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## **From Van Dorn to Manalo: An Analysis of the Court's Evolving Doctrine in the Recognition of Foreign Divorce Decrees in Mixed Marriages**

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# From *Van Dorn* to *Manalo*: An Analysis of the Court's Evolving Doctrine in the Recognition of Foreign Divorce Decrees in Mixed Marriages

*Amparita S. Sta. Maria\**

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I. INTRODUCTION

Outside the Vatican, the Philippines is the only country that proscribes divorce.<sup>1</sup> In the Family Code of the Philippines (Family Code),<sup>2</sup> the sole provision that talks about divorce and of Filipino citizens possibly benefitting from this manner of severing marriage is Article 26.<sup>3</sup> However, like other provisions in an entire code, this article does not operate in a vacuum. There is an implicit mandate that its construction and interpretation must be consistent, as much as possible, with other existing provisions of the law.<sup>4</sup> Thus, although the Family Code amended and superseded the Family Relations chapter of Book I of the Civil Code of the Philippines,<sup>5</sup> the provisions of the Family Code are still to be construed in harmony with the entire Civil Code.

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1. Ana Santos, *There's just one country other than the Vatican where divorce is illegal — and some want to change that*, L.A. TIMES, Aug. 23, 2016, available at <http://www.latimes.com/world/asia/la-fg-philippines-divorce-snap-story.html> (last accessed Aug. 31, 2018).

2. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1988).

3. *Id.* art. 26. The provision reads —

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. (17a)

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.*

4. Philippine International Trading Corporation v. Commission on Audit, 621 SCRA 461, 469 (2010).

5. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

As the Supreme Court stated in *Philippine International Trading Corporation v. Commission on Audit*,<sup>6</sup> “[i]t is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.”<sup>7</sup>

One such provision whose importance has heavily weighed in on Article 26 of the Family Code is Article 15 of the Civil Code,<sup>8</sup> commonly referred to as the “nationality rule.”<sup>9</sup>

This Article discusses how the Supreme Court has interpreted the second paragraph of Article 26<sup>10</sup> over the years, and contends that the Court — in its desire to give the provision an expansive interpretation — committed a judicial overreach in *Republic v. Manalo*,<sup>11</sup> by needlessly limiting the application of the nationality rule and by resorting to judicial legislation.

## II. THE VAN DORN CASE

As Article 15 preceded Article 26, the case which is widely believed to have “triggered” the amendment of Article 26 of the Family Code and the subsequent inclusion of the second paragraph therein, is *Van Dorn v. Romillo*,<sup>12</sup> which was decided by the Supreme Court on 8 October 1985, before the effectivity of the Family Code.<sup>13</sup>

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6. *Philippine International Trading Corporation v. Commission on Audit*, 621 SCRA 461 (2010).

7. *Id.* at 469.

8. CIVIL CODE, art. 15. Article 15 of the Civil Code provides, “[l]aws 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.” *Id.*

9. *See Dacasin v. Dacasin*, 611 SCRA 657, 670 (2010) & *Lavadia v. Heirs of Juan Lucas Luna*, 730 SCRA 376 (2014).

10. FAMILY CODE, art. 26, para. 2. The second paragraph of Article 26 of the Family Code provides, “[w]here 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 likewise have capacity to remarry under Philippine Law.” *Id.*

11. *Republic of the Philippines v. Marelyn Tanedo Manalo*, G.R. No. 221029, Apr. 24, 2018, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/221029.pdf> (last accessed Aug. 31, 2018).

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

13. *See FAMILY CODE*, art. 257.

