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Neutral Citation Number: [2020] EWFC 27

Case No: LV18D06534

IN THE FAMILY COURT
(Sitting remotely)

Leeds Family Hearing Centre
Coverdale House, East Parade
Leeds, LS1 2BH

Date: 03/04/2020

Before:

MR JUSTICE WILLIAMS

Between:

Gerlie Ortiz Padero-Mernagh

Petitioner

- and -

Rodger Darrel Mernagh

Respondent

-and-

The Queen's Proctor

Intervening

(Divorce: Nullity: Remote Hearing)

The Petitioner: In person.

The Respondent: In person

Simon P G Murray (instructed by the Government Legal Department) on behalf of the Queen's Proctor

Hearing dates: 30 and 31 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Justice Williams:

1. On 14 July 2018 the petitioner wife issued an application for divorce in the Liverpool Family Court. The marriage in respect of which she sought a dissolution is certified to have taken place on 21 March 2005 in the Philippines.
2. On 27 July 2018 the respondent husband filed an Acknowledgement of Service and a 'Reply/defence'. In those documents he stated that the marriage was bigamous in that he asserted that the wife remained married to a man called Rafael Gragasin and that the marriage ceremony in the Philippines on 21 March 2005 had failed to comply with Philippine law. The husband cross-petitioned for nullity and followed this up with a further document entitled 'Application for cross petition of nullity' which was filed with the court on 4 October 2018.
3. Both parties have in the main represented themselves throughout these proceedings. The wife is a nurse. She was represented at the first hearing but has since acted in person including at this the final hearing. The husband is or was a solicitor and is now retired.
4. When the petition came before the court on 21 January 2019 Deputy District Judge Greatorex gave directions for each party to file evidence. It was listed again on 25 March 2019 and one of the issues for that hearing was whether any expert evidence was required. At that hearing the mother's counsel raised a number of technical points in relation to the husband's failure to comply with the Family Procedure Rules in relation to his answer and cross petition. Although the order of 21 January 2019 does not expressly rule upon the technical points taken the content of the order indicates that the court accepted that the matter should proceed on the basis of a petition for divorce and a cross petition for nullity. All subsequent orders proceeded on the basis that the two live issues before the court were divorce and nullity.
5. On 25 March District Judge James gave further directions. Both the petitioner and the respondent were in person. Neither party made an application for a part 25 expert on Philippine family law but at some stage extracts from the Philippine civil code and the Philippine family code were filed with the court. On that order it is recorded that
 - i) *the respondent asserts that the marriage is void ab initio on the basis that*
 - a) *the petitioner had contracted a previous undissolved marriage and*
 - b) *the marriage certificate indicates a ceremony in circumstances other than those set out by the petitioner in her evidence, and*
 - c) *in consequence of the venue shown on the certificate being unauthorised for marriage, the marriage is void.*
 - ii) *The evidence the respondent cites in support of i)a) is that the effect of Philippine law is such that the use of the father's surname on Ralph's birth certificate is conclusive evidence that Ralph's father was married to the petitioner at the date of Ralph's birth and that the petitioner has previously told the respondent of a ceremony she went through with Ralph's father at her house, which the respondent asserts amounted to a valid marriage. The*

petitioner admits that a ceremony took place but denies that it constituted a marriage valid in the law of the Philippines.

- iii) *The evidence the respondent cites in support of i)b) is the alleged discrepancy on the marriage certificate and information derived from and documented in the petitioner's application to enter the UK as the respondent spouse*
 - iv) *in relation to i)c) the ceremony between the petitioner and the respondent took place, it is agreed, at a hotel authorised for marriages but the certificate refers to it taking place at the offices of the official conducting the same.*
6. On 6 June 2019 HH J Hayes QC gave further directions. The husband attended in person at the Family Court in Leeds but the wife in error attended at the Huddersfield Family Court. The order made on 6 June 2019 also records the husband's case. One of the recitals notes that the husband took issue with part of the recital on the order of 25 March insofar as it appeared to state that the husband accepted that Casa Milan was an authorised marriage venue. The judge gave directions for the Home Office to disclose relevant information relating to applications made to the Home Office in relation to the wife and Ralph. HHJ Hayes QC directed that the proceedings be transferred to the High Court; I believe in fact this was intended to be an allocation to be heard by a judge of High Court level. He listed for directions before Mr Justice Cobb on 8 July 2019 and for final hearing before Mr Justice Cobb on the 15th to 17th of October 2019.
7. On 8 July 2019 Mr Justice Cobb gave directions and listed the case to be heard before me on 11 November.
8. The matter was listed for final hearing before me on 11 November 2019 and I adjourned that hearing and made directions, as I did not consider that the case was ready for final determination. The recitals to the order are as follows

