compliance with Section 24 of Rule 132 of the Rules of Court is required and thus the Japanese law must be proven.[86] The Supreme Court opted to remand the case to the Regional Trial Court to receive proof of the Japanese law on divorce only.[87]

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76. *Sakai*, 873 SCRA at 88.

77. *Id.*

78. *Id.* at 88-89.

79. *Id.* at 87.

80. *Id.*

81. *Id.*

82. *Sakai*, 873 SCRA at 87.

83. *Id.*

84. *Id.* at 90.

85. *Id.* at 91.

86. *Id.* at 90-91 (citing *Corpuz*, 628 SCRA at 281-82).

87. *Sakai*, 873 SCRA at 92.

It must be pointed out that the subject divorce in *Sakai* is a Divorce by Agreement, so it is apparent that the document involved is not a divorce decree. Remember that in *Tanaka*, Racho argued that under the Japanese Civil Code, the manner of proving a divorce by agreement is by record of its notification and by the fact of its acceptance, both of which are stated in a divorce certificate, and not in a traditional divorce decree.[88] Note also that the Supreme Court in *Sakai* ruled that it was only because the Office of the Solicitor General did not dispute the existence of the divorce decree that it became admissible, when it was supposedly the divorce decree already or its equivalent since there is no traditional divorce decree in a divorce by agreement.[89]

Assuming that the subject document is, indeed, the divorce decree, then there should be no more issue as to its admission, and it can be conceded that the decree had complied with Section 24 of Rule 132 of the Rules of Court. If the subject document is either a divorce certificate or a certificate of acceptance of the report of divorce, which is more likely the case, then its admission is again contingent on the Office of the Solicitor General not objecting thereto. This only means that, in *Sakai*, there was still no categorical declaration that a divorce certificate or a certificate of acceptance of the report of divorce may now be admitted in lieu of a divorce decree, as required in the *Koike* ruling. More significantly, if a divorce certificate or certificate of acceptance of the report of divorce is admissible as held by the Supreme Court, then what is it admissible for since, in *Tanaka*, the Certificate of Acceptance of the Report of Divorce was explicitly ruled admissible as evidence of the fact of divorce?

Nonetheless, admissibility is different from weight of evidence.[90] The admissibility of evidence "depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade."[91]

88. *Tanaka*, 868 SCRA at 32.

89. *Sakai*, 873 SCRA at 91.

90. Mancol, Jr. v. Development Bank of the Philippines, 846 SCRA 131, 143 (2017).

91. DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc., 480 SCRA 314, 325-26 (2006) (citing People v. Navarro, 297 SCRA 331, 349 (1998)).

Furthermore, in *Sakai*, it was the Court of Appeals — and not the Office of the Solicitor General — which reasoned that Sakai, a Filipino citizen, also obtained the divorce, such that the Divorce by Agreement cannot be recognized.[92] Sakai, citing *Orbecido III*, averred that even if she consented to the divorce, this should not prevent the application of Article 26 because it does not provide that when the consent of the Filipino spouse is obtained in the divorce, Article 26 no longer applies.[93] The Supreme Court upheld the argument, citing the *Manalo* case, and ruled that despite the Filipino spouse's participation in the divorce proceedings and even if she had initiated it, she can still benefit from the exception provided under the second paragraph of Article 26.[94]

In *Orbecido III*, the Supreme Court held that, taking into consideration the legislative intent and applying the rule of reason, the second paragraph 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."[95] The Supreme Court held that "[t]he 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[as t]o rule otherwise would be to sanction absurdity and injustice."[96]

In Arturo M. de Castro's Article entitled "Recognition of Absolute Divorce in Mixed Marriages under Philippine Law: A Critical Analysis,"[97] he stated that "one of the criticism[s] against [ ] *Orbecido* [ ] is that it is a case of judicial legislation."[98] De Castro explained that "[t]he textual language [of Article 26] is clear [in that it] covers only mixed marriages between a Filipino [ ] and a foreigner, and not a marriage between Filipino[s]"[99] where one later becomes naturalized and, thereafter, obtains a divorce.[100]

92. *Sakai*, 873 SCRA at 89-90.