Petitioner Alice Reyes, a Filipina, filed for divorce against her American husband, respondent Richard Upton.<sup>14</sup> The latter, through his lawyers, agreed to the divorce based on the following stipulations:

- (1) That [his] spouse seeks a divorce on the ground of incompatibility.
- (2) That there is no community of property to be adjudicated by the [Supreme Court of the United States].
- (3) That there are no community obligations to be adjudicated by the [Nevada court].<sup>15</sup>

The Nevada court granted the divorce.<sup>16</sup> Reyes subsequently married Theodore Van Dorn.<sup>17</sup>

Consequently, Upton filed a case against Reyes in the Philippines to demand for an accounting of their business in Manila, the Galleon Shop, claiming that the same was conjugal in character.<sup>18</sup> Upton also asked for the right to manage the shop, principally contending that the divorce decree obtained by Reyes from the Nevada court was not valid in the Philippines because divorce, *per se*, is prohibited in the country.<sup>19</sup> Thus, “the acts and declaration of a foreign [c]ourt cannot, especially if the same is contrary to public policy, divest Philippine [c]ourts of jurisdiction to entertain matters within its jurisdiction.”<sup>20</sup>

Petitioner Reyes opposed the claim and moved to dismiss the case on the ground that in the judgment of the Nevada divorce proceedings, respondent Upton acknowledged that he and Reyes did not have *any* community property.<sup>21</sup> This covered all properties including those situated in the Philippines and, therefore, Upton’s claim was barred by prior judgment.<sup>22</sup>

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14. *Id.* at 140-42.

15. *Id.* at 143.

16. *Id.* at 141.

17. *Id.*

18. *Id.*

19. *Van Dorn*, 139 SCRA at 141.

20. *Id.* at 142.

21. *Id.*

22. *Id.*

The lower court denied Reyes' motion to dismiss, thus, she elevated the case before the Supreme Court via a petition for *certiorari*.<sup>23</sup>

The fact that divorce is not a legal option for Filipino nationals was not lost to the Court when it acknowledged that under the law, Philippine nationals are covered by the prohibition on absolute divorce, "the same being considered contrary to [the country's] concept of public policy and morality."<sup>24</sup> The Court relied on the nationality rule under Article 15 of the Civil Code which states that "[l]aws 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."<sup>25</sup>

However, the Court also emphasized that owing to the very same nationality rule, it equally recognizes a divorce validly obtained by foreigners in their own country, as long as said divorce is valid there.<sup>26</sup> Thus, speaking through Justice Ameurfina A. Melencio-Herrera, the Court sustained Reyes's position and ruled that the divorce obtained by the latter in Nevada effectively "released [her] from the marriage [under] the standards of American law, under which divorce dissolves the marriage."<sup>27</sup> Citing the Supreme Court of the United States (US) in *Atherton v. Atherton*,<sup>28</sup> the Court further elaborated that a marriage that is severed against one spouse also binds the other and that a "husband without a wife, or a wife without a husband, is unknown to the law."<sup>29</sup>

Thus, the Court sustained the petition and ruled in favor of Reyes, stating that, following respondent Upton's national law, he is no longer considered the husband of Reyes.<sup>30</sup> As such, he has no standing to sue Reyes in his capacity as her husband and neither has he any right over the control of alleged conjugal assets.<sup>31</sup> The Court held that "[a]s he is bound by the Decision of his own country's [c]ourt, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is

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23. *Id.* at 141.

24. *Id.* at 143.

25. *Van Dorn*, 139 SCRA at 143 (citing CIVIL CODE, art. 15).

26. *Van Dorn*, 139 SCRA at 143.

27. *Id.*

28. *Atherton v. Atherton*, 45 L.Ed. 794, 799 (1899) (U.S.).

29. *Van Dorn*, 139 SCRA at 144 (*Atherton*, 45 L.Ed. at 799).

30. *Van Dorn*, 139 SCRA at 144.