Pursuant to section 8 (1) (a) Matrimonial Causes Act 1973 the Court thinking it fit so to do, directs that the papers identified in the Index attached to this order be sent to the Queen's Proctor to argue various questions which the court considers it both expedient and necessary to have fully argued in relation to a Petition for Divorce issued by the Petitioner Wife.

The questions are

- A. *Is the marriage of the parties undertaken in the Philippines on 21st March 2005 valid according to the law of the Philippines in particular having regard to*
 - a. *What effect under Philippine law does the inaccurate recording of the location of the marriage ceremony on the Marriage Certificate have,*
 - b. *What effect under Philippine law does the previous '1994 marriage' of the Petitioner have on the validity of the 2005 marriage? Are there any circumstances which show that either*
 - i. *The 2005 marriage was not a valid marriage under Philippine law at the time it was undertaken, or*
 - ii. *The 2005 marriage had become invalid or otherwise come to an end?*
 - c. *Are there any other matters of Philippine law which otherwise would affect the validity of the 2005 marriage?*

- B. *If the 2005 marriage is void or voidable does this court have jurisdiction to grant a decree of nullity in relation to it or can that only be undertaken in the courts of the Philippines?*
- C. *As a matter of English law is the husband precluded from arguing the validity of the marriage in the light of the submissions he made to the UK Visa Authorities?*
- D. *In the event that the court concludes that either of the parties has either produced altered or forged documents or that they have made false submissions to the Home Office in relation to visa applications in relation to the validity of the marriage what approach should the court take to referring that matter to either the Home Office or the Attorney-General to consider whether any further steps should be taken?*

And upon the court on the evidence currently before it having determined that it is necessary in order to justly determine the cross petition is to have evidence of the law of the Philippines relating to the validity of the 1994 and 2005 marriages.

9. I gave directions as to the filing of further statements from the wife and from the husband. Neither filed any further evidence. I also provided for the Queen's Proctor to apply for further directions including in relation to expert evidence on the law of the Philippines. It seemed clear to me from my involvement on 11 November 2019 that the prospect of the parties instructing a single joint expert on Philippine law was not viable given they were both acting in person and of limited means. There was a considerable delay in the process of involving the Queen's Proctor, my order coinciding with the final stages of the Parliamentary process relating to the U.K.'s exit from the European Union, the general election in December 2019 and the subsequent resumption of Parliamentary processes leading to the passage of the European Union (Withdrawal Agreement) Act 2020. Combined with some uncertainty as to the scope of the court's powers pursuant to section 8(1)(a) MCA 1973 this meant that it was only in March 2020 that the Attorney General's office confirmed that the Queen's Proctor had been instructed to make submissions as directed but that it was a matter for the parties to address the question of expert evidence on the law of the Philippines.

This Hearing

10. The order of 11 November 2019 originally provided for a three-day hearing which was expected to take place at the Family Court sitting in Leeds. That was duly listed for 30 March 2020. The development of the coronavirus pandemic intervened. The President of the Family Division issued '**COVID 19: National Guidance for the Family Court 19th March 2020**'. This was followed by the directions from the Lord Chief Justice on 24 February 2020 which stated that '*No hearings which require people to attend are to take place in any County or Family Court until further notice, unless there is genuine urgency and no remote hearing is possible. All cases currently being heard should be adjourned part heard so that arrangements can be made, where possible, to conduct the hearing remotely.*' I considered that it was likely that a fair hearing could be achieved remotely. I was conscious of the fact that at the hearing on 11 November 2019 both parties had expressed a wish for the matter to be concluded as quickly as possible.

