Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MARIA TERESA DINO BASA-EGAMI, *Petitioner,*	**G.R. No. 249410**
	Present:
-versus-	GESMUNDO, *C.J.*, Chairperson HERNANDO, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
DR. LISA GRACE BERSALES, in her capacity as the Administrator and Civil Registrar General, HIROSHI EGAMI, THE LOCAL CIVIL REGISTRAR OF SAN MIGUEL, BULACAN, REPUBLIC OF THE PHILIPPINES, AND THE FORMER FOURTH DIVISION, COURT OF APPEALS. *Respondents.*	Promulgated: JUL 06 2022

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DECISION

ZALAMEDA, *J.*:

This is a Petition for *Certiorari* (Petition)[1] under Rule 65 of the Rules of Court, seeking to nullify and set aside the Decision[2] dated 25 March 2019

[1] *Rollo*, pp. 18-42. Captioned as Petition for Review on certiorari under Rule 65, id. at 18.

[2] Id. at 47-58; penned by Associate Justice Japar B. Dimaampao (now a Member of this Court) and concurred in by Associate Justices Manuel M. Barrios and Maria Filomena D. Singh (now a Member of this Court).

and Resolution[3] dated 22 July 2019 issued by the Court of Appeals (CA) in CA G.R. CV No. 109890. The CA reversed and set aside the Decision[4] dated 07 December 2016 and Resolution[5] dated 26 June 2017, rendered by Branch 86, Regional Trial Court (RTC) of Quezon City, in Civil Case No. R-QZN-14-11882.

Antecedents

On 18 May 1994, petitioner Maria Teresa Dino Basa-Egami (petitioner), a Filipina, married Hiroshi Egami (Egami), a Japanese national. However, their union did not last long, as they eventually parted ways in October 2006. Not long after, Egami begot a child with another woman, prompting him to ask for divorce from petitioner. Petitioner was initially averse to Egami's idea. After Egami's relentless prodding, however, petitioner relented and agreed to sign the divorce papers.[6]

On 03 April 2008, petitioner and Egami were issued a Japanese Divorce Decree,[7] which was duly recorded in the Family Register at Nakagawa-ku, Nagoya City. A Certificate of Receiving[8] was also issued by the Head of Nakagawa-ku, Nagoya City, stating that petitioner and Egami's Divorce Decree was duly reported to the said office on 03 April 2008. Subsequently, petitioner filed before the RTC a Petition for Recognition of Foreign Judgment/Final Order,[9] to be able to remarry.[10]

During trial on the merits, petitioner testified and submitted the following documents as her evidence: 1) certified copy of the Notification of Divorce/Report of Divorce, duly authenticated by Consul Jerome John O. Castro (Consul Castro), Consul for the Philippine Consulate General, Osaka, Japan; 2) Family Register of Egami, stating the fact of divorce between him and petitioner, as certified by Hirchika Hyase, Head of Nakagawa-Ku, Nagoya City on 04 August 2014, and duly certified and authenticated by Naomi Asano, an official from the Ministry of Foreign Affairs (Consular Service Division) and Consul Castro; 3) a Certificate of Acceptance of

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3 Id. at 44-45; penned by Associate Justice Japar B. Dimaampao (now a Member of this Court) and concurred in by Associate Justices Manuel M. Barrios and Maria Filomena D. Singh (now a Member of this Court).

4 Id. at 72-78; penned by Presiding Judge Roberto P. Buenaventura.

5 Id. at 69-70; penned by Presiding Judge Roberto P. Buenaventura.

6 Id. at 73, 90.

7 Id. at 48.

8 Id. at 73.

9 Id. at 72.

10 Id. at 73, 90.

Divorce/Certificate of Receiving which states that the Divorce obtained by Egami and petitioner were reported on 03 April 2008, similarly certified and authenticated by Naomi Asano, an official from the Ministry of Foreign Affairs (Consular Service Division) and Consul Castro; and 4) excerpts from the Book "The Civil Code of Japan," as certified and notarized by Kenji Sugimori, a notary from the Osaka Legal Affairs Bureau, and duly authenticated by Consul Castro.[11]