31. *Id.*

estopped by his own representation before said [c]ourt from asserting his right over the alleged conjugal property.”<sup>32</sup>

The Court further elucidated on the discriminatory effect of the nationality rule if it were to be interpreted according to Upton’s view that since divorce is not recognized in the Philippines, petitioner Reyes should still be considered bound by the obligations of marriage to the respondent under Philippine law.<sup>33</sup> To wit —

To maintain, as private respondent does, that, under [Philippine] laws, petitioner has to be considered still married to private respondent and still subject to a wife’s obligations under Article 109, *et. seq.* of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.<sup>34</sup>

While the *Van Dorn* ruling recognized the consequences for both parties of the Nevada divorce decision, especially as far as Upton was concerned, it did not categorically dwell on petitioner Reyes’s own capacity to remarry after she has initiated and obtained said divorce proceedings. In other words, even with the *Van Dorn* ruling, the Supreme Court remained silent as to a Filipino’s capacity to remarry following a divorce, regardless of who initiated the same.

Further, although the Court concluded that a “husband without a wife or a wife without a husband is unknown to the law”<sup>35</sup> and that “[t]he marriage tie, when thus severed as to one party, ceases to bind either,”<sup>36</sup> the Court stopped short of declaring that Reyes was now free and capacitated to remarry. In other words, the emphasis of the Court’s ruling focused on the severance of the marriage bonds between Reyes and Upton, but it did not take the ruling to its logical conclusion that hence, petitioner Reyes was now free and capacitated to remarry, although she did exactly that when she married Van Dorn.

It can only be surmised that the reason for this restraint on the part of the Court is Article 15, itself, which must still be observed as far as Reyes

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32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Van Dorn*, 139 SCRA at 144.

was concerned. Because of the discriminatory effect that a strict application of Article 15 would have against a Filipino, the Court settled with saying that both Upton and Reyes were considered released from their marriage bonds.<sup>37</sup>

On 3 August 1988, almost three years after the *Van Dorn* decision, Executive Order No. 209 came into effect providing for the Family Code.<sup>38</sup> While Article 26 thereof substantially contains the same provision as Article 71 of the Civil Code,<sup>39</sup> a second paragraph was introduced through Executive Order No. 227.<sup>40</sup> Thus, Article 26 under the present Family Code now reads —

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.<sup>41</sup>

Despite the common view that the second paragraph was introduced as a curative provision in case a *Van Dorn* situation arises again,<sup>42</sup> in reality, this provision does not address the dilemma presented in that case. It is very clear that the second paragraph of Article 26 requires that the divorce be initiated and obtained by the foreign spouse of the Filipino; otherwise, said Filipino cannot be considered capacitated to remarry.<sup>43</sup> In fact, the Supreme Court,

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37. See *Van Dorn*, 139 SCRA at 143.

38. See FAMILY CODE, art. 257.

39. CIVIL CODE, art. 71 (repealed 1987). Article 71 of the Civil Code provides — “All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law.” *Id.*

40. Amending Executive Order No. 209, Otherwise Known as the “Family Code of the Philippines”, Executive Order No. 227, § 1 (1988). See *Republic v. Orbecido III*, 472 SCRA 114 (2005).

41. FAMILY CODE, art. 26.

42. *Corpuz v. Sto. Tomas*, 628 SCRA 266, 278 (2010).

43. *Garcia v. Recio*, 336 SCRA 437, 446-47 (2001).



in *Garcia v. Recio*,<sup>44</sup> reiterated the requisite conditions before the second paragraph of Article 26 of the Family Code can apply. Thus —

At the outset, [the Court] lay[s] the following basic legal principles as the take-off points for [the Court's] discussion. Philippine law does not provide for absolute divorce; hence, [Philippine] courts cannot grant it. *A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 1522 and 1723 of the Civil Code. In mixed marriages involving a Filipino and a foreigner, Article 26 of the Family Code allows the former to contract a subsequent marriage in case the divorce is 'validly obtained abroad by the alien spouse capacitating him or her to remarry.'* A divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.<sup>45</sup>

