EN BANC

G.R. No. 249238 (REPUBLIC OF THE PHILIPPINES, Petitioner, **v. RUBY CUEVAS NG a.k.a. RUBY NG SONO**, Respondent).

Promulgated:

February 27, 2024

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CONCURRING OPINION

ZALAMEDA, *J.*:

The Court is faced with the task of determining the effect of a divorce by mutual agreement in our jurisdiction, brought about by respondent Ruby Cuevas Ng a.ka. Ruby Ng Sono's petition for recognition of foreign divorce. The *ponencia* upheld respondent's right to invoke Article 26(2) of the Family Code, recognizing that a divorce by mutual agreement is within the purview of said provision. I concur.

Legal landscape of divorce in the Philippines

Apart from Vatican City, the Philippines is the only country that does not allow absolute divorce. Since Philippine law does not provide for absolute divorce, our courts cannot grant it.[1] However, the migration of countless Filipinos to other countries and the reality that many of us have entered into mixed unions ultimately paved the way for the inclusion of Article 26(2) into the Family Code, a provision allowing relative divorce in this jurisdiction, *thus*:

> 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.

The Court has repeatedly pointed out that the second paragraph was introduced as a corrective measure to resolve an absurd situation where the Filipino spouse remains married to the alien spouse even after their marital

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[1] *See Garcia v. Recio*, 418 Phil. 723 (2001) [Per J. Panganiban, Third Division].

bond has been severed by the divorce decree obtained abroad. Through Article 26(2) of the Family Code, Philippine courts are given the authority to extend the effect of a foreign divorce decree to Filipino spouses and to determine the validity of the dissolution of the marriage without undergoing trial. It bestowed upon Filipino spouses the substantive right to have their marriages considered dissolved, capacitating them to remarry like their foreign spouses.[2]

Settled is the rule that the divorce decree and the governing personal law of the alien spouse must first be pleaded and proven as a fact because courts cannot take judicial notice of foreign laws and judgments.[3] Indeed, the starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws.[4] This means that the 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.[5]

With a divorce validly obtained abroad, Filipinos can almost taste the freedom from the shackles of a failed marriage. They can have a fresh start in life and another chance in love since it capacitates them to remarry.

Unfortunately, a foreign divorce notwithstanding, a new beginning remains elusive to some. It is rather agonizing to note that even with the existence of Article 26(2) and a divorce validly obtained abroad, the vast majority of petitions for recognition of foreign divorce are nonetheless being denied by Philippine courts.

The reasons for the denial are varied and evolving. In the past, the usual reason was the ambiguity in the law and the Court's interpretation that it should be the foreign spouse who should initiate the divorce proceeding under Article 26(2). Then there came the influx of cases where the issue was proving the existence of the divorce decree and the divorce law of the foreign spouse, including the provision in the foreign divorce law capacitating the alien spouse to remarry.[6] After the seminal case of *Republic v. Manalo* (Manalo),[7] the denial of petitions for recognition by the lower courts were due to the divorce being obtained by both spouses through joint

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2 *See Arreza v. Toyo*, 855 Phil. 522, 529 (2019) [Per J. Leonen, Third Division].
3 *See Racho v. Tanaka*, 834 Phil. 21, 30 (2018) [Per J. Leonen, Third Division].
4 *See Arreza v. Toyo*, 855 Phil. 522, 530 (2019) [Per J. Leonen, Third Division].
5 *See Corpuz v. Tirol*, 642 Phil. 420, 432 (2010) [Per J. Brion, Third Division].
6 *See In Re: Petition for Recognition of Foreign Judgment of Divorce of Ordaneza*, G.R. No. 254484, November 24, 2021 [Per J. Carandang, Third Division].
7 831 Phil. 33 (2018) [Per J. Peralta, *En Banc*].

filing, supposedly in transgression of the requirement of the law that the divorce should be obtained *solely* by the foreign spouse.[8] Corollary to this, the Office of the Solicitor General (OSG) now argues that a divorce by mutual consent should not be recognized in this jurisdiction because Article 26(2) only contemplates divorce obtained through judicial and adversarial proceedings.