The Republic of the Philippines, through the Office of the Solicitor General (OSG), sought the dismissal of the petition, arguing in the main that a consensual or mutual divorce, such as the divorce obtained by petitioner; is not contemplated by Article 26(2) of the Family Code;[12] hence, it cannot be recognized by Philippine courts.[13]

Ruling of the RTC

In due time, the RTC issued its Decision[14] dated 07 December 2016, granting the petition. The dispositive portion thereof reads:

> WHEREFORE, in view of the foregoing premises, finding the petition to be meritorious, this Court declares and rules that:
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> 1. The Divorce Decree as stated in the Notification of Divorce and Certificate of Acceptance of Divorce issued between the petitioner and Hiroshi Egami is hereby recognized, given credence and ordered enforced.
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> 2. The marital bond between petitioner Maria Teresa Dino Basa-Egami and respondent Hiroshi Egami celebrated on May 18, 1994 in San Miguel, Bulacan which was registered at the Office of the Civil Registrar General under Registry No. 94-00382 is declared deemed dissolved by virtue of the aforesaid divorce.
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> 3. The Local Civil Registrar of Quezon City is hereby directed to accept the filing, recording and/or annotation [of] the Order dissolving the marriage of herein parties on the corresponding Certificate of Marriage of the petitioner and Hiroshi Egami together with the copy of this judgment and thereafter forward a copy thereof as annotated to the Office of the Administrator of the Civil Registrar General of the National Statistics Office (NSO) for proper filing and recording with

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[11] Id. at 74.

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

[13] Id.

[14] Id. at 72-78.

the said office.

SO ORDERED.[15]

The RTC found that petitioner was able to comply with all the requirements of Article 26(2).[16] It gave credence and weight to the Notification of Divorce and Acceptance of Divorce as proof of the fact of divorce, the documents being certified as genuine and duly authenticated by the officials from the Philippine Consulate in Japan.[17] Citing Articles 728 and 732 of the Civil Code of Japan, the RTC stated that the divorce between the couple dissolved their marriage and restored them to the state of an unmarried persons, which thus capacitated petitioner to remarry.[18]

In addition, the trial court rejected the argument of the OSG that a Filipino's divorce by agreement abroad cannot be recognized here, as the RTC held that the evidence of petitioner showed that the divorce was, in fact, not mutual but was forced upon the petitioner by her former husband.[19]

The OSG moved for reconsideration[20] but the same was denied.

Ruling of the CA

On appeal, the CA issued the assailed Decision,[21] reversing the RTC ruling. The dispositive portion reads:

> **THE FOREGOING DISQUISITIONS CONSIDERED,** the *Appeal* is hereby **GRANTED.** The *Decision* dated 7 December 2016 of the Regional Trial Court of Quezon City, Branch 86, in Civil Case No. R-QZN-14-11882, is **REVERSED AND SET ASIDE.** Perforce, the *Petition for Recognition of Foreign Judgment/Final Order* a quo is **ORDERED DISMISSED.**
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> **SO ORDERED.**[22]

Petitioner's Motion for Reconsideration having been denied, she filed the present Petition for *Certiorari* before this Court.

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15 Id. at 78.
16 Id. at 77.
17 Id.
18 Id.
19 Id.
20 Id. at 69.
21 Id. at 47-58.
22 Id. at 57.

Issues

In this Petition, the Court is asked to determine whether:

1) The instant Petition may be given due course and duly considered by the Court;

2) Philippine courts should recognize a divorce by mutual consent;

3) Petitioner was able to sufficiently comply with the Rules of Court in proving the fact of divorce and the national law on divorce of her foreigner husband; and

4) The Petition is meritorious.