It is noteworthy to mention that in an earlier decision where the issue involved was the citizenship of the petitioner who secured a divorce against her Filipino husband, the Court intimated that the lower court glossed over the possibility that while petitioner and her husband may have been both Filipino citizens at the time of the marriage, the petitioner may have already acquired foreign citizenship at the time she filed for divorce.<sup>46</sup> Thus, in *Quita v. Court of Appeals*,<sup>47</sup> the Court held —

Then in private respondent's motion to set aside and/or reconsider the lower court's decision she stressed that the citizenship of petitioner was relevant in the light of the ruling in *Van Dorn v. Romillo Jr.* that *aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law.* She prayed therefore that the case be set for hearing. Petitioner opposed the motion but failed to squarely address the issue on her citizenship. The trial court did not grant private respondent's prayer for a hearing but proceeded to resolve her motion with the finding that both petitioner and Arturo were 'Filipino citizens and were married in the Philippines.' It maintained that their divorce obtained in 1954 in San Francisco, California, U.S.A., was not valid in Philippine jurisdiction. [*The Court*] deduce[s] that the finding on their citizenship pertained solely to the time of their marriage as the trial court was not supplied with a basis to determine petitioner's citizenship at the time of their divorce. The doubt persisted as to whether she was still a Filipino citizen when their divorce was decreed. The trial court must have overlooked the materiality of this aspect. Once proved that she was no longer a Filipino citizen at the time of their divorce, *Van Dorn* would become applicable and petitioner could very well lose her right to inherit from Arturo.

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44. *Id.*

45. *Id.* at 446-47 (emphasis supplied).

46. *Quita v. Court of Appeals*, 300 SCRA 406, 413 (1998).

47. *Quita v. Court of Appeals*, 300 SCRA 406 (1998).

Respondent again raised in her appeal the issue on petitioner's citizenship; it did not merit enlightenment however from petitioner. In the present proceeding, petitioner's citizenship is brought anew to the fore by private respondent. ... When asked whether she was an American citizen petitioner answered that she was since 1954. Significantly, the decree of divorce of petitioner and Arturo was obtained in the same year. *Petitioner however did not bother to file a reply memorandum to erase the uncertainty about her citizenship at the time of their divorce, a factual issue requiring hearings to be conducted by the trial court.* Consequently, respondent appellate court did not err in ordering the case returned to the trial court for further proceedings.<sup>48</sup>

Ultimately, the Court remanded the case for further proceedings, specifically to determine petitioner Quita's "citizenship at the time of their divorce, a factual issue [which requires] hearings to be conducted by the trial court."<sup>49</sup> It should be emphasized, however, that the main purpose for the remand of the case was to determine Quita's capacity to succeed as an heir of the deceased, which in turn, hinges on whether or not she was already a foreigner who was capable of validly filing for divorce before her husband's death.<sup>50</sup> The import of this legal query is that if Quita was still a Filipino citizen at the time she filed for divorce, then the divorce was not valid under the nationality rule and therefore she still stood to inherit from her deceased husband. If she were already an American citizen at the time of filing for divorce, then the applicable doctrine was *Van Dorn*. This was precisely the reason why the court still applied the *Van Dorn* ruling. As in the latter case, the issue centered on what national law should be applied to petitioner Quita, whose Filipino citizenship was in issue.

Although the second paragraph Article 26 did not really figure in the *Quita* decision, *Quita* was cited seven years after by the Supreme Court in *Republic v. Orbecido III*<sup>51</sup> as one of its supporting basis for providing an entirely new interpretation of the second paragraph of Article 26.

### III. THE ORBECIDO CASE

In 1981, respondent Cipriano Orbecido III married Lady Myros M. Villanueva in Lam-an, Ozamis City.<sup>52</sup> They had a son and a daughter,

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48. *Id.* at 413-14 (citing *Van Dorn*, 139 SCRA) (emphases supplied).

49. *Quita*, 300 SCRA at 414.

50. *Id.* at 415.