93. *Id*. at 88.

94. *Id*. at 90.

95. *Orbecido III*, 472 SCRA at 121.

96. *Id*.

97. Arturo M. de Castro, *Recognition of Absolute Divorce in Mixed Marriages under Philippine Law: A Critical Analysis*, 51 ATENEO L.J. 520 (2006).

98. *Id*. at 527.

99. *Id*.

100. *Id*.

In *Manalo*, the Supreme Court ruled that the second paragraph of Article 26 should extend to a Filipino spouse who has filed for divorce which, under Article 15 of the New Civil Code,[101] or the Nationality Rule, she or he does not have the capacity to do.[102] The reason given by the Supreme Court for this is the unfair and oppressive situation that would result if by virtue of the divorce, the foreign spouse not only is considered no longer married to said Filipino, but could already remarry, while the Filipino remains tied to a spouse who has been set free from such marriage.[103]

The concern for justice and non-discrimination in marital laws for Filipino citizens first appeared in the *Van Dorn* case and was reiterated in the *Orbecido III* case, which then found its way to the *Manalo* case. In Amparita Sta. Maria's Article entitled "*From Van Dorn to Manalo: An Analysis of the Court's Evolving Doctrine in the Recognition of Foreign Divorce Decrees in Mixed Marriages*,"[104] she characterized the non-discriminatory interpretation applied in *Orbecido III* as a "revolutionary" perspective that expanded the scope of the 2nd paragraph of Article 26. [105] Sta. Maria added that "the basic problem with [this interpretation] of the Court is that it wanted to provide a remedy for a situation that is not within the scope of the [2nd paragraph of Article 26] to address."[106] Sta. Maria then concluded that "the Supreme Court[,] in its desire to give the [said] provision an expansive interpretation[,] committed [ ] judicial overreach in *Republic v. Manalo*, [that] needlessly limit[ed] the application of the nationality rule [through unwarranted] judicial legislation."[107]

There is nothing essentially objectionable in an expansive interpretation of a particular provision as long as it is within the scope of the said provision to address. The *Manalo* case held that it is within the scope of the second paragraph of Article 26 to address what would comprise the literal and liberal interpretation of the phrase "validly obtained abroad by the alien spouse" in

101. CIVIL CODE, art. 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.").

102. *Manalo*, 862 SCRA at 611.

103. *Id.*

104. Amparita Sta. Maria, *From Van Dorn to Manalo: An Analysis of the Court's Evolving Doctrine in the Recognition of Foreign Divorce Decrees in Mixed Marriages*, 63 ATENEO L.J. 101 (2018).

105. *Id.* at 113.

106. *Id.*

107. *Id.* at 103.

the said provision.[108] In the *Tanaka* and *Sakai* cases, the liberal interpretation of the 2nd paragraph of Article 26 was further expanded to cover a divorce mutually agreed upon by the spouses as included in the phrase "validly obtained abroad by the alien spouse."[109] Nonetheless, whether the divorce mutually agreed upon by the spouses or a divorce by agreement itself violates public policy considerations in Article 17 of the New Civil Code was never addressed in the *Manalo*, *Tanaka*, or *Sakai* cases. The *Manalo* case specifically addressed the second paragraph of Article 26 as an exception to the Nationality Rule, it being deemed a corrective measure to an absurd situation brought about by the strict interpretation of the said rule.[110]

Whether the second paragraph of Article 26 can also be considered an exception to the public policy consideration in Article 17 of the New Civil Code is another matter altogether. Likewise, whether it is within the scope of Article 26 to address the public policy implications of a divorce by agreement being tantamount to a collusion between the spouses must also be addressed as this is not just a simple question anymore of what is included in the phrase "validly obtained abroad by the alien spouse."

Thus, in the case of *Marinay*, the Supreme Court held that under the second paragraph of Article 26, "Philippine courts are empowered to correct a situation where the Filipino spouse is still tied to the marriage while the foreign spouse is free to marry."[111] The Supreme Court significantly added that "notwithstanding Article 26 ... , *Philippine courts already have jurisdiction to extend the effect of a foreign judgment in the Philippines to the extent that the foreign judgment does not contravene domestic public policy*."[112]

108. *Manalo*, 862 SCRA at 613.