Ruling of the Court

The present recourse could have merited an outright dismissal for being an improper remedy to assail the adverse ruling of the CA

Indubitably, the assailed rulings of the CA is final in nature, as nothing remained for the appellate court to do in the proceedings before it. It is explicit under Section 1, Rule 45 of the Rules of Court that a judgment or a final order or resolution of the CA may be appealed with this Court *via* a verified petition for review on *certiorari*.[23] The availability of the right to appeal in this case is a bar to petitioner's resort to a petition under Rule 65 for the apparent reason that a special civil action for *certiorari* may be pursued only when there is no appeal that may be resorted to. *Certiorari* is not and cannot be a substitute for a lapsed or lost appeal, which loss was due to a party's fault or negligence or where a person fails, without justifiable ground, to interpose an appeal despite its accessibility. Indeed, where the rules provide for a specific remedy for the

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[23] *See Oliveros v. Court of Appeals*, G.R. No. 240084, 16 September 2020.

vindication of rights, the remedy should be availed of.[24]

Further, it is settled that a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[25] The issues and arguments raised by petitioners touch on the wisdom of the CA's decision to reverse the RTC ruling, granting the petition in favor of petitioner, and asks this Court to re-examine the evidence on record. But, *certiorari* will issue only to correct errors of jurisdiction and not errors or mistakes in the findings and conclusions of the court.[26] In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses, or substitute the findings of fact of the court *a quo*.[27]

Petitioner's reliance on *Cruz v. People*[28] is also misplaced. *Certiorari*, as a remedy, was allowed to prevail therein because of the manifest disregard of the basic rules and procedures by the trial court. As explained in that case, the trial court blatantly and whimsically refused to follow a simple, yet categorical, rule on the release of cash bond under Section 22, Rule 114 of the Rules of Court. In this case, however, petitioner can hardly accuse the CA of blatant disregard of the Rules. On the contrary, the appellate court displayed marked obedience to the laws and rules in this case.

It is not lost to this Court that while it may dismiss a petition outright for being an improper remedy, it may, in certain instances where a petition was filed on time both under Rules 45 and 65, and in the interest of justice, proceed to review the substance of the petition and treat it as having been filed under Rule 45.[29] As averred by petitioner, however, she received a copy of the CA's Resolution on 16 August 2019 and filed the Petition at bar on 15 October 2019,[30] which was clearly beyond the 15-day period to file the appropriate petition for review under Rule 45 of the Rules of Court. It is axiomatic that *certiorari* under Rule 65 cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45.[31]

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[24] Id., citing Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al., 716 Phil. 500, 512 (2013).
[25] *See Pendoy v. Court of Appeals (18th Division)-Cebu City*, G.R. No. 228223, 10 June 2019.
[26] *See Villareal v. Aliga*, 724 Phil. 47, 58-59 (2014), citing *Bautista v. Cuneta-Pangilinan*, 698 Phil. 110 (2012).
[27] Id.
[28] 812 Phil. 166 (2017).
[29] *See Ortega v. Social Security Commission*, 578 Phil. 338, (2008).
[30] *Rollo*, p. 19.
[31] *See Mercado v. Valley Mountain Mines Exploration, Inc.*, 677 Phil. 13 (2011), citing *Leynes v. Former*

Given the foregoing, the Court clearly has a sufficient reason to dismiss this Petition outright. Verily, when a party adopts an improper remedy, the petition may be dismissed outright.[32]

In the interest of substantial justice, and given the existence of compelling reasons in this case, the Court brushes aside this otherwise fatal defect and gives due course to the petition to decide on the merits thereof

Under the second paragraph of Article 26 of the Family Code, Philippine courts may extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage.[33] The noble objective of Article 26 is to avoid the absurd situation where a Filipino remains married to his or her alien spouse, whereas the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law. The aim was to solve the problem of many Filipinos who, under the Civil Code, are still considered married to their alien spouses even after the latter have already validly divorced them under their (the spouses') national laws and perhaps have already married again.[34]

However, a revisit of the stream of jurisprudence on this issue shows that the lofty aim of the framers of the Family Code is put to naught in some, if not most instances brought to courts. This is all because of the ambiguity in the law and the unfathomably strict requirements of the Rules of Court in proving the fact of divorce and the foreign law. In most cases in the past, the Filipino spouse, after going to court to ask for the recognition of the divorce decree obtained abroad, actually ended up being continuously locked up in the unfair situation that Article 26(2) seeks to avoid.