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

52. *Id.*

Kristoffer Simbortriz and Lady Kimberly, respectively.<sup>53</sup> In 1986, Villanueva went to the United States with their son Kristoffer. They both subsequently became U.S. citizens.<sup>54</sup>

In 2000, respondent Orbecido, through his son, learned that his wife obtained a divorce decree against him, has remarried, and now has a child with her American husband.<sup>55</sup> The married couple lived in California.<sup>56</sup> Orbecido therefore filed a petition for authority to remarry under the second paragraph of Article 26.<sup>57</sup> The trial court granted the petition so the case was elevated by the government before the Supreme Court.<sup>58</sup>

The main contention of the government, on the one hand, through the Office of the Solicitor General (OSG), was that the provision did not apply to the respondent's case since at the time the latter and his wife were married, they were still both Filipino citizens; that said provision "only applies to a valid mixed marriage; that is, a marriage celebrated between a Filipino citizen and an alien."<sup>59</sup> It was further the position of the OSG that "there is no law that governs respondent's situation"<sup>60</sup> and that addressing Orbecido's situation is "a matter of legislation and not of judicial determination."<sup>61</sup>

On the other hand, respondent argued that while Article 26 does not apply squarely to his case, he contends that since his wife, who is now considered an alien, is already capacitated to remarry after the divorce decree obtained by her, "he is likewise capacitated by operation of law pursuant to Section 12, Article II of the Constitution,"<sup>62</sup> which provides, among others that "[t]he State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution."<sup>63</sup>

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53. *Id.* at 116.

54. *Id.* at 117.

55. *Id.*

56. *Id.*

57. *Orbecido III*, 472 SCRA at 117.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 117-18.

63. PHIL. CONST. art. II, § 12.

In deciding this case, the Court first provided a brief historical background of the second paragraph of Article 26 of the Family Code.<sup>64</sup> In addition, it cited the following as points for consideration:

*A. The Objections of the Catholic Bishops Conference of the Philippines (CBCP)*

The CBCP had objected to the inclusion of the second paragraph on the ground that it needs further consultation because it is the “beginning of the recognition of the validity of divorce even for Filipino citizens.”<sup>65</sup> Furthermore, the same is discriminatory since those whose spouses are Filipinos and who divorce them abroad cannot remarry while those whose spouses were foreigners or aliens are allowed to do so.<sup>66</sup>

*B. The Legislative Intent*

Citing one of the members of the Civil Code Revision Committee, Judge Alicia V. Sempio-Diy, the second paragraph of Article 26 was purportedly put in place “to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.”<sup>67</sup>

The Court also mentioned that the provision at issue can be traced from the *Van Dorn* case where “[t]he Court held therein that a divorce decree validly obtained by the alien spouse is valid in the Philippines, and consequently, the Filipino spouse is capacitated to remarry under Philippine law.”<sup>68</sup>

As mentioned before, the said case never dealt with the capacity of petitioner Reyes to remarry.

*C. The Jurisprudence*

The Court drew on the previous ruling of *Quita*, which accordingly provided the answer to the present issue, albeit it was an *obiter dictum* in said case.<sup>69</sup>

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64. See *Orbecido III*, 472 SCRA at 119–20.

65. *Orbecido III*, 472 SCRA at 120.

66. *Id.*

67. *Id.* at 120–21.

68. *Id.* at 121.

69. *Id.*

The jurisprudential answer lies latent in the 1998 case of *Quita*. In *Quita*, the parties were, as in this case, Filipino citizens when they got married. The wife became a naturalized American citizen in 1954 and obtained a divorce in the same year. The Court therein hinted, by way of *obiter dictum*, that a Filipino divorced by his naturalized foreign spouse is no longer married under Philippine law and can thus remarry.<sup>70</sup>

Again, as previously observed in this Article, there were lingering doubts as to the citizenship of petitioner *Quita* at the time she divorced her then husband.<sup>71</sup> Because she was trying to establish herself as his heir, the Court remanded the case to determine whether she was already a US citizen at the time of the divorce, thus establishing the validity of said divorce against her under the nationality rule and consequently disqualifying her as an heir of her deceased (ex)-husband.<sup>72</sup>

After weighing all the relevant factors, the Court made the following pronouncements —

Thus, taking into consideration the legislative intent and applying the rule of reason, [the Court] hold[s] that Paragraph 2 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. The 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. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.