11. Arrangements were made with the parties and the Queen's Proctor for this hearing to be conducted remotely by Skype for business. The 30th March was set aside for reading and for testing the Skype facility. The hearing itself was to take place on 31 March with 1 April being set aside for judgment writing. Testing of the Skype link took place successfully on 30 March.
12. In advance of the hearing Mr Murray on behalf of the Queen's Proctor provided written submissions in the course of 30 March 2020. The respondent filed an email in which he made legal submissions. A bundle of documents had been compiled from the court file and indexed and provided to the Queen's Proctor. I also had a copy of that bundle and the index was provided to each of the parties in advance of the hearing to try to ensure that all concerned had access to the relevant documents. At the commencement of the hearing it transpired that neither the petitioner nor the respondent had access to a complete set of the papers but it appeared that both had available to them the critical documents which were the relevant marriage certificates and Ralph's birth certificate.
13. The hearing was scheduled and convened by my clerk who ensured that all the parties were online before I joined the hearing. He confirmed who was on line, and that he was recording the hearing. At the commencement of the hearing I set out the ground rules that I expected to be followed during the course of the remote hearing in order to ensure that each party was able to give evidence, make submissions and participate to the fullest extent possible. They were

Remote hearing commencement protocol

1. *Confirm all present who were expected and no one unauthorised, save that a person could be present to assist the Litigants in Person with managing technology but not to help with giving evidence or submissions [As it happened this being a divorce hearing it was technically in open court and I was robed so I informed the parties that other parties could be present. The husband required assistance on a couple of occasions when his Tablet appeared not to be charging and when he lost his wifi connection]*
2. *Confirm all can hear and see everyone*
3. *Confirm all in a quiet and private space.*
4. *Confirm arrangements made to record. Remind parties it is an offence under the Coronavirus Act 2020 to make any unauthorised recording of the proceedings either through skype or with any other equipment.*
5. *If your wifi disconnects you click back on the link to re-enter – any difficulties e-mail my clerk who would remain available but with audio/video muted.*
6. *Prior to giving evidence I would ask the parties to affirm the truth of their evidence with the usual form of affirmation.*
7. *Conduct of hearing*
 - a. *Mute your microphone when not your turn to speak*
 - b. *No one to speak when someone else is speaking – no interruptions*
 - c. *Only start speaking when invited to by me*
 - d. *Anything urgent indicate by palm up to screen*
 - e. *When evidence is being called the judge, the witness and the questioner microphones should be on.*

- f. Remind all that failure to follow ground rules would result in difficulties conducting hearing and if I conclude someone is disrupting the hearing I will consider excluding them and re-commencing the hearing without them participating. [The husband had been very disruptive at the previous hearing and had been, putting it mildly, extremely rude to at least 2 judges during earlier hearings]*
8. *Set out the 'Agenda' for the hearing.*
14. Apart from minor technical glitches and occasional interruptions by the respondent the hearing proceeded in accordance with my directions. All involved abided in the main by the ground rules. The respondent's need for occasional assistance with the technology demonstrated the benefit of having a 'MacMicro' friend in easy reach. I think both the wife and husband were satisfied that the remote hearing had allowed them to put their cases and give their evidence in a fair way although I appreciate that the perception of the judge may be different to that of the parties: 'Remote Justice: a family perspective. Celia Kitzinger; The Transparency Project Blog 29 March 2020.' I was satisfied that a fair hearing had been achieved. I would like to express my thanks to the parties and to Mr Murray for making the remote hearing work as effectively as it did.
15. The petitioner gave evidence first. She made an affirmation and confirmed the truth of the contents of the two narrative statements that she had filed and added some supplemental material. She was cross-examined by the respondent and the Queen's Proctor and asked to clarify various matters by me.
16. The respondent also gave oral evidence making an affirmation. He had not complied with the orders for him to submit witness statements which was somewhat surprising given his profession but rather relied on a document entitled 'My Reply' which did contain an amended version of the usual statement of truth. He gave evidence in chief briefly and was asked a few questions by the petitioner, the Queen's Proctor and by me.
17. After the completion of evidence the respondent, the petitioner and the Queen's Proctor delivered their submissions. I allowed the parties a right to reply to the Queen's Proctor submissions and then adjourned to prepare this written judgement.
18. Regrettably I did not have expert evidence on Philippine Family Law which might have confirmed both the substantive law but perhaps more importantly the practice and application of that law to marriages in the Philippines. However, part of the court bundle comprised extracts from the Family Code of the Philippines (executive order number 209, July 6, 1987) and the Civil Code of the Philippines (Republic Act number 386, June 18, 1949). As both extracts derived from the same source I had assumed that they were provided by the respondent although in the course of the hearing he relied only on the Civil Code and said that the Family Code had been provided by somebody else and he appeared to be unaware of it. The respondent's submissions on the law were all based on the Civil Code and he said '*I am an expert in the Philippines family law*' [application for cross petition of nullity]. However, it appears that the Family Code of the Philippines came into effect on 3 August 1988 in accordance with article 257 of the Code which stated that it would take effect one year after its publication in a newspaper of general circulation. Circulation in