109. *Tanaka*, 868 SCRA at 45 & *Sakai*, 873 SCRA at 90.

110. *Manalo*, 862 SCRA at 638.

111. *Marinay*, 700 SCRA at 102.

112. *Id.* (emphasis supplied).

C. The Nullada Case (29 JANUARY 2019)

In *Marlyn M. Nullada v. Registrar of Manila, et. al.*, the following documents were presented by the petitioner Filipino spouse Marlyn in the Regional Trial Court: (a) Report of Marriage issued by the Philippine Embassy in Japan; (b) Authentication Certificate of Report of Marriage; (c) Divorce Certificate issued by the Japanese Embassy in the Philippines; (d) Authentication Certificate of the Divorce Certificate; and (e) excerpts of the Japanese Civil Code.[113] The Regional Trial Court denied the Petition for Recognition of Foreign Divorce, ruling that Article 17 of the New Civil Code does not recognize divorce jointly filed by the spouses.[114] The Regional Trial Court explained that Marlyn had also agreed to the divorce and jointly filed it with her husband, barring the application of the 2nd paragraph of Article 26, which would have otherwise allowed a Filipino spouse to remarry after the alien spouse had validly obtained a divorce.[115] Marlyn went straight to the Supreme Court by filing a Petition for Review on Certiorari.[116]

The Supreme Court identified the main issue as whether the second paragraph of Article 26 "has a restrictive application so as to apply only in cases where it is the alien spouse who sought the divorce, and not where the divorce was mutually agreed upon by the spouses."[117] The Supreme Court, reiterating *Manalo*, ruled that the Regional Trial Court erred in its interpretation of Article 26 and held that the fact that the divorce was by mutual agreement was not sufficient ground to reject the decree.[118] However, the Supreme Court also held that the divorce decree and the Japanese law were not proven even if the Office of the Solicitor General never disputed the Divorce Certificate, as the recognition of divorce could not be extended as a matter of course.[119] The Supreme Court held that "[u]nder prevailing rules and jurisprudence, the submission of the decree should come with adequate proof of the foreign law

113. *Nullada*, G.R. No. 224548, at 3-4.

114. *Id.* at 5.

115. *Id.*

116. *Id.*

117. *Id.* at 5.

118. *Id.* at 8.

119. *Nullada*, G.R. No. 224548, at 8.

that allows it."[120] Nonetheless, the Supreme Court again remanded the case to the Regional Trial Court to prove the Japanese law only.[121]

What is significant in the ruling in *Nullada* is that the divorce decree was deemed not proven even if the Office of the Solicitor General did not dispute the Divorce Certificate. It must be recalled that in the two previous cases of *Tanaka* and *Sakai*, the Certificates of Acceptance of the Report of Divorce and the Divorce Certificates were deemed admissible as evidence of the fact of divorce and by the simple expediency of the Office of the Solicitor General's failure to object to the admission of the Certificate of Acceptance of the Report of Divorce or the Divorce Certificate.[122] This is precisely why there should be a definitive and unconditional ruling on whether a divorce certificate and/or certificate of acceptance of a report of divorce in a divorce by agreement are admissible as proofs of the foreign judgment or the fact of divorce, or as equivalents of the decree in itself, regardless if the Office of the Solicitor General objects thereto or not. Equally significant is the Supreme Court's pronouncement in *Nullada* that "the submission of the decree should come with adequate proof of the foreign law that allows it."[123]

More importantly, *Nullada* was the first time Article 17 of the New Civil Code was specifically invoked to deny a petition for recognition of foreign divorce by agreement. The Regional Trial Court was on track when it refused to recognize the Divorce by Agreement and ruled that Article 17 of the New Civil Code does not recognize divorce jointly filed by the spouses. It would have been ideal had the Regional Trial Court expounded further on whether prohibitive laws concerning persons, their acts, or property which have, for their object, public policy were not rendered ineffective by a judgment promulgated in a foreign country. Instead, the Regional Trial Court reasoned on the basis of the fact that Marlyn also agreed to the divorce and jointly filed for it with Akira, the Japanese spouse, which barred the application of the second paragraph of Article 26. Thus, the Supreme Court again ruled on the basis of Article 26 and only reiterated the ruling in *Manalo*.[124] It was a missed opportunity to fully address the issue of whether a divorce by agreement as a consensual divorce jointly filed is tantamount to collusion between the spouses that contravenes the third paragraph of Article 17 of the New Civil Code.