With a myriad of reasons blocking the door to freedom from a failed mixed marriage, the Filipino spouse ultimately ends up being continuously locked up in the unfair situation that Article 26(2) seeks to avoid.[9]

Worth emphasizing, however, is the fact that the current trend in jurisprudence has eliminated seemingly insurmountable obstacles that have forestalled Filipino spouses from finally getting out of their predicament of being divorcees who cannot remarry.

In *Manalo*, the Court *En Banc* settled once and for all the longstanding query of who should initiate and obtain a valid divorce decree. It emphatically declared that **Article 26(2) only requires that there be a divorce validly obtained abroad capacitating the foreigner spouse to remarry, without regard as to who initiated it.** As acknowledged in *BasaEgami v. Bersales* (Basa-Egami),[10] *Manalo* was a salutary paradigm shift in jurisprudence, eliminating a huge hurdle often faced by Filipino divorcees in their quest to obtain recognition of their divorce from Philippine courts. *Manalo* laid the groundwork and was followed by a series of its iterations.

A validly obtained divorce by mutual consent falls under the purview of Article 26(2) of the Family Code

With many significant developments in favor of Filipinos, I commend the esteemed *ponente* for not bucking this positive trend with the recognition of a divorce by mutual consent validly obtained by a Filipino and Japanese national in Japan.

Indeed, there should be no question that a divorce by mutual consent validly obtained abroad should be recognized here under the principle of comity. To be sure, a perusal of Article 26(2) shows no distinction on the

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8 *See Nulada v. The Hon. Civil Registrar in Manila*, 846 Phil. 96, 105 (2019) [Per J. A. Reyes, Jr., Third Division]; *see also Abel v. Rule*, G.R. No. 234457, May 12, 2021 [Per J. Leonen, Third Division].

9 *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].

10 *Id.*

kind of proceeding taken by the estranged couple to obtain their divorce. Again, as emphasized in *Manalo*, based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad and the Court is bound by the words of the statute. Where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos.*[11]

Thus, in *Galapon v. Republic*,[12] the Court stressed that pursuant to *Manalo*, Article 26(2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) obtained jointly by the Filipino and foreign spouse; and (iii) obtained solely by the Filipino spouse. Thus, a divorce decree obtained by mutual consent, with or without the conformity of the Filipino spouse, or whether at their behest or acquiescence, falls within the scope of Article 26(2) and merits recognition in this jurisdiction.[13]

True, there is always the possibility that some estranged couples in mixed marriages could resort to collusion to legally end their marriage by way of mutual agreement. The possibility of collusion alone, however, should not be not sufficient justification to automatically prevent the recognition of a valid divorce by mutual consent. For one, the fact that the parties opted for divorce by mutual consent does not necessarily mean that they resorted to machinations like collusion. For another, such sweeping generalization is anathema to the principle of good faith:

> It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. **Absent enough proof thereof, the presumption of good faith prevails.**[14](Emphasis supplied)

Withal, even in nullity cases in this jurisdiction, there is a possibility of collusion between the parties, as when one of the parties decides not to answer and participate in the proceeding, despite due notice. Nonetheless, there exists no policy for courts to summarily dismiss petitions where such a situation exists. Instead, the Office of the Prosecutor is first required to conduct an investigation to determine the existence of collusion.

The Court is also not keen on declaring the existence of collusion by the mere fact that the spouses have exhibited certain acts that may communicate a mutual desire to dissolve or annul their marriage. The case of

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11 *See Ambrose v. Suque-Ambrose*, G.R. No. 206761, June 23, 2021 [Per J. Gaerlan, First Division].

12 869 Phil. 351 (2020) [Per J. Caguioa, First Division].

13 *See id.* at 365; *Basa-Egami v. Bersales*, G.R. No. 249410, July 6, 2022 [Per J. Zalameda, First Division].