This is exactly the misery confronting petitioner, whose divorce from her foreign spouse was not recognized by the appellate court. To date, she remains married under Philippine laws even though her former husband, a Japanese citizen, has long been freed from the shackles of a failed marriage in view of the more lenient laws of his country. To see the unjustness, if not

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Tenth Division of the Court of Appeals, 655 Phil. 25 (2011).

32 Id.

33 *Moraña v. Republic*, G.R. No. 227605, 05 December 2019.

34 Id., citing *Republic of the Philippines v. Marelyn Tanedo Manalo*, 831 Phil. 33 (2018).

ludicrousness of petitioner's situation, it only needs to be pointed out that petitioner is still incapacitated to remarry under Philippine laws even after the lapse of a little over 12 years from the time of her or her divorce abroad in 2008.

Put in a crucible of analysis, the factual milieu of this case shows a compelling reason for the Court to brush aside technicalities and give due course to the petition. In the broader interest of substantial justice, the Court decides to eschew the dismissal of the present petition to delve into the merits thereof. To be sure, under exceptional circumstances, as when stringent application of the rules will result in manifest injustice, the Court may set aside technicalities and proceed with the appeal. An appeal may be given due course even if it was a wrong mode of appeal and was even filed beyond the reglementary period provided by the rules to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.[35]

Contrary to the OSG's posture, the divorce by mutual consent between petitioner and her foreigner spouse may be recognized in this jurisdiction

The OSG is adamant that petitioner's case does not fall under Article 26(2) of the Family Code. It postulates that the foreign divorce by mutual agreement between petitioner and Egami cannot be given recognition here because only a divorce obtained through a court judgment or adversarial proceeding could be recognized by Philippines courts, insisting that the only divorce contemplated under Article 26(2) is the one validly obtained by the alien spouse, without the consent or acquiescence of the Filipino spouse.[36]

The Court does not agree.

If We are to follow the OSG's interpretation of the law, petitioner would sadly remain in limbo – a divorcee who cannot legally remarry – as a result of the ambiguity in the law, particularly the phrase "divorce is thereafter validly obtained abroad by the alien spouse." This perfectly manifests the dire situation of most of our *kababayans* in unsuccessful mixed marriages since, more often than not, their divorces abroad are obtained through mutual agreements. Thus, some of them are even

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[35] *See Philippine Bank of Communications v. Court of Appeals*, 805 Phil. 964, 974 (2017).
[36] *Rollo*, pp. 98-100.

constrained to think of creative and convincing plots to make it appear that they were against the divorce or that they were just prevailed upon by their foreigner spouse to legally end their relationship. What is more appalling here is that those whose divorce end up getting rejected by Philippine courts for such a flimsy reason would still be considered as engaging in illicit extra-marital affairs in the eyes of Philippine laws if ever they choose to move on with their lives and enter into another relationship like their foreigner spouse. Worse, their children in the subsequent relationship would be legally considered as illegitimate.

The myopic understanding of Article 26(2), as incessantly advocated by the OSG, would have been sound and successful in the past, since the Court repeatedly upheld this ultra-conservative view by relying on the letter of the law that *killeth*, instead of choosing that spirit of the law which *giveth* life. Fortunately, *Republic v. Manalo*[37] *(Manalo)*, a landmark ruling by the Court *En Banc*, finally put an end to this iniquitous interpretation of the law as it gave due regard to the sad consequences a strict and literal construction of the law brings, thus:

> Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes.
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> 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 of 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 meantime shall be considered as illicit in the eyes of the Philippine law. Worse, any child born out of 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.
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> This Court should not turn a blind eye to the realities of the present

[37] 831 Phil. 33 (2018).

> 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 of rotten quality.[38]

Manalo was indeed a salutary paradigm shift in jurisprudence, eliminating a huge hurdle often faced by Filipino divorcees in their quest to obtain a recognition of their divorce from Philippine courts. Notably, this breakthrough decision was serendipitously rendered in *Manalo,* a word which meant *to* win in the vernacular. The ruling was, no doubt, a big win for our *kababayans* who, for a long time, had received the proverbial short end of the stick from their own country, no less, in view of such ambiguity in the law.