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120. *Id.*

121. *Id.* at 9.

122. *Tanaka*, 868 SCRA at 42 & *Sakai*, 873 SCRA at 91.

123. *Nullada*, G.R. No. 224548, at 8.

124. *Id.* at 7–8.

*D. The Toyo Case (*1 JULY 2019*)*

In *Arreza v. Toyo, et. al.*, the following documents were presented by petitioner Arreza to the Regional Trial Court: (a) the Divorce Certificate; (b) Acceptance of the Notification of Divorce; and (c) a copy of the Japanese Civil Code and its English translation.[125] The Regional Trial Court found that Arreza proved that their divorce agreement was accepted by the local government of Japan, but was unable to prove the Japanese law.[126] The Regional Trial Court denied her Petition for Recognition of Foreign Divorce as the submitted documents were not properly authenticated.[127] Arreza argued that the Japanese Civil Code copy and its English translation were official publications and, therefore, "self-authenticating documents."[128]

The Supreme Court ruled that the documents submitted to prove the divorce decree and the Japanese law on divorce must comply with Section 24 of Rule 132 of the Rules of Court.[129] The Supreme Court noted that the Regional Trial Court had ruled that the Divorce Certificate complied with Section 24 of Rule 132 of the Rules of Court, but not the proof of the Japanese law.[130] The Supreme Court ruled that the Japanese Civil Code was not proven because its English translation was published by a private company, which is not the official translator of the Japanese Civil Code, such that it was not an official publication exempt from authentication.[131] The Supreme Court then remanded the Petition for Recognition of Foreign Divorce to the Court of Appeals for "appropriate action," which could be for the reception of evidence on the pertinent Japanese law on divorce by agreement and any related matter thereto.[132] If the Supreme Court intended to dismiss the case, it would have done so instead of remanding it to the Court of Appeals.

125. *Toyo*, G.R. No. 213198, at 2.

126. *Id.* at 2–3.

127. *Id.* at 3.

128. *Id.*

129. *Id.* at 6 (citing REVISED RULES ON EVIDENCE, rule 132, § 24).

130. *Toyo*, G.R. No. 213198, at 6.

131. *Id.* at 7.

132. *Id.* at 9.

On the matter of the reception of evidence on the Japanese law on divorce, the Supreme Court, in the earlier case of *Tanaka*, noted that the Regional Trial Court admitted a copy of the English version of the Japanese Civil Code having been translated by the proper authorities.[133] The Supreme Court then granted the Petition for Recognition of Foreign Divorce despite that fact that no copy of the Japanese Civil Code was presented by petitioner.[134] In the latter case of *Toyo*, a copy of the Japanese Civil Code and its English translation were presented by petitioner.[135] The Supreme Court affirmed the Regional Trial Court ruling that rejected the copy of the Japanese Civil Code and its English translation as it was published by a private company not authorized to do an official translation.[136] However, the Supreme Court also stated in *Toyo* that one source for the official publication of the Japanese Civil Code is the Official Gazette of Japan known as *Kanpo*, albeit in Japanese.[137] Evidently, the presentation of the Japanese Civil Code in the Japanese language is equally important as the authorized official English translation thereof otherwise the Supreme Court would not have bothered to mention about the *Kanpo* in the case of *Toyo*.