14 *Heirs of Gregorio v. Court of Appeals*, 360 Phil. 753 (1998) [Per J. Purisima, Third Division].

Puyat v. Puyat (Puyat)[15] and the vintage *En Banc* case of *Ocampo v. Florenciano* (Ocampo)[16] come to mind.

Puyat involved a petition for declaration of nullity of marriage and the Court of Appeals (CA) declared the existence of collusion because the wife failed to attend the hearing of the presentation of her evidence and did not question the propriety of the trial court's decision. In reversing the CA, the Court ratiocinated in this wise:

> Simply because they mutually desire to have their marriage declared null and void does not mean that they have colluded to trick the court. To rule otherwise would be to unfairly foreclose the remedy under Article 36 to all individuals who are similarly situated as Gil Miguel and Ma. Teresa. To the Court's mind, the CA failed to demonstrate the presence of collusion or that evidence was suppressed or fabricated by any of the parties.
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> In *Juliano-Llave v. Rep. of the Phils.*, the Court held that the respondent spouse was not deprived of her right to due process when judgment was issued without her answer and without having presented her evidence. The Court reasoned that "[h]er failure to file and answer and her refusal to present her evidence were attributable only to herself and she should not be allowed to benefit from her own dilatory tactics to the prejudice of the other party."
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> Although the case of *Juliano-Llave* is not in all fours as the circumstances surrounding the present case, the Court finds it relevant to the present case. While collusion was not an issue in *Juliano-Llave*, it is significant to underscore that **the Court affirmed the judgment of the trial court declaring the marriage of the parties void ab initio despite the failure of the respondent spouse to file her answer and present her evidence. These factors should not be automatically equated to collusion.**[17] (Citations omitted; Emphasis supplied)

Ocampo, on the other hand, was a case where the CA denied the legal separation of the spouses because the wife readily expressed her conformity to the filing of the petition and confessed her extra-marital affairs to the investigating prosecutor. In reversing the CA, the Court quoted an American jurisprudence that says, "collusion may not be inferred from the mere fact that the guilty party confesses to the offense and thus enables the other party to procure evidence necessary to prove it"[18] and that "proof that the defendant desires the divorce and makes no defense, is not by itself collusion."[19]

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[15] G.R. No. 181614, June 30, 2021 [Per J. Carandang, First Division].
[16] 107 Phil. 35 (1960) [Per J. Bengzon, *En Banc*].
[17] *Id.*
[18] *Id.*; Citations omitted.
[19] *Pohlman v. Pohlman*, [N. J.] 46 Atl. Rep. 658.

On a related point, I am of the view that Filipino spouses who validly obtained a divorce decree by mutual consent should not be unduly discriminated by their own country, no less. They do not opt for a divorce by mutual consent out of whim. Be it stressed that it is an option given to them by the national law of their foreign spouse. The Court has already duly pointed out in *Racho v. Tanaka* (Racho)[20] that the national law of Japan does not prohibit the Filipino spouse from initiating or participating in the divorce proceedings. Thus, it would be inherently unjust for Filipino spouses to be prohibited by Philippine laws from something that a foreign law allows. Parenthetically, the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals. Significantly, *Racho* likewise pointed out that it is not an ideal option and should be eschewed:

> The Solicitor General's narrow interpretation of Article 26 disregards any agency on the part of the Filipino spouse. It presumes that the Filipino spouse is incapable of agreeing to the dissolution of the marital bond. It perpetuates the notion that all divorce proceedings are protracted litigations fraught with bitterness and drama. Some marriages can end amicably, without the parties harboring any ill will against each other. The parties could forgo costly court proceedings and opt for, if the national law of the foreign spouse allows it, a more convenient out-ofcourt divorce process. This ensures amity between the former spouses, a friendly atmosphere for the children and extended families, and less financial burden for the family.