The OSG should now take note that *Manalo* is the prevailing jurisprudence on the matter. As it was clearly spelled out in *Manalo*, Article 26(2) only requires that there be a divorce validly obtained abroad, without regard as to who initiated it.[39] This felicitous ruling was echoed in yet another seminal case of recognition of a divorce of mixed marriage. In *Racho v. Tanaka*[40] *(Racho)*, rendered only a few months after *Manalo,* the Court squarely dealt with the divorce by mutual consent of a marriage involving a Filipina and a Japanese national, the same situation in the petition at bar. Therein, the Court unambiguously declared that pursuant to *Manalo*, a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, regardless of who between the spouses initiated the divorce proceedings.[41] Since then, there have been many other iterations of *Manalo* in jurisprudence.

Contrary to the posture taken by the OSG, therefore, the CA correctly held that the divorce obtained by petitioner abroad against her foreign husband, whether at her behest or acquiescence, may be recognized as valid in this jurisdiction so long as it complies with the documentary requirements under the Rules of Court.

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38 Id. at 57, 72-73.
39 Id. at 51.
40 834 Phil. 21 (2018).
41 Id.

The pieces of evidence submitted by petitioner are sufficient to prove the fact of divorce

Like in *Manalo*, however, the CA correctly stressed that before such foreign divorce decree can be recognized by Philippine courts, petitioner, as the party pleading it, is charged with the burden of proving it as a fact, and demonstrating its conformity to the foreign law allowing it.[42]

This rather stringent requirement springs from the fact that our courts do not take judicial notice of foreign judgments and laws.[43] Accordingly, a foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law, to show the effect of the judgment on the alien himself or herself.[44]

Following this vein, petitioner is thus obligated to submit into evidence a copy of the divorce decree itself, along with a copy of the foreign law which, under Sections 24 and 25 of Rule 132 of the Rules of Court, may be proven by either of the following: (1) official publication; or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these 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.[45]

In petitioner's case, she submitted into evidence the following documents to prove the fact of divorce between her and her former spouse: 1) Notification of Divorce or Report of Divorce; 2) Certificate of Acceptance of Divorce, and 3) the Family Register of Hiroshi. As aptly found by the CA, however, ubiquitously absent from petitioner's list of evidence is the divorce decree itself.[46]

On this score, the OSG is right in pointing out that in *Racho*, it was stated that such certificate only certified that the divorce decree, or the acceptance certification of notification of divorce, exists. It is not the divorce decree itself.[47] In the same breadth, however, *Racho* was categorical in holding that an authenticated Certificate of Acceptance of the Report of Divorce is admissible as evidence of the *fact* of divorce, thus:

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42 *Rollo*, pp. 55.
43 *See Corpuz v. Sto. Tomas*, 642 Phil. 420, 432 (2010).
44 *Rollo*, p. 55.
45 Id. at 55.
46 Id. at 56.
47 Id. at 100.

> The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication issued by Consul Bryan Dexter B. Lao of the Embassy of the Philippines in Tokyo, Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the *fact* of divorce between petitioner and respondent.[48] (citation omitted)

As adverted to earlier, *Racho*'s facts closely parallel the factual milieu herein. Petitioner was also previously married to a Japanese national and their divorce was by mutual agreement. Furthermore, instead of proving the fact of divorce by presenting the divorce decree itself, petitioner submitted, *inter alia*, a Certificate of Acceptance of Divorce, certified and authenticated by the proper officials of the Philippine Consulate in Japan. *Apropos* herein is the additional elucidation on this issue by the Court in *Moraña v. Republic*:[49]