accordance with article 257 occurred on 4 August 1987. Article 254 of the Family Code repealed (amongst others) titles III & IV of the Civil Code which dealt with marriage replacing them with Titles I and II of the Family Code. Ultimately the fact that the respondent had relied upon repealed provisions of Philippine family law in support of his legal submissions did not affect the outcome as the relevant provisions were not that different, although it did illustrate an aspect of the respondent's character, namely his absolute conviction in the rightness of his own view and his derisive and abusive dismissal of those who disagree despite the foundations of sand on which his views might rest. Issues of foreign law are to be determined in this court as issues of fact not law.

19. In my recitation of the parties' cases and the evidence I do not intend to repeat all that was said but to distil what appear to me to be the essential elements.

The Wife's case

20. The wife invites me to conclude that her marriage to the husband was a valid marriage and that as a British citizen she is entitled to a divorce under English law. She maintains that they obtained a licence to marry as required under Filipino law and that the marriage was solemnised by the solemnising officer who is required to register the marriage with the Philippine Statistics Authority. The identity appears to have changed at some point from the Philippine Statistics Office to the Philippine Statistics Authority. She says that the marriage certificate shows that it was provided by the office of the civil registrar general, part of the PSO and that the place of marriage was the office of the solemnising officer at PM Apartments, room 101, 24 Matalino Street, Diliman, Quezon City. The certificate confirms a marriage licence was granted (199624), that it was witnessed, being signed by those witnesses and the husband and wife and that it was sealed through registration with the Philippines Statistics authority. She says that Casa Milan is a venue where legal marriages could be conducted in 2005 and remains so today.
21. In relation to the allegation that at the time of the marriage she remained married to Ralph's father she originally said that although she undertook a ceremony with Raphael Gragasin, that it was not legally recognised or registered nor did it comply with the requirements of a legally binding marriage. She said this was not uncommon where couples celebrate their relationship but they do not amount to legal marriages. Over the course of the evidence though she accepted that a marriage ceremony had taken place and that it had been registered. However, she said that when she had come to apply for a passport the Philippine statistics authority had been unable to locate a marriage certificate and she had been issued a passport as a single person. She also understood that Mr Gragasin had emigrated to the USA and his status had been accepted within that process to be that of a single man. She said she had therefore believed that she was not married and that this was confirmed by her obtaining from the national statistics authority a 'singleness' certificate or Certificate of No Marriage prior to the marriage ceremony in March 2005. She therefore continued to maintain that she did not remain validly married to Mr Gragasin in March 2005. In relation to the alleged defects in the process of marriage in 2005 she maintained that they were insufficient to render the marriage void or voidable and that it was an effective marriage in Philippine law and thus she was entitled to a decree of divorce in England.

