

Declarations of Nullity as a Problem of Private International Law

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Virginia Leonor, the petitioner in *Leonor vs. Court of Appeals*, G.R. No. 112597, April 2, 1996, filed for legal separation and alimony before a lower cantonal court of Switzerland, where her husband was residing. With relations between the spouses obviously soured, Mauricio Leonor counter-sued for divorce. The lower cantonal court denied petitioner alimony and pronounced the divorce of husband and wife while reserving the liquidation of the matrimonial partnership. Not content, Mauricio raised the issue of the non-existence of the marriage he and Virginia had contracted. How would Philippine courts deal with a Swiss declaration of nullity (or an annulment)? This was not the issue to which the Supreme Court addressed itself, but that does not preclude us from dealing with it. Filipinos are now everywhere in the world and with increasing mobility arise more urgent and complex issues in that challenging — and vexing — area of law traditionally called “conflict of laws” or private international law.

It is not accurate to assert, as some authors are wont to do, that Philippine courts are under no obligation to recognize, much less enforce, foreign judgments. This seems to be a common persuasion among authors in the field, but that is not what we read from our laws. *Rule 39, Section 50 of the Rules of Court* deals with the issue of foreign judgments directly.

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Section 50. *Effect of foreign judgments.* The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title of the thing;

b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact.

Now, exactly what kind of a proceeding deals with a petition for a declaration of nullity? There are two good reasons for considering it a proceeding *in rem*: first, English jurists write about a useful fiction, the matrimonial *res*, and it is its very existence that is adjudicated in nullity proceedings; second, Justice Hilarion Aquino argues from the effects of judgment: he suggests that if such proceedings were considered *in personam*, judgment would bind only parties to the proceedings, but a declaration of nullity is supposed to bind “the entire world.” If, then, we are correct in our categorization, then a foreign declaration of the nullity of marriage is binding on our courts — and against the whole world — insofar as the matrimonial *res* or the existence of the *vinculum matrimonii* is concerned.

The cited section of the rules, however, leaves no doubt that it will still be open to our courts to determine whether the foreign court pronouncing nullity sat with jurisdiction over the case. There is, of course, the well-known rule that a foreign tribunal is presumed to have adjudged within jurisdiction. (*Rule 131, Section 3, [n]*) Being a disputable presumption, the party who wishes to impugn the judgment declaring nullity must advance clear and convincing evidence that the foreign tribunal acted without or in excess of jurisdiction. This should then be our first concern — jurisdiction.

A court has jurisdiction over matrimonial actions when it has *in personam* jurisdiction over both spouses. If either party is a domiciliary of the state whose courts entertain suit, then that state’s courts are said to have jurisdiction also over the matrimonial *res*. (Siegel, *Conflicts*, 397) Note that while we depend, by this analysis, on the *in personam* jurisdiction the court may or may not have over the parties, we do not depart from our proposal to treat nullity proceedings as *in*

rem. Whether the court has *in personam* jurisdiction over the parties or not is determinative of whether the matrimonial *res* is within the jurisdiction of the court or not. Salonga shares the same view: it is his position that the jurisdiction to annul (and also to declare null) is vested in courts of the domicile of the parties, and this is regardless of whether the foreign state subscribes to the nationality theory or to the domiciliary theory. (Salonga, *Private International Law*, 1995 Ed., 278-279)

Under English law, a court has jurisdiction over nullity petitions if:

a) either party is domiciled in England on the date when the proceedings begin;

b) either party is habitually resident in England for one year ending on the date of the filing of the petition;

c) either party dies before the date of filing and was, at the time of his death, domiciled in England. (McClellan, *Conflict of Laws*, 183)

What brings the matrimonial *res* then within the jurisdiction of a foreign court? The answers so far given suggest that it is the fact that the parties, or at least one of them, is domiciled in the state of the forum. Put otherwise, it is the fact that at least one of the parties is domiciled in the state of the forum that brings the marriage *res* within the jurisdiction of the court. Any party who then contests a foreign decree of nullity must succeed in showing that there was no real connection between the parties and the forum sufficient to bring the matrimonial *res* within the jurisdiction of the foreign court. It is interesting to note what criteria English courts apply in determining whether to recognize foreign decrees of nullity or not. Certainly persuasive is whether or not such a decree is effective in the state where it is issued. English courts will likewise be persuaded to recognize a foreign decree of nullity if at the date of the commencement of proceedings, either party was domiciled in such a foreign state, or was a national of the state, or if either party was domiciled in such a foreign state at the time of his or her death. (McClellan, 197)