Truly, choosing the path of least resistance, so to speak, should not be taken against Filipino spouses. Certainly, it is more reasonable than a divorce by judicial and adversarial proceeding. A judicial divorce, almost always, becomes a war by attrition between the parties. When tensions flare up, courtroom drama may easily arise, leading to an acrimonious divorce. It is ridiculously expensive and tedious, as well. With a more viable alternative allowed by the divorce law of the foreign spouse, there is no rhyme or reason for this Court to complicate matters by compelling the estranged couple to further hurt each other's feelings with a needless court battle. As the great Lao Tzu said, "war should be avoided at all costs"[21] and "war is only justifiable when all possible alternatives have been completely exhausted."[22]

A divorce by mutual consent is almost a staple in recent jurisprudence. We have expressly ruled in *Basa-Egami, Racho,* and *Republic v. Bayog-Saito* (Bayog-Saito)[23] that such type of divorce may be given recognition in jurisdiction. Further, there is an implicit acknowledgment as to the propriety

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[20] *See Racho v. Tanaka*, 834 Phil. 21, 30 (2018) [Per J. Leonen, Third Division].
[21] The Art of War.
[22] *Id.*
[23] G.R. No. 247297, August 17, 2022 [Per J. Inting, Third Division].

of a divorce by mutual consent outside those cases. To be sure, We mostly deny petitions or remand cases only because of the failure of the Filipino spouse's failure to prove the fact of divorce or the foreign law. For instance, in *Republic v. Kikuchi* (Kikuchi),[24] there was no divorce judgment to speak of as the divorce was not coursed through Japanese courts but through the Mayor of Sakado City, Saitama Prefecture. Echoing the ruling in *Moraña v. Republic* (Moraña),[25] *Kikuchi* ruled that the Filipino spouse still proved the fact of divorce with the presentation of the Divorce Report (not a judgment divorce). Nevertheless, the case was remanded to the trial court as the other document submitted by the Filipino spouse did not prove the existing divorce law of Japan:

> Not being an official translation, the document submitted by Jocelyn does not prove the existing law on divorce in Japan. Unfortunately, without such evidence, there is nothing on record to establish that the divorce between Jocelyn and Fumio was validly obtained and is consistent with the Japanese law on divorce.
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> Given that Jocelyn was able to prove the fact of divorce but not the Japanese law on divorce, a remand of the case rather than its outright dismissal is proper. This is consistent with the policy of liberality that the Court has adopted in cases involving the recognition of foreign decrees to Filipinos in mixed marriages.

Additionally, questions regarding the disregard of our national law on divorce and the Constitutional mandate for the State to afford protection to marriage have already been extensively threshed out in the negative by the Court in *Manalo* and there appears no cogent reason to discuss the same anew. As *Manalo* emphatically enunciated:

> Conveniently invoking the nationality principle is erroneous. Such principle, found under Article 15 of the Civil Code, is not an absolute and unbending rule. In fact, the mere existence of Paragraph 2 of Article 26 is a testament that the State may provide for an exception thereto. Moreover, blind adherence to the nationality principle must be disallowed if it would cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law. The courts have the duty to enforce the laws of divorce as written by the Legislature only if they are constitutional.

I agree that marriage should remain an inviolable social institution. However, the Constitutional mandate to protect marriage should not unjustly tie the hands of the Court. Recognizing foreign divorce by mutual agreement does not undermine the institution of marriage. As poignantly expressed in *Moraña*, "in cases like these, there is no more 'institution' to protect as the

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[24] G.R. No. 243646, June 22, 2022 [Per J. Hernando, First Division].
[25] 867 Phil. 578 (2019) [Per J. Lazaro-Javier, First Division].

supposed institution was already legally broken. Marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it."