22. In a note drafted by counsel for the wife dated 20 January 2019 it is noted that
- i) the husband is opposing the grant of a decree of divorce to gain financial leverage against the wife in respect of financial matters as he has proposed in open correspondence that he will not oppose the divorce if the wife agrees not to pursue any financial claims.
 - ii) The husband's references in correspondence to his having ended the marriage show that he treated it as a valid marriage.
23. The wife seeks an order that the husband pay her costs on the basis that his defence of her petition is motivated by an improper purpose, namely seeking to prevent her making a claim for financial relief.

The Husband's case

24. The husband's case in summary is that
- i) The marriage was bigamous and whilst it might be treated as effective in Philippine law it cannot be subject to a divorce in England but must be annulled.
 - ii) Alternatively, he argues that the marriage process did not comply with Philippine law, that the certificate wrongly records details of the marriage ceremony and thus is not a valid marriage. The defects he identifies are
 - a) the date is wrongly recorded,
 - b) the location is wrongly recorded and the witnesses were not present at the location or on the date recorded,
 - c) the singleness certificate procured by the wife was fraudulently obtained.
25. He says he wife told him
- i) that she had previously been married
 - ii) there is no divorce in the Philippines
 - iii) this marriage was void ab initio because it was
 - a) bigamous
 - iv) the ceremony did not comply with the law of the Philippines and the ceremony did not result in a valid marriage because
 - a) the marriage took place on 19 March not the 21st as stated on the certificate
 - b) it took place at a hotel, the Casa Milan, not a church or a legal office. He says it is not possible for hotels to be licensed to perform marriages.

- c) The wife fraudulently obtained a 'singleness' certificate in order to enable the marriage to the husband to take place. She did this by using her wrong maiden name 'Ortiz' rather than 'Padero' which would have revealed that she was not single. The husband says he was duped into paying for a fraudulent marriage certificate and for a full singleness certificate.
- 26. The husband said that the UK immigration authorities challenged the fact of their marriage and no tribunal ever accepted that they were married. Within that process when they were seeking to bring Ralph to the UK his birth certificate confirmed that the wife was married to Ralph's father Rafael Gragasin.
- 27. He says that he was entitled to make the submissions to the Home Office that the wife's marriage to Mr Gregasin was invalid and that his marriage to the wife was valid as these were matters of interpretation of Philippine law. He says they were rejected and that he is entitled to adopt his current position notwithstanding it is the opposite of what he argued before the immigration tribunal.
- 28. The position of the Queen's Proctor was as set out below. I would like to thank Mr Murray for the assistance that the Queens Proctor has given and for his conduct of the case.
 - i) In the position statement the Queen's Proctor declined to make submissions on the validity of the 1994 and 2005 marriages under Philippine law. I pressed Mr Murray for his assistance in the course of submissions with the following net effect.
 - a) The 1994 marriage certificate issued by the national statistics authority of the Philippines taken together with the wife's evidence appeared to demonstrate that a valid marriage had taken place in 1994. Nothing in the Family Code indicated any basis on which it could be said that marriage had been annulled or was otherwise invalid. Defects as to procedure did not appear under the provisions of the Family Code to make an otherwise valid marriage invalid.
 - b) If the 1994 marriage had not been annulled or otherwise was rendered invalid under Philippine law the wife would have remained validly married as at March 2005 and under article 35 (4) of the Family Code the marriage of March 2005 would be void from the beginning as a bigamous marriage. The exception under article 41 would appear not to be applicable because there was no well-founded belief that Mr Gragasin was already dead at the time of the marriage.
 - c) The defects identified by the respondent in the marriage process or the certificate did not render the marriage either void or voidable under the Family Code. Articles 2 and 3 of the Family Code set out essential and formal requisites of marriage the absence of which would render the marriage void ab initio. Defects in the essential requisites would not affect the validity of the marriage. As none of the essential or formal requisites of marriage were absent the Family Code would appear to provide that the marriage was valid.