Moreover, the Supreme Court in *Toyo* did not rule anymore on whether the Regional Trial Court was correct in its acceptance of the Divorce Certificate in lieu of a divorce decree or if the Divorce Certificate is admissible as evidence of the fact of divorce, as it did in *Tanaka* with respect to the Certificate of Acceptance of the Report of Divorce. Apparently, the Supreme Court has somehow acknowledged the futility of expecting a petitioner to produce a traditional divorce decree in a divorce by agreement. From *Tanaka* to *Toyo*, no divorce decree was ever presented, but the Supreme Court never dismissed any case outright for this reason when it could have easily done so. Indeed, the Supreme Court was simply applying the rule of reason as strictly requiring the submission of a document that is impossible to produce would be patently absurd and unfair.

In any case, any objection by the Office of the Solicitor General to the admissibility of a divorce certificate or a certificate of acceptance of the report of divorce would invariably pertain to the formalities of authenticity and attestation. The said objection can be easily addressed by complying with

133. *Tanaka*, 868 SCRA at 38.

134. *Id.* at 55.

135. *Toyo*, G.R. No. 213198, at 2.

136. *Id.* at 7.

137. *Id.*

Section 24 of Rule 132 of the Rules of Court or by mere *apostillization*[138] of the subject documents. In fact, in *Nullada*, the Supreme Court held that the Divorce Certificate did not comply with Section 24 of Rule 132 of the Rules of Court.[139] Yet, the Supreme Court did not order petitioner to rectify the Divorce Certificate or to produce the divorce decree itself when it remanded the case to the Regional Trial Court to receive proof of the Japanese law on divorce only. Thus, it would be best if an unconditional declaration is made that a divorce certificate and/or certificate of acceptance of the report of divorce may be submitted in lieu of a divorce decree, including the legal basis therefor.

The Supreme Court somehow did this in the next case.

*E. The Takahashi Case (*5 DECEMBER 2019*)*

In the special proceeding entitled *In Re: Petition For Judicial Recognition of Divorce between Minuro Takahashi and Juliet Rendora Moraña*, petitioner Moraña and her Japanese spouse Takahashi agreed and applied for divorce before the Mayor's Office of Fukuyama City, Japan, which issued the corresponding Divorce Report.[140] The Regional Trial Court dismissed the Petition for Recognition of Foreign Divorce, ruling that "the Divorce Report and Certificate of All Matters cannot take the place of the divorce decree itself ... ."[141] The Regional Trial Court noted that "the authenticated Divorce Certificate issued by the Japanese government was not [ ] included in petitioner's formal offer of evidence aside from ... [being] a mere photocopy

138. The Philippines is a signatory to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents otherwise known as the Apostille Convention. Having acceded to the Apostille Convention last 12 September 2018, the Philippines now honors public documents bearing "apostilles" from competent authorities, which authenticate documents in apostille-contracting countries. Since 14 May 2019, apostilled documents need not be presented to Philippine embassies or consulates abroad for authentication before these are recognized as official records. *See* Department of Foreign Affairs, PUBLIC ADVISORY: APOSTILLE CONVENTION ON AUTHENTICATION OF DOCUMENTS TAKES EFFECT IN PH ON 14 MAY 2019, *available at* https://dfa.gov.ph/dfa-news/statements-and-advisoriesupdate/22114-public-advisory-apostille-convention-on-authentication-of-documents-takes-effect-in-ph-on-14-may-2019%20 (last accessed Sep. 30, 2020).

139. *Nullada*, G.R. No. 224548, at 9.

140. *Takahashi*, G.R. No. 227605, at 2.

141. *Id.* at 3.

... ."[142] The Regional Trial Court also considered that Moraña secured the divorce, which is not allowed under Philippine laws.[143] The Court of Appeals affirmed the Regional Trial Court ruling that the Divorce Report and Certificate of All Matters cannot substitute for the divorce decree.[144] The Court of Appeals also held that the divorce cannot be recognized under Article 26, having been obtained by the Filipino spouse and not by Takahashi alone.[145]

The Supreme Court, reiterating *Manalo*, ruled that a foreign decree of divorce may already be recognized although it was the Filipino spouse who obtained the same.[146] The Supreme Court also cited *Tanaka* in that the prohibition on Filipinos from participating in divorce proceedings will be discriminatory against Filipino nationals.[147] Thus, the Supreme Court held that the Divorce by Agreement may be recognized here even though it was Moraña herself, or jointly with her husband, who applied for and obtained the divorce.[148]

