

Legal issues and family matters



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The right of a divorced Filipino to remarry under Article 26 of the Family Code

Please take note that divorce is not allowed by the Family Code of the Philippines. Even if the marriage between two Filipino citizens was solemnized in a country where divorce is allowed (like Korea or Singapore, for example), a divorce obtained there will not be recognized since Article 15 of the New Civil Code applies to Filipinos wherever they may be in the world. Article 15 of the NCC provides that laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

What about a divorce between a foreigner and a Filipino? If it is the Filipino who filed for divorce, such a divorce will not be recognized here in the Philippines. But if it is the foreigner spouse who filed the divorce action against the Filipino (and such divorce allows that foreign spouse to remarry), then the Family Code recognizes that divorce. The Filipino spouse is likewise allowed to remarry but he or she must first file a petition here in the Philippines for the recognition of that foreign divorce decree.

In a valid marriage between two Filipino citizens, where one party is later naturalized as a foreign citizen and obtains a valid divorce decree capacitating him or her to remarry, can the Filipino spouse likewise remarry under Philippine law?

This was the novel question resolved by the Supreme Court, through ponente Justice Leonardo A. Quisumbing, in the case of *Republic of the Philippines v. Cipriano Orbecido III*, G.R. No. 154380, promulgated on October 5, 2005.

Article 26 of the Family Code provides, to wit,

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.

Does Article 26 apply only to a mixed marriage, that is, between a Filipino and a foreigner?

Orbecido filed with the Regional Trial Court of Molave, Zamboanga del Sur a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. No opposition was filed. Finding merit in the petition, the RTC granted Orbecido's petition.

In its petition before the Supreme Court, the Office of the Solicitor General stated that Article 26 applies only to valid mixed marriage, that is, a marriage celebrated between a Filipino citizen and an alien. The proper remedy in Orbecido's situation, according to the OSG, is to file a petition for annulment or for legal separation. Furthermore, the OSG argues there is no law that governs Orbecido's situation. The OSG claims that this is a matter of legislation and not of judicial determination.

Supreme Court ruling: Article 26 allows a Filipino citizen divorced by a spouse who had acquired foreign citizenship and remarried, to remarry.

The Supreme Court rejected the OSG's claim and in the dispositive portion (summing up) of its decision stated:

"We are unanimous in our holding that Paragraph 2 of Article 26 of the Family Code should be interpreted to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry."

"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."

The Supreme Court's views and reasoning are enumerated below:

[1] Taking into consideration the legislative intent and applying the rule of reason, 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.

[2] If 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 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.

[3] In view of the foregoing, we state the twin elements for the application of Paragraph 2 of Article 26 as follows:

There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and

A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

[4] 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.

In this case, when Cipriano's wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between her and Cipriano. As fate would have it, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus Cipriano, the "divorced" Filipino spouse, should be allowed to remarry.

We are also unable to sustain the OSG's theory that the proper remedy of the Filipino spouse is to file either a petition for annulment or a petition for legal separation. Annulment would be a long and tedious process, and in this particular case, not even feasible, considering that the marriage of the parties appears to have all the badges of validity. On the other hand, legal separation would not be a sufficient remedy for it would not sever the marriage tie; hence, the legally separated Filipino spouse would still remain married to the naturalized alien spouse.

Note: Please read "Biblical grounds for divorce and remarriage" in my Salt and Light blog at http://salt-and-light.blogspot.com/2005/12/divorce-and-remarriage_26.html

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: "Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus' name. Lord Jesus, I now accept you as my Savior. Amen."

If you want people to pray for you for whatever your needs are, please follow this link to a prayer room for men and women:
<http://womentodaymagazine.com/chat/share.html>