When a foreign court decrees the nullity of a marriage of nationals of its state, I do not think there will be any second thoughts about conceding such a decree full faith and credit, absent contest or protest. Sound judicial policy precludes us from expending the resources of our courts in attempting to substitute judgments of foreign courts over

nationals and matters of their own state. The matter, however, becomes considerably more interesting should a Filipino couple, or a couple, one of whom is a Filipino that contracted marriage in the Philippines pray a foreign court for a decree of nullity. Absent any clear showing of a real connection between the parties to the suit and the foreign forum, I have no doubts that our courts would deny recognition, and for good reason. In other words, we will not allow "quickie" declarations of nullity to wreck havoc on an institution we are determined to protect. Going by requirements earlier discussed then, our courts will have to be shown that at least one of the parties was domiciled in the state of the forum at the time suit was brought. This was the case with Virginia who brought suit, though for separation and alimony, against Mauricio, her husband, while the latter was domiciled in Geneva.

Equally important a consideration is choice of law. If our courts in the Philippines are to recognize and to enforce a foreign decree of nullity, the foreign court must have applied Philippine law or, even if it applied its own law, that there is sufficient kinship between such a law and ours so as to keep the declaration of nullity from being contrary to public policy. (cf. Coquia and Pangilinan, *Conflict of Laws*, 1995 Edition, 353) This is clearly nothing more than a reverse application of the doctrine of *lex loci celebrationis* enshrined in our *Family Code*. Article 26 of the *Family Code* holds that "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, 38." While it is marriages outside the Philippines to which *lex loci celebrationis* is applied, the provision does not suggest that Philippine law subscribes to the doctrine in choice of law issues and this also demands that marriages contracted in the Philippines, when judged by foreign courts, be judged according to our laws. Thus is, much besides, a rather well accepted precept of private international law. (cf. Siegel, 298)

If a Filipino contracts marriage abroad, and the marriage is valid by the laws and in the jurisdiction of the foreign state, despite the rather simple formulation of Article 26 of the *Family Code*, such a marriage might still be attacked before our courts on the ground that the Filipino, though enjoying capacity to contract under foreign law, was not so capacitated under Philippine law. Article 15 of the *Civil*

Code makes Philippine law hound a Filipino wherever he goes in matters relating to "family rights and duties, or to the status, condition and legal capacity." By some logic which is not entirely clear to me, the late, revered Justice Paras, and others with him, opine that this also means that legal capacity is to be determined as regards foreigners by reference to their national law. (cf. Paras, *Philippine Conflict of Laws*, 1990 Edition, 216) I have never subscribed unqualifiedly to this view (cf. my book *Private International Law*, 1995 Edition, CCT College of Law, mimeo.) for the reason that not all systems subscribe to the nationality theory. It makes little sense to me to determine the legal capacity of an English man for juridical acts by reference to his national law, when his very own national law holds his capacity to be determined by the law of his domicile! I submit that in determining the capacity of foreigners to contract marriage, reference should first be made to the theory which the states of which they are nationals subscribe: nationality or domiciliary, and then the appropriate law consulted.

Collier hints at an interesting matter relating to choice of law in marriage cases. We will assume that a state has signed a concordat with the Holy See (which has international legal personality for purposes of treaties or concordats) by virtue of which the marriage of Catholic nationals of that state and declarations relative thereto are left to the competence of church tribunals whose decisions are binding under the laws of the state. Giovanni, a national of that state, is married to Marimar. While domiciled in the United States, they obtain from an American court a decree of nullity which is effective in the United States but is not recognized by Giovanni's national law. Giovanni then decides to re-marry. He proposes to Julia, a Filipina OCW who accepts. They are married in the United States. Is the marriage valid or not? The snag here is that Giovanni, though armed with a judicial decree of nullity, is by his national law, incapacitated from re-marrying. If we were to doggedly hold on to our doctrine that capacity is a matter of personal law, then without a shadow of doubt, Giovanni could not have validly wed Julia. Collier writes that English law has solved the matter once and for all by enacting that in such cases, personal law is ignored and the validity of marriage is upheld. (Collier, *Conflict of Laws*, 2nd Edition, 308) Unfortunately for us in the Philippines, we do not have such a statute. What we do have, however, is the very clear provision of the *Family Code* that the marriage is valid here if valid where celebrated. (*Article 26*) If this

were all, we would have no trouble affirming the validity of Giovanni's marriage to Julia. But if we insist that *Article 15* of the *Civil Code* is applicable also to foreigners in such wise that their legal capacities are determined by their national law — an application which I have contested as being beyond the purview of the provision itself — then we have a real problem. My first proposal is obvious: abide by the clear limitation of *Article 15* and apply it only to Filipinos. In such a case, the marriage between Giovanni and Julia would stand. On the assumption, however, that our courts insist that for foreigners, *Article 15* holds as well, we might want to follow the English lead and choose to uphold the validity of the marriage.

