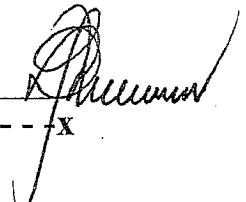


G.R. No. 223628 — EDNA S. KONDO, represented by her Attorney-in-Fact, LUZVIMINDA S. PINEDA, petitioner, versus CIVIL REGISTRAR GENERAL, respondent.

Promulgated:

MAR 04 2020



X-----X

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur in the result.

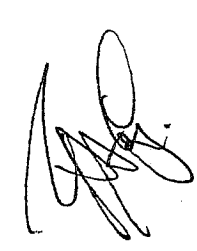
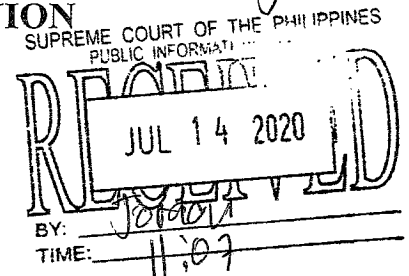
However, I submit, as I did in the case of *Republic v. Manalo*<sup>1</sup> (*Manalo*), that Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. This exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse.<sup>2</sup>

As stated in my *Dissenting Opinion* in *Manalo*:

x x x [R]ather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in [*Van Dorn v. Romillo, Jr.*<sup>3</sup>], [*Republic v. Orbecido III*<sup>4</sup>] and [*Dacasin v. Dacasin*<sup>5</sup>] merely clarify the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) [of] the Family Code. These parameters may be summarized as follows:

1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad by a Filipino citizen cannot be enforced in the Philippines. To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law.
2. Nevertheless, the effects of a divorce decree obtained by a foreign national may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce. This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and

<sup>1</sup> G.R. No. 221029, April 24, 2018, 862 SCRA 580.  
<sup>2</sup> Id. at 638.  
<sup>3</sup> 223 Phil. 357 (1985).  
<sup>4</sup> 509 Phil. 108 (2005).  
<sup>5</sup> 625 Phil. 494 (2010).

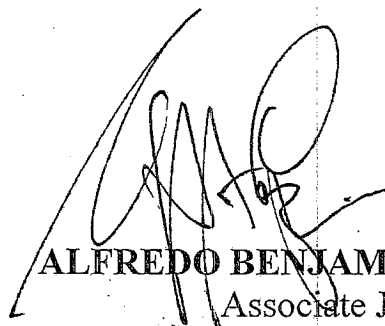


merely recognizes the residual effect of such decree on the Filipino spouse.<sup>6</sup> (Emphasis and underscoring omitted)

Petitioner Edna S. Kondo is a Filipino citizen seeking recognition of the divorce decree issued upon a joint application filed with her husband Katsuhiko Kondo, a Japanese national.

Unlike the divorce decree in question in *Manalo*, the divorce decree in this case had been obtained *not* by the Filipino citizen alone, but *jointly*, by the Filipino and alien spouse. Verily, a divorce decree granted upon a joint application filed by the parties in a mixed marriage is still one “obtained by the alien spouse”, *albeit* with the conformity of the latter’s Filipino spouse. Thus, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that has been celebrated between a Filipino citizen and a foreign national; and a **valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**<sup>7</sup>

Based on these premises, I vote to **REMAND** the case to the Regional Trial Court of Manila to allow Edna S. Kondo to present evidence to prove the pertinent provisions of the Japanese Civil Code allowing Katsuhiko Kondo to remarry.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

<sup>6</sup> *Republic v. Manalo*, supra note 1, at 641.

<sup>7</sup> See *Republic v. Orbecido III*, supra note 4, at 115.