The ruling in the present case is in line with our continuing efforts to afford protection to the interest of Filipino spouses who have already validly secured a divorce decree abroad. Indeed, We should not adopt a stand that unduly discriminates against divorces obtained by mutual consent. The pronouncement in *Quita v. Court of Appeals* (Quita),[26] while not about recognition of divorce by mutual agreement, may be applied in this case analogously. To borrow the words in *Quita*, "[i]f we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce decree is no longer married to the Filipino spouse, then the instant case [recognizing divorce by mutual consent] must be deemed as coming within the contemplation of Paragraph 2 of Article 26."[27]

To have a strained interpretation of Article 26(2) and not recognize divorce by mutual agreement will lead to iniquitous and deleterious results. As *Basa-Begami* points out, until the divorce validly obtained abroad is recognized by Philippine courts, Filipino spouses remain in legal limbo because while they may have already validly secured a divorce abroad, they still cannot remarry.

Even worse, We can unintentionally push Filipino spouses down to another circle of hell. With a declaration in this case that a divorce by mutual agreement should not be recognized, We will unjustly create and alienate a class of Filipinos — divorcees that can *never* remarry unless they become citizens of other countries that recognize divorce by mutual agreement. Until then, these Filipinos will be virtually in a perpetual state of grief and torment, as they are unable to escape the chains that still unfairly bind them to a marriage that no longer exists in the eyes of the law of the countries of their former spouses. This could further lead to the proliferation of relationships that carry the stigma of being labeled as illicit with their sires' status as illegitimate. Meanwhile, the alien spouses have full autonomy to chart their next course, with the right to remarry or love again without any impediment. These disheartening situations are not only iniquitous for Filipino spouses, but they also severely compromise the sanctity of marriage and the welfare of children.

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[26] 360 Phil. 601 (1998) [Per J. Bellosillo, Second Division].

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

The fervent pleas and judiciary's response

The bleak picture I paint here is not an idea of a playful mind but something that is truly happening to our overseas Filipino divorcees. Just recently, Hon. Mylene J. Garcia-Albano (*Hon. Garcia-Albano*), Philippine Ambassador to Japan, sent a Letter[28] dated November 9, 2023, where she communicated about the growing remonstrance of Filipinos in Japan on the matter of judicial recognition of foreign divorce. Not long after, Hon. Charmaine A. Serna-Chua *(Hon Serna-Chua)*, the Minister and Consul General of the Philippine Embassy in Tokyo, sent an electronic mail,[29] asking for assistance on how to help the cause of our Filipino divorcees.

It turns out that while Filipino divorcees welcome a highly efficient and exceedingly economical process of divorce by mutual consent, the procedure of having such divorce recognized here becomes another vicissitude of life for them. Hon. Garcia-Albano stated in her letter that "[m]any Filipino women divorcees come to the Philippine Embassy in Tokyo to bemoan the high legal cost and long legal procedure concomitant with the filing of a petition for judicial recognition of foreign divorce. For many of them, the complexity of the legal process often leads them to losing their status as they are unable to enter into another marriage in Japan." Thus, Hon. Garcia-Albano exhorts the Court to consider ways that would abbreviate and streamline the pertinent legal proceeding.

Also, according to Hon. Serna-Chua, the same sentiment is echoed in the letter from a Filipino community leader addressed to the President of the Philippines, airing the collective sentiment of Filipino divorcees who lose their legal immigrant status as they are unable to remarry in Japan. On this score, I find it *apropos* to quote:

> [T]here are laws that are being implemented which our lawmakers think would be helpful but in reality make Filipinos living abroad suffer.
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> I am talking about JRD or Judicial Recognition of Foreign Divorce. Dati po, kapag nagdidiborsyo ang isang Pilipina at Hapon, kinakailangan lang na magprocess ng mga papeles sa ating Philippine Embassy o Philippine Consulate upang makakuha ng tinatawag na Report of Divorce. . .I can't recall when it started but now the Philippine Consulate is requiring every divorced Filipina to secure a judicial recognition of divorce in the Philippines to be able to marry again. Alam nyo po ba na magmula 250,000 hanggang 500,000 pesos ang sinisingil ng mga abogado at itinatakbo ang mga downpayment na kanilang ibibinigay. [*sic*] Napakahirap pong kitain ang pera at hindi basta-basta ang halagang