If [the Court is] 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 is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26.

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70. *Id.* at 121 (citing *Quita*, 300 SCRA).

71. *Quita*, 300 SCRA at 413.

72. *Id.* at 413-14 (citing *Van Dom*, 139 SCRA).

*The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry.*<sup>73</sup>

The *Orbecido* case provided a “revolutionary” perspective of second paragraph of Article 26. Despite the clear and plain meaning of the law as to the context within which said provision should be applied, the Court found a way to expand its interpretation and construe the premise — “*Where a marriage between a Filipino citizen and a foreigner is validly celebrated*”<sup>74</sup> — as including spouses who, at the time of their marriage to each other, were still Filipino citizens.<sup>75</sup> Again, the most compelling argument of the *Orbecido* decision was the *injustice* that a strict and literal interpretation would create.<sup>76</sup> The concern for justice was also one of the rationale in *Van Dorn* when the Court stated that petitioner should not be “discriminated against in her own country if the ends of justice are to be served.”<sup>77</sup>

The basic problem with the decision of the Court is that it wanted to provide a remedy for a situation that is not within the scope of Article 26, Paragraph 2 to address. This provision was never intended to carve an exception to the restriction imposed by Article 15. It only sought to supplement it by further bringing the process to a fair conclusion that when a foreign spouse divorces a Filipino citizen, and that the such divorce is recognized within the Philippine jurisdiction under the nationality rule, fairness dictates that the Filipino concerned should also be allowed to remarry. It is not enough merely to declare him or her as no longer married to his or her foreign spouse.

As mentioned in the *Orbecido* case, according to Judge Sempio-Diy, the purpose of adding Paragraph 2 in Article 26 is to remedy a situation “where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.”<sup>78</sup> It is quite clear that this is the only scenario that the said Article was envisioned to cure.

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73. *Orbecido III*, 472 SCRA at 121-22 (citing *Lopez & Sons, Inc. v. Court of Tax Appeals*, 100 Phil. 850, 855 (1957)) (emphases supplied).

74. *Orbecido III*, 472 SCRA at 120.

75. *Id.*

76. *Id.* at 121.

77. *Van Dorn*, 139 SCRA at 144.

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

IV. THE *MANALO* CASE

Pushing the interpretation of the second paragraph of Article 26 further, on 24 April 2018, the Supreme Court promulgated the case of *Republic v. Manalo*, which virtually declared the provision in question unconstitutional for violating the equal protection clause of the Constitution.<sup>79</sup>

Respondent Marelyn Tanedo Manalo married a Japanese national, Yoshino Minoru, in the Philippines.<sup>80</sup> Subsequently, she filed for divorce in Japan and was able to obtain a divorce decree from a Japanese Court on 6 December 2011.<sup>81</sup> Consequently, she filed a petition for cancellation of entry of marriage.<sup>82</sup> This was later amended so that it will also be treated as a petition for recognition of foreign judgment.<sup>83</sup> The trial court denied the petition on the ground that under Article 15 of the Civil Code, Filipinos are not allowed to file for divorce.<sup>84</sup>

The Court of Appeals reversed the lower court's decision stating that under Article 26 of the Family Code, it is inconsequential who filed for divorce because "it would be the height of injustice to consider Manalo still married to the Japanese national, who, in turn, is no longer married to her."<sup>85</sup> Hence, a petition was filed by the by the OSG, assailing the appellate court's decision.<sup>86</sup>

The Supreme Court's ruling in this case touched on various issues but this Article will only deal with what it deems most relevant to the subject at hand. To be sure, the Court was ambivalent as to what legal basis it should use in order to uphold the right of respondent Manalo to have the divorce decree recognized as a foreign judgment, so that it could capacitate her to remarry.