- ii) In relation to the jurisdiction of this court to grant a decree of nullity the Queen's Proctor submitted that
 - a) section 5(3) of the Domicile and Matrimonial Proceedings Act 1973 provide that the court shall have jurisdiction to entertain proceedings for nullity of marriage if and only if the court has jurisdiction under the Council regulation. Given that both parties are habitually resident in the jurisdiction and domiciled here this court would have jurisdiction.
 - b) Section 11 and 12 of the Matrimonial Causes Act 1973 set out the grounds on which a marriage shall be held void and voidable. One of the grounds is that at the time of the marriage either party was already lawfully married.
 - c) In English law a foreign marriage is formally valid when and only when it complied with the formalities required by or recognised as sufficient by the law of the country where the marriage was celebrated (*lex loci celebrationis*). When determining whether to grant a decree of nullity the court would apply English law as set out in sections 11 and 12 of the Matrimonial Causes Act 1973.
 - d) A theoretical possibility exists of the Court determining pursuant to section 14 (1) of the Matrimonial Causes Act 1973 that the marriage could be annulled on the basis that the validity of the marriage would fall under the rules of private international law to be determined by reference to the law of the Philippines. In such a case the court would not be bound only to apply sections 11 and 12 MCA 1973 and might determine that the marriage was invalid and could be annulled for failure to comply with Philippine law. Mr Murray noted that there is no English authority on the issue of whether a marriage could be annulled in England on some ground quite unknown to English domestic law. I note that in *HM Attorney General v Akhtar* [2020] EWCA Civ 122 the Court of Appeal confirmed that defects in the form of a marriage only provided grounds for annulment if purported to comply with the provisions of the Marriage Act 1949 to 1986. Thus, defects in the form of marriage could only provide grounds for a decree of nullity if it fell within section 14 of the MCA 1973.
 - e) The Queen's Proctor as a cross reference identified the power of the court contained in section 55 of the Family Law Act 1986 to make declarations as to marital status including whether the marriage was at its inception a valid marriage or whether it subsisted on a specific date. Mr Murray noted that a court was required to make the declaration unless doing so would be manifestly contrary to public policy.
- iii) The Queen's Proctor submitted that the husband was not precluded from arguing before this court that the 1994 marriage was valid and that his marriage was invalid notwithstanding that he had argued to the contrary before the immigration tribunal. Mr Murray submitted that there is no form of estoppel which prevents the husband from now raising these points. It may be that the husband's credibility or veracity might be questioned as a result of the

change in stance and the unattractive position that he took in asserting that he would not oppose the wife's petition if she did not pursue a financial claim but the case is to be decided upon the available evidence.

- iv) The Queen's Proctor noted that it is frequently the case that where a party has forged documents the Queen's Proctor would seek an order permitting them to send their file of papers to the police to consider whether any offence it had arisen. Whether that arose in this case would depend on the courts determinations as to the facts both in relation to securing immigration status and generally in relation to the marriage.

The Legal Framework

Jurisdiction

- 29. Section 5 of the Domicile and Matrimonial Proceedings Act 1973 addresses the jurisdiction of High Court and County Courts. For the purposes of this case sub-section 2 provides that the court shall have jurisdiction to entertain proceedings for divorce if and only if the court has jurisdiction under the Council Regulation. Again, for the purposes of this case sub-section 3 provides the court shall have jurisdiction to entertain proceedings for nullity of marriage if and only if the court has jurisdiction under the Council Regulation
- 30. The jurisdictional basis of the wife's divorce petition was that both she and the husband are habitually resident in England and Wales. The court would have jurisdiction pursuant to the first indent of Article 3.1 of Council regulation 22001/2003 (BIIA) if both parties were habitually resident in England at the time of issue. Likewise, the court would have jurisdiction in respect of marriage annulment on the same basis.
- 31. The evidence establishes that both parties are habitually resident in England and Wales. The wife acquired habitual residence in England and Wales at some point after her arrival here in 2005. Her subsequent acquisition of British citizenship and her permanent residence here merely confirms her habitual residence. The husband appears to have been habitually resident in the jurisdiction throughout his life. Thus, the court has jurisdiction in both matters.