[28] Circulated to the Members of the *En Banc* during deliberations.
[29] *Id.*

> 250,000 pesos. Hindi lang tungkol sa pera but also, about the time frame needed to secure this judicial recognition which takes a minimum of 6 months pwera pa po ang kinakailangang pag-uwi ng Pilipina para humarap sa korte na bukod na gastos at pagliban sa trabaho. Hindi po kinakaya ang gastos kaya ang nagyayari po, dahil hindi makapag-pakasal ulit, nawawalan ng visa ang Pilipina at nagiging overstay o kung hindi naman ay mapapauwi na lamang. Marami rin pong mga kaso na nagpapakasal ulit ang Pilipina sa ibang Hapon subalit ang kasal na ito ay hanggang sa Japan lamang ni rerecognize at maging sa Japan man ay hindi rin magagamit ng Filipina ang kanyang bagong apelyido dahil hindi pa naayos ang kanyang Judicial Recognition of Foreign Divorce sa Pilipinas. Lalo po lamang dumami ang problema at naging kawawa ang buhay pati na ang kanyang pamilya.
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> . . . If they are considered modern heroes, may I request our beloved President to do something about this problem? An immediate action is needed as this affects the lives of the Filipinas not only in Japan but also in other countries. Can we not suspend the implementation of this law and go back to the old system I mentioned earlier, even temporarily until a revision is made which would not make people's lives difficult to handle? Otherwise, can I make a suggestion to please create a body composed of Public Attorneys in the Philippines through which the Filipinas can process the JRD (without spending exorbitant amount for private attorneys) much more cheaply and easily?

Aside from that, Hon. Serna-Chua manifested a harrowing and pitiful situation of Filipina victims of trafficking in Japan. Apparently, during a March 23, 2023 seminar on trafficking in persons organized by the International Organization for Migration in Tokyo, it was revealed that Filipino trafficking victims in Japan are being further oppressed because they continue to bear their abuser's names in their records, including their passports, until they obtain judicial recognition of their divorce.

The Court is relentless in implementing judicial reforms to carry out is mandate. Pursuant to its rule-making power under the Constitution,[30] the Court has promulgated new rules and amended old ones in furtherance of its commitment to deliver efficient and responsive justice to all.

As part of its efforts, the Court may indeed examine its rules on recognition of foreign divorce with the goal of providing a more streamlined and economical procedure, such as a summary proceeding, perhaps one that is *ex-parte*, where the submission of the required documents may be done by an authorized representative without the need for personal appearance of petitioner or a lawyer. Also, in tandem with OCA Circular No. 157-2022-A,[31] further collaboration with the Department of Foreign Affairs may be explored to enable online application for authenticated copies of the divorce

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30 1987 Constitution, Article VIII, sec. 5(5).

31 Compilation of the Laws of Foreign Countries on Marriage and Divorce, July 7, 2022.

law of the foreign spouse. Palpably, this has been the most difficult evidence to obtain for the Filipino spouse, and the reason for much delays or even denials of their petitions. Finally, I agree with Associate Justice Maria Filomena A. Singh that the possible amendment of Rule 39, Section 48 of the Rules of Court should be taken into consideration, at the very least "[t]o the extent that there is a need to provide a definitive set of rules governing the recognition of divorce decrees, whether obtained through judicial proceeding or by mutual consent."[32] Nonetheless, even without the amendment, the Court is not precluded by the language of Rule 29, Section 48 from making a definitive declaration that the evidence of the fact of divorce by mutual agreement, *not being a court judgment*, may be proved in accordance with Rule 132, Section 24[33] of the Rules of Court.

With all the foregoing considered, I register my concurrence with the *ponencia*.

RODIL V. ZALAMEDA
Associate Justice

[32] *See* p. 3, Reflections of Associate Justice Maria Filomena A. Singh.

[33] 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.