When a person believes that his marriage is a *nullity*, may he proceed with a second marriage without waiting for a judicial decree of nullity? We now have a provision in the *Family Code* that settles the matter.

Article 40. The absolute nullity of a previous marriage may be invoked for purpose of remarriage on the basis solely of a final judgment declaring such previous marriage void.

There is then no doubt that for marriages contracted after the approval and execution of the code, a judicial declaration of nullity is a prerequisite. Authors with a more metaphysical bent may argue thus: If a marriage is a *nullity*, it is non-existent. If it is non-existent, there is really no impediment to a re-marriage. Therefore, a judicial decree of nullity is not really necessary. Actually, *Article 40* of the *Family Code* is not a new provision. It is rather the codification of what the law, even before the Code, already held. Not that it was always clear. In *Domingo v. Court of Appeals*, 226 SCRA 572 (1993), Justice Florida Ruth-Romero, writing for the court, very clearly ruled that as early as the *Gomez v. Lipana*, 33 SCRA 615 case — a pre-Family Code decision — the court had already abandoned earlier rulings, such as those in *People v. Aragon* and *People v. Mendoza* that suggested that no declaration of nullity was necessary. In short, whatever a person's beliefs may be about the nullity of his marriage, he must first obtain a judicial decree of nullity before contracting a second marriage. It is not difficult to understand why this must be so, namely, to leave parties free to determine by themselves whether they are at liberty to re-marry on the basis of the supposed nullity of their previous marriage is not compatible with setting forth a regime of law. What a judicial declaration of nullity juridically accomplishes is to overcome the pre-

sumption of the validity of marriage that attaches to every such contract.

Related to the issue of foreign decrees of nullity are the decrees of ecclesiastical tribunals. Under the present legal regime, it is not difficult to state what the status of such decrees is: Insofar as our courts of law are concerned, church decrees of nullity have no effects whatsoever. For church courts, likewise, the decrees of civil courts have no canonical effects. For Catholic Filipinos, this situation makes parallel processes inevitable: a Filipino who desires a declaration of nullity must file both before a court of law and before a church court, and there is no guarantee that there will be unanimity of decision. He may very well find himself in a situation where he is pronounced by the state's courts free to marry, but bound to a previous marriage by the canons of his faith, or free by church law but threatened with the possibility of a criminal charge for bigamy before civil courts.

Would an enactment that would allow civil courts to recognize canonical declarations of nullity run counter to the "separation" clause of the Constitution? I do not believe so for the following reasons:

a) The priests and ministers of the Catholic Church may be authorized by the State to solemnize marriages that are also binding civil covenants. If this same Church later pronounces that a marriage which one of its ministers solemnized is in fact a nullity, it should not be too difficult for the state to lend binding effect for civil purposes to this declaration. Of course it may very well be the case that a Catholic marriage is declared a nullity on grounds unknown to the *Family Code*, such as may arise when one of the parties is impeded by sacred Orders or by a public perpetual vow of chastity in a religious institute (i.e., a deacon, a priest or a bishop, and a religious cannot validly contract matrimony, cf. CIC 1087-1088). Under conflicts principles, however, we recognize that marriages, even of Filipinos, when contracted abroad may also be competently declared nullities by foreign courts —by decrees which we will recognize and enforce— on grounds alien to Philippine law, for after all, the standard by which the validity of such marriages is determined will not be Philippine law but that of the *locus celebrationis*.

b) In states such as Italy, the policy of neutrality in regard to religion has not hindered the approval and ratification of treaties that make church decisions civilly efficacious. It is one thing to declare that

the state will not support nor suppress any religion, and another for the state to pretend that an organized religious entity, like the Catholic Church, is a non-entity. In fact, legally, the Catholic Church has personality. Not only is each diocesan bishop a *corporation sole* under the *Corporation Code*. The Holy See itself, which is the central governing body of the Catholic Church, enjoys international legal personality. It sends and receives legations and enjoys some degree of membership in international organizations and fora. If such an agreement were entered into between the Philippines and the Holy See, there would be reason to treat marriages contracted under canon law in a manner analogous to marriages contracted in a foreign jurisdiction. □

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