> Both the trial court and the Court of Appeals, nonetheless, declined to consider the Divorce Report as the Divorce Decree itself. According to the trial court, the Divorce Report was "*limited to the report of the divorce granted to the parties.*" On the other hand, the Court of Appeals held that the Divorce Report "*cannot be considered as act of an official body or tribunal as would constitute the divorce decree contemplated by the Rules.*"
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> The Court is not persuaded. Records show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. There was no "*divorce judgment*" to speak of because the divorce proceeding was not coursed through Japanese courts but through the Office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the Office of the Mayor of Fukuyama City, the same is deemed an *act of an official body* in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.[50]

Following judicial precedents, there is thus no reason why the Court should not consider similar evidence in this case as proof of the fact of divorce in favor of petitioner. Indeed, the principle of *stare decisis* requires

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48 834 Phil. 21, 34-35 (2018).
49 G.R. No. 227605, 05 December 2019.
50 Id.

that once a case has been decided one way, any other case involving exactly the same point at issue should be decided in the same manner. It simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different.[51]

Petitioner failed to prove foreign law

The CA, in reversing the RTC, also clarified that the divorce in this case cannot be given recognition by the Philippine courts because petitioner failed to properly plead and prove the Japanese law on divorce.

The Court sustains the CA.

Even as the Court declares the evidence of petitioner to be sufficient in proving the fact of divorce, the OSG is correct in pointing out that as a settled rule, mere presentation of the divorce decree is insufficient. A divorce obtained abroad may be recognized in our jurisdiction only if the decree is valid according to the national law of the foreigner.[52] Accordingly, both the divorce decree *and* the governing personal law of the alien spouse must be proven.[53]

The CA found that the Civil Code of Japan submitted by petitioner does not comply with the attestation requirements under Sections 24 and 25 of the Revised Rules of Court.[54] Also, the OSG argued that the Civil Code submitted by petitioner is a mere photocopy of a book published by a private company, *Elbun-Horei-Sha, Inc.* It is not even authenticated, and neither is a statement or proof that the library of the Japanese Embassy is an official repository or custodian of Japanese public laws and records.[55]

Petitioner, on the other hand, counters that her evidence should be considered as sufficient evidence of the national law of Japan as the Court did in *Racho*. She posits that like in *Racho*, the trial court herein duly admitted the evidence of the national law of Japan which, as stated in the RTC Decision, were excerpts from the book *The Civil Code of Japan,* certified as true copy and notarized by Kenji Sugimori, notary of the Osaka Legal Affairs Bureau and duly authenticated by Consul Castro of the

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51 *See University of the East v. Masangkay*, 831 Phil. 228 (2018).
52 *See Ando v. Department of Foreign Affairs*, 742 Phil. 37 (2014).
53 Id.
54 *Rollo*, p. 57.
55 Id. at 103.

Philippine Consulate General, Osaka, Japan.[56]

In the face of these conflicting assertions, the Court's appropriate recourse is to peruse the subject document in order to arrive at the correct conclusion. However, petitioner shot herself in the foot by failing to attach any evidence to her petition. Accordingly, the Court is constrained to sustain the CA's ruling on this issue. To stress anew, 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 and like any other fact.[57] Hence, any declaration as to the validity of the divorce can only be made upon petitioner's complete submission of evidence proving the divorce decree and the national law of her alien spouse.[58]

Petitioner's argument that this Court should apply *Racho* under the circumstances herein deserves scant consideration. This time around, *Racho* differs from the present case. In *Racho*, the Court dealt mainly, if not exclusively, with the issue of proving the fact of divorce. The sufficiency of evidence relative to the national law of Japan was only discussed in passing. Herein, though, both the proof of divorce and proof of national law are squarely put in issue by the CA and the OSG. It should be noted on this score that in *Racho*, petitioner therein went directly to the Court after her petition was denied by the trial court. In this case, however, while the RTC duly admitted the evidence of Japan's national law on divorce, the CA rejected the same. Moreover, in *Racho*, the OSG admitted that the petitioner therein was able to prove that the national law of Japan allows absolute divorce, albeit the petitioner therein supposedly failed to point to a specific provision in said law relative to a spouses' right to remarry after the divorce. Herein, however, the OSG is explicitly assailing the ruling of the trial court that the petitioner was able to prove the national law of her former spouse.