Likewise, the Supreme Court disagreed with the Court of Appeals, which ruled that the Divorce Report "cannot be considered as the act of an official body or tribunal as would constitute the divorce decree contemplated by the Rules."[149] The Supreme Court held instead and for the first time explicitly acknowledged that "[t]here was no 'divorce judgment' to speak of because the divorce proceeding was not coursed through the Japanese courts ... ."[150] The Supreme Court added —

> In any event, since the Divorce Report was issued by the [Mayor's Office] of Fukuyama City, the same is deemed an *act of an official body* in Japan [and b]y whatever name it is called, the Divorce Report is clearly the equivalent of the '[d]ivorce [d]ecree' in Japan, hence, the best evidence of the fact of divorce obtained by [Moraña] and her former husband.[151]

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142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Takahashi*, G.R. No. 227605, at 6-8 (citing *Manalo*, 862 SCRA at 604).

147. *Takahashi*, G.R. No. 227605, at 8 (citing *Tanaka*, 868 SCRA at 55).

148. *Takahashi*, G.R. No. 227605, at 8.

149. *Id.* at 9 (emphasis omitted).

150. *Id.*

151. *Id.*

The Supreme Court noted that "the State[, through the Office of the Solicitor General,] did not question the existence of the Divorce Report, the Divorce Certificate, and more importantly the fact of divorce between petitioner [Moraña] and her [Japanese] husband."[152] Again citing *Manalo*, the Supreme Court held that "if the opposing party fails to properly object, as in this case, the existence of the divorce report and divorce certificate decree is rendered admissible as [ ] written act[s] of the foreign official body."[153] The Supreme Court stated that "time and again, ... [it is] the court's primary duty [ ] to dispense justice; and [that] procedural rules are designed to secure and not to override substantial justice."[154] Still, the Supreme Court ruled that the Japanese law was not proven as mere printouts of the pertinent Japanese law from a website and its English translation were presented.[155] Again, the case was remanded to the Regional Trial Court to prove the Japanese law on divorce.[156]

The *Takahashi* case is by far the most accurate assessment of a petitioner's predicament in a petition for recognition of foreign divorce by agreement. The Supreme Court acknowledged that there is no "divorce judgment," there being no Japanese court intervention in the whole divorce by agreement process. The logical implication is that no divorce decree will ever be issued in a Japanese divorce by agreement. The Supreme Court then ruled that "[b]y whatever name it is called, the Divorce Report is clearly the equivalent [to] the '[d]ivorce [d]ecree' in Japan and, hence, the best evidence of the fact of divorce obtained by [Moraña] and her [Japanese] husband."[157]

There was even no need to state the obvious that the Divorce Report was issued by the Mayor's Office of Fukuyama City and is deemed an act of an official body in Japan. It is immaterial whether or not a divorce report is an act of an official body in Japan as the same cannot take the place of a foreign judgment as contemplated in the *Marinay* case. There was also no need to justify the recognition of the Divorce Report by the expedient circumstance of the State failing to object to its authenticity, genuineness, and due execution rendering it admissible. It must be recalled that, in the previous case of *Nullada*,

152. *Id.*

153. *Id.* at 10.

154. *Takahashi*, G.R. No. 227605, at 10.

155. *Id.* at 11.

156. *Id.* at 12.

157. *Id.* at 9.

the Supreme Court ruled that the divorce decree was deemed unproven even if the Office of the Solicitor General did not dispute the Divorce Certificate.[158]

The fact of the matter is, the Divorce Report is truly the equivalent of the "divorce decree" in Japan, at least in a divorce by agreement, and is the best proof of the fact of divorce obtained by the spouses. This declaration in *Takahashi* certainly went much further than the pronouncement of the Supreme Court that the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the fact of divorce in *Tanaka*.[159] Considering further the legislative intent behind Article 26 and applying the rule of reason, strictly requiring the submission of a document that clearly does not exist would be patently absurd and unfair. Being the equivalent of a divorce decree, a divorce report, or by whatever name it is called, is the equivalent of the divorce decree itself, within the purview of the *Koike* ruling.