*A. Literal Interpretation of the Law*

The first approach that the Court took was to show that it is clear from the plain meaning of the questioned provision that it does not matter who

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79. *Manalo*, G.R. No. 221029, at 14.

80. *Id.* at 2.

81. *Id.*

82. *Id.*

83. *Id.* at 2-3.

84. *Id.* at 4.

85. *Manalo*, G.R. No. 221029, at 4.

86. *Id.*

initiated the divorce proceeding in a marriage between a Filipino and a foreigner.<sup>87</sup> Thus —

Paragraph 2 of Article 26 speaks of ‘a divorce [...] validly obtained abroad by the alien spouse capacitating him or her to remarry.’ Based on a clear and plain reading, it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding.<sup>88</sup>

The cited provision is quite plain and clear. The foreign spouse must initiate the divorce proceeding. This is the unequivocal meaning of said provision which has been affirmed in the rulings by the court in *Recio* and *Orbecido*. Although the latter case stated that what is important is the citizenship of the one filing for divorce “at the time a valid divorce is obtained abroad by the alien spouse[,]”<sup>89</sup> nevertheless, the Court still remained true to the letter and intent of the provision that only the foreign spouse can initiate divorce according to the latter’s national law.<sup>90</sup>

#### *B. Exception to the Nationality Rule*

The second position taken by the Court is that the provision can be considered as an exception to the nationality rule and that it is a corrective measure to an absurd situation brought about by such strict adherence to said rule,<sup>91</sup> to wit —

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce is in the same place and in like circumstances as a Filipino who is at the receiving end of an alien

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87. *Id.* at 11.

88. *Id.*

89. *Orbecido III*, 472 SCRA at 122 (emphasis omitted).

90. *Id.* at 122.

91. *Manalo*, G.R. No. 221029, at 12.



initiated proceeding. In both instance[s], it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.

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.<sup>92</sup>

The explanation of the Court changed from adopting a literal interpretation to a liberal one, describing the questioned provision as an exception rather than a complement to Article 15.<sup>93</sup> It postulates that a strict and unbending construction of the nationality rule would result to an absurd situation for the second paragraph of Article 26, “where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse.”<sup>94</sup> Precisely, the *Van Dorn* case, armed only with the nationality rule as legal basis, was able to resolve the dilemma faced by a Filipino citizen whose marriage with a foreigner was severed by a divorce decree abroad, by ruling that said foreigner, who is governed by his or her own national law, will no longer be considered married to the Filipino spouse.<sup>95</sup> The second paragraph of Article 26 only provided closure by stating that said Filipino spouse in this particular situation can also remarry — a legal pronouncement missing in *Van Dorn* — because it was decided prior to the amendment of Article 26.<sup>96</sup> This is the only purpose of the latter provision and to this extent, the Court was right in saying that the second paragraph of the article is corrective in that it addresses “an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country.”<sup>97</sup>

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92. *Id.* at 12-13.

93. *Id.*

94. *Id.* at 12.

95. *Van Dorn*, 139 SCRA at 144.

96. *Id.*

97. *Manalo*, G.R. No. 221029, at 12.

However, the Court decided that said provision should extend to a Filipino spouse who has filed for divorce which, under Article 15, she or he does not have the capacity to do so.<sup>98</sup> Accordingly, the reason 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 also remarry; while the Filipino could not.<sup>99</sup>

### *C. Violation of Equal Protection*

Preceding from the premise that to hold Article 26, Paragraph 2 together with Article 15 as solely applicable to a foreign spouse initiated divorce would create an absurd situation, the Supreme Court also ventured to challenge the constitutionality of the second paragraph of Article 26 for being violative of the right to marry.<sup>100</sup> The Court explained —

While the Congress is allowed a wide leeway in providing for a valid classification and that its decision is accorded recognition and respect by the courts of justice, such classification may be subjected to judicial review. The deference stops where the classification violates a fundamental right, or prejudices persons accorded special protection by the Constitution. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties[ ] and require a stricter and more exacting adherence to constitutional limitations. If a legislative classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class strict judicial scrutiny is required since it is presumed unconstitutional, and the burden is upon the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest.