Clearly, unlike in *Racho*, there are contending views herein which should be threshed out by the Court. Relative to this, it should be noted also that in *Racho*, the Court was able to rule in favor of the petitioner therein because the records before it were already sufficient to fully resolve factual issues therein. Such is not the case here. The Petition at bar is bereft of any relevant attachments except for the decisions and resolutions of the CA and the RTC.

For what it is worth, the Court does not subscribe to petitioner's

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[56] Id. at 74, 121.

[57] *See Ando v. Department of Foreign Affairs*, 742 Phil. 37 (2014).

[58] Id.

contention that this Court should already take exception of the law of Japan on divorce since it had already been discussed in *Racho*. Laws are dynamic and evolving so much so that the Court must take caution in taking judicial notice of the Japanese law pleaded by petitioner. And since questions relating to the national law of other countries are essentially factual in nature, the better rule is for petitioner to plead and prove it as any other fact. In this vein, it bears noting that while the Court discussed Japanese laws in *Racho*, subsequent jurisprudence still required the presentation of the pertinent Japanese laws on divorce, and the failure of the petitioner to properly plead and prove the foreign law would be taken against him or her. The 2019 case of *Arreza v. Toyo*[59] is *apropos:*

> Here, the Regional Trial Court ruled that the documents petitioner submitted to prove the divorce decree have complied with the demands of Rule 132, Sections 24 and 25. However, it found the copy of the Japan Civil Code and its English translation insufficient to prove Japan's law on divorce. It noted that these documents were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs.
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> Notwithstanding, petitioner argues that the English translation of the Japan Civil Code is an official publication having been published under the authorization of the Ministry of Justice and, therefore, is considered a self-authenticating document.
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> Petitioner is mistaken.
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> The English translation submitted by petitioner was published by Eibun-Horei-Sha, Inc., a private company in Japan engaged in publishing English translation of Japanese laws, which came to be known as the EHS Law Bulletin Series. However, these translations are "not advertised as a source of official translations of Japanese laws;" rather, it is in the KANPO or the Official Gazette where all official laws and regulations are published, albeit in Japanese.
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> Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication.
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> Neither can the English translation be considered as a learned treatise. Under the Rules of Court, "[a] witness can testify only to those facts which he knows of his [or her] personal knowledge[.]" The evidence is hearsay when it is "not . . . what the witness knows himself [or herself] but of what he [or she] has heard from others." The rule excluding hearsay evidence is not limited to oral testimony or statements, but also covers written statements.

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[59] G.R. No. 213198, 01 July 2019.

> The rule is that hearsay evidence "is devoid of probative value[.]" However, a published treatise may be admitted as tending to prove the truth of its content if: (1) the court takes judicial notice; or (2) an expert witness testifies that the writer is recognized in his or her profession as an expert in the subject.
>
> Here, the Regional Trial Court did not take judicial notice of the translator's and advisors' qualifications. Nor was an expert witness presented to testify on this matter. The only evidence of the translator's and advisors' credentials is the inside cover page of the English translation of the Civil Code of Japan. Hence, the Regional Trial Court was correct in not considering the English translation as a learned treatise.[60] (Citations omitted)

Remand of the case to the RTC is in order

At this point, the benevolent stance of this Court can no longer come to petitioner's aid. The Court addressed all matters which it can act upon to serve the interest of justice. The only thing left for this Court to do is remand this case to the RTC, as current jurisprudence allows the same whenever the fact of divorce was duly proved but not the national law on divorce of the foreigner spouse.[61]

WHEREFORE, the Petition for *Certiorari* under Rule 65 is **GRANTED**. The Decision dated 25 March 2019 and Resolution dated 22 July 2019 of the Court of Appeals in CA G.R. CV No. 109890 are **REVERSED AND SET ASIDE.** The case is **REMANDED** to Branch 86, Regional Trial Court of Quezon City, for further proceedings and reception of evidence on the pertinent Japanese law on divorce and the document proving Hiroshi Egami is now recapacitated to marry.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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60 Id.

61 *Moraña v. Republic*, G.R. No. 227605, 05 December 2019.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to the 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