It must be recalled that the submission of the decree should come with adequate proof of the foreign law that allows it as held in *Nullada*.[160] Thus, even if a divorce report, divorce certificate, or certificate of acceptance of the report of divorce is the equivalent of the divorce decree itself, the foreign law on divorce must still be established together with the decree. Mere printouts or excerpts of the Japanese Civil Code taken from a website would obviously not suffice, as held in *Takahashi* and *Nullada*.[161] Moreover, failure to present authenticated copies of the Japanese Civil Code would be fatal to petitioner's cause, as ruled in *Sakai*.[162] The *Toyo* case practically directed prospective petitioners that one source for the official publication of the Japanese Civil Code is the Official Gazette of Japan known as *Kanpo* albeit in Japanese.[163] In *Tanaka*, the Supreme Court admitted the copy of the English version of the Japanese Civil Code, translated under the authorization of the Ministry of Justice and the Code of Translation Committee, as proof of the Japanese law.[164] Indeed, the presentation of an official publication or authenticated copy of the Japanese Civil Code in the Japanese language is equally important as the authenticated copy of the officially authorized English translation thereof in proving the Japanese law on foreign divorce by agreement.

158. *Nullada*, G.R. No. 224548, at 8.

159. *Tanaka*, 868 SCRA at 42.

160. *Nullada*, G.R. No. 224548, at 8.

161. *Takahashi*, G.R. No. 227605, at 11 & *Nullada*, G.R. No. 224548, at 9.

162. *Sakai*, 873 SCRA at 90–91.

163. *Toyo*, G.R. No. 213198, at 7.

164. *Tanaka*, 868 SCRA at 38.

The first issue raised in this Article has, for all intents and purposes, been addressed and resolved with clarity by the *Takahashi* case.

The same cannot be said with respect to the second issue this Article has previously mentioned. From *Tanaka* up to *Takahashi*, the Supreme Court, reiterating *Manalo*, has ruled that a foreign decree of divorce cannot be rejected outright just because it was the Filipino spouse who obtained the same or agreed thereto. However, the validity of such foreign decree of divorce by agreement vis-à-vis Article 17 of the New Civil Code was never fully addressed in any of the said cases. To reiterate, the *Marinay* case held that under the 2nd paragraph of Article 26, "Philippine courts are empowered to correct a situation where the Filipino spouse is still tied to the marriage while the foreign spouse is free to marry [again.]"[165] The Supreme Court added that "notwithstanding Article 26 ... , Philippine courts already have jurisdiction to extend the effect of a foreign judgment in the Philippines to the extent that the foreign judgment does not contravene domestic public policy."[166]

It may not matter whether a divorce certificate, certificate of acceptance of the report of divorce, and divorce report are the equivalent of a divorce decree and there is a Japanese law on divorce by agreement capacitating the spouses to remarry, if ultimately a divorce by agreement violates public policy considerations under Article 17 of the New Civil Code. At the very least, therefore, the public policy consideration under Article 17 of the New Civil Code raised in *Nullada* should be fully addressed and resolved.

IV. RECOMMENDATION

Nullada is the only case where the applicability of Article 17 of the New Civil Code was raised. The Regional Trial Court denied the Petition for Recognition of Foreign Divorce, but erroneously declared that in the third paragraph of Article 17 of the New Civil Code is a policy of non-recognition of divorce.[167] Article 17 of the New Civil Code contemplates the policy of non-recognition of divorce jointly filed by the spouses, whereas Article 15 of the New Civil Code or the Nationality Rule states the policy of non-recognition of divorce as far as Filipino citizens are concerned. Unfortunately, the Regional Trial Court deviated from Article 17 of the New Civil Code when it reasoned that the fact that Marlyn also agreed to the divorce and jointly filed for it barred the application of the second paragraph of Article 26.

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165. *Marinay*, 700 SCRA at 102.

166. *Id.*

167. *Nullada*, G.R. No. 224548, at 5.