‘Fundamental rights’ whose infringement leads to strict scrutiny under the equal protection clause are those basic liberties explicitly or implicitly guaranteed in the Constitution. It includes the right of procreation, the *right to marry* ... .

Although the Family Code was not enacted by the Congress, the same principle applies with respect to the acts of the President, which have the force and effect of law unless declared otherwise by the court. In this case, [the Court] find[s] that Paragraph 2 of Article 26 violates one of the essential requisites of the equal protection clause. Particularly, the limitation of the provision only to a foreign divorce decree initiated by

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98. *Id.* at 11-12.

99. *Id.* at 12-13.

100. *Id.* at 13.

the alien spouse is unreasonable as it is based on superficial, arbitrary, and whimsical classification.<sup>101</sup>

There is a substantial distinction between a Filipino whose marriage was severed through a divorce filed by his or her foreign spouse and who was subsequently successful in securing a divorce decree; and a Filipino who initiated the proceeding himself or herself, despite the fact that he or she does not have the capacity to do so. If the divorce decree is consequently issued in the latter case, said Filipino should take responsibility for the consequence of being in an absurd and unfair situation.

To address the injustice in the above scenario, it is obvious that the law needs to be changed. In *Manalo*, the Court took the position that the issue before them was resolvable not by legislative reform but by jurisprudential pronouncement.<sup>102</sup>

#### *D. Liberal interpretation of the Law*

Finally, the Court decided that it was more prudent to adopt a liberal interpretation of the questioned provision to prevent subsequent relationships of the Filipino spouse from being regarded as “illicit.”<sup>103</sup>

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.

...

Indeed, where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may, therefore, be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.<sup>104</sup>

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101. *Id.* at 13-14.

102. *Id.* at 13.

103. *See Manalo*, G.R. No. 221029, at 21.

104. *Manalo*, G.R. No. 221029, at 21-23.

## V. CONCLUSION

The second paragraph of Article 26 is a window afforded to Filipino nationals who find themselves trapped in a marriage where their foreign spouses have exercised the right to sever the same through a divorce proceeding. It is necessarily limited because Philippine law does not afford its own citizens that same right. Their own national law restricts them. Therefore, the remedy is to change the law, but the only body authorized to do this is the legislature through an amendment of Article 26, Paragraph 2, or even by enacting a divorce law altogether. As Justice Alfredo Benjamin S. Caguioa pointed out in his dissent —

[I]t bears to emphasize that the public policy against absolute divorce remains in force. At present, there exists no legal mechanism under Philippine law through which a Filipino may secure a divorce decree upon his [or her] own initiative. Accordingly, it is the Court's duty to uphold such policy and apply the law as it currently stands until the passage of an amendatory law on the subject.

As members of the Court, ours is the duty to interpret the law; this duty does not carry with it the power to determine what the law should be in the face of changing times, which power, in turn, lies solely within the province of Congress.<sup>105</sup>

“Since the Supreme Court is only granted judicial power, it should not attempt to assume or be compelled to perform non-judicial functions.”<sup>106</sup> In interpreting the law, the judiciary should not go beyond its well-established parameters, not even if the court believes that by doing so, a just and equitable resolution of the case would be achieved. This is especially true if the desired remedy lies elsewhere, within the power of another co-equal body. The *Manalo* ruling is a clear case of judicial overreach.

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105. *Id.* at 1 (J. Caguioa, dissenting opinion).

106. *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 643 SCRA 90, 125 (2011) (J. Carpio, dissenting opinion) (citing JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 828 (1996)).