Naturally, the Supreme Court ruled on the basis of Article 26 as interpreted in *Manalo* and held that the Regional Trial Court erred in refusing to recognize the divorce decree solely on the ground that the divorce was jointly filed by the spouses.[168] Since Article 17 of the New Civil Code was already raised in *Nullada*, it would have been the most opportune time to fully address the issue by reason alone of the public policy implications involved.

The public policy consideration in a divorce by agreement is the question of whether the divorce jointly filed is tantamount to collusion between the spouses that desecrates marriage as an inviolable social institution protected by the Constitution. Section 9 of A.M. No. 02-11-10-SC requires the public prosecutor to submit an Investigation Report of Marriage to determine collusion between the spouses in a Petition for Declaration of Absolute Nullity of Void and Voidable Marriages.[169] In *Office of the Court Administrator v. Judge Cabrera, et. al.*,[170] the Supreme Court en banc held that "the reason why the public prosecutors are not in a position to determine whether there is collusion between the parties is that one or both of them cannot be summoned to appear before the public prosecutor."[171] In a divorce by agreement, the public prosecutor or the Office of the Solicitor General need not even determine if the parties had colluded as the spouses themselves admit that they have mutually agreed to separate and divorce. There is already, therefore, a very strong case that collusion exists in a divorce by agreement, in contravention of Article 17 of the New Civil Code. This is why under Section 9 of A.M. No. 02-11-10-SC, petitions for nullity of void and voidable marriages are dismissed if collusion exists between the parties for contravening public policy.[172]

168. *Id.* at 6.

169. RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES, A.M. No. 02-11-10-SC, § 9 (2). The provision states that if collusion exists, the court should "set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition." *Id.*

170. Office of the Court Administrator v. Judge Cabrera, et al., A.M. No. RTJ-11-2301, Jan. 16, 2018, *available at* http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63857 (last accessed Sep. 30, 2020).

171. *Id.*

172. RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES, § 9.

The *Manalo* case specifically addressed the second paragraph of Article 26 as an exception to Article 15 of the New Civil Code or the Nationality Rule, it being a corrective measure to address an absurd situation brought about by the strict adherence to the rule.[173] This Article proposes that a resolution must also be made on whether the justifications that made Article 26 an exception to Article 15 of the New Civil Code are likewise applicable to create an exception to Article 17 of the New Civil Code before a divorce by agreement or any other foreign divorce by consent is unequivocally recognized as "valid" in this jurisdiction.

Whether the justification of an unfair and oppressive situation that would result if, by virtue of the divorce, the foreign spouse is not only considered no longer married to said Filipino but could also remarry while the Filipino spouse could not, may once again prevail over another public policy consideration must be adequately addressed.

Admittedly, a divorce by agreement is the more practical and less protracted option compared to a judicial divorce. Given that the spouses may essentially agree to separate anyway, then the protracted aspect would definitely be minimized even if the spouses choose the judicial process which may be the only appropriate option in this jurisdiction. Convenience should never be given more premium over what is legal and protected under the Constitution.

In a recent article in Nikkei Asian Review,[174] the Justice Ministry in Japan was reported to have been reaching out to ease the plight of foreign nationals in Japan who have been unwittingly divorced under their "easy" system of divorce.[175] In many cases, Japanese nationals are accused of submitting divorce papers to local governments without the consent of their foreign spouses using forged signatures or getting them to sign under false pretenses.[176] "In some cases, foreign nationals also lose access to their children as a result of their unexpected ['easy'] divorces."[177]

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173. *Manalo*, 862 SCRA at 638.

174. Eugene Lang, Duped into divorce: Foreign nationals plead for help in Japan, *available at* https://asia.nikkei.com/Spotlight/Society/Duped-into-divorce-Foreign-nationals-plead-for-help-in-Japan (last accessed Sep. 30, 2020).

175. *Id.*

176. *Id.*

177. *Id.*

It is, therefore, more prudent to carefully assess all the justifications and implications of a foreign divorce by agreement before judicial recognition is unequivocally bestowed on such a convenient but potentially precarious manner of dissolving a marriage.