Grounds and Fact of Divorce and Nullity

- 32. Section 1(1) and (2)(e) of the MCA 1973 provide that a divorce petition may be presented on the ground that the marriage has broken down irretrievably and the court is satisfied that the parties have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition. Section 1 (4) requires the court to grant a decree of divorce if satisfied that the marriage has irretrievably broken down and that a fact is established.
- 33. Section 11(b) MCA 1973 provides that a marriage shall be void on the ground that at the time of the marriage either party was already lawfully married. Section 14 MCA 1973 provides that where any matter affecting the validity of a marriage would fall to be determined by reference to the law of another country nothing in sections 11 to 13 preclude the determination of that matter or require the application to the marriage of

the grounds in section 11 & 12 except so far as applicable in accordance with rules of private international law. Section 13(1) – (5) sets out a number of circumstances where it is provided that the court shall not grant a decree of nullity in relation to a voidable marriage if the court is satisfied of certain matters. That would suggest that there is no discretion to decline a decree of nullity under section 11. It seems to me, although I have not heard full argument on the point and do not need to determine it, that there might be circumstances where the conduct of the petitioner or indeed both of the parties was so egregious that as a matter of public policy the court might decline to grant a decree, particularly if the parties had a remedy in the country where the marriage took place.

34. The wife asserted that the marriage had broken down irretrievably by reason of the parties having lived apart for a continuous period of at least five years immediately preceding the presentation of the petition. The wife asserted that the parties had stopped living together as a couple on 10 October 2011 and had not cohabited again since. This did not appear to be in dispute.
35. The husband's assertion that the wife was already lawfully married would fall within section 11(b); his contention that procedural defects rendered the marriage invalid would potentially fall within section 14(1).

Marriage Validity

36. A foreign marriage will be recognised in English law if it is effective under the law of the country where it was undertaken. If it is recognisable it can be dissolved by a decree of divorce in the English court. *Asaad v Kurter* [2013] EWHC 3852 (Fam) [2014] 2 FLR 833 sets out the fundamental principle relating to the validity of foreign marriages and their recognition in English law.

'It is a well-established rule of private international law that if a marriage is formally valid in the country in which it took place, it is formally valid everywhere. Conversely, if it is not formally valid by the laws of that country, it is not valid anywhere; Dicey, Morris & Collins, The Conflict of Laws (Sweet & Maxwell, 14th edn, 2006), 17–003; Cheshire, North & Fawcett, Private International Law (Oxford University Press, 14th edn, 2008) (Cheshire), at p 878; and Berthiaume v Dastous [1930] AC 79. In its judgment in that case the Privy Council said, at 83:

'If there is one question better settled than any other in international law, it is that as regards marriage – putting aside the question of capacity – locus regit actum. If a marriage is good by the laws of the country where it is effected, it is good all over the world ... If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere ...'

37. I also note the potential relevance of one of the presumptions of marriage; namely the presumption of proper formality of a ceremony followed by cohabitation. The effect of this presumption is that if a marriage ceremony is proved the court should presume that the proper formalities were followed. The presumption is capable of rebuttal by strong and weighty evidence. *Hyatleh v Mofdy* [2017] EWCA Civ 70.
38. Issues relating to the law of the Philippines are for the purposes of English law issues of fact and I shall address those later in this judgement.

Factual Background and Conclusions

39. In this section I shall consider the documentary and oral evidence that has been put before me and set out my conclusions. Insofar as I reach conclusions they are reached on the balance of probabilities with the burden of proof lying with the person who asserts a fact. The burden of proof lies on the wife to prove a valid marriage capable of being dissolved by a decree of divorce. She could be assisted in this task by the presumption of formal validity. The burden of proof lies on the husband to prove on the balance of probabilities that the wife was already lawfully married and/or that the marriage was invalid for procedural irregularity. Of course, in practice there is an inevitable inter-linkage between the issues.
40. In determining the facts, the credibility of the parties has ultimately not played a very significant part and my conclusions are a product of my evaluation of the documents; in particular the marriage and birth certificates, the written statements of the parties, their oral evidence, the other documentary evidence including the materials provided by the Home Office and inferences that I have drawn from the other evidence.
41. The husband was born on 21 April 1953. He obtained a law degree and qualified as a solicitor. His first marriage ended in divorce.
42. The wife was born on 13 December 1972 in the Philippines. By late 1993 she was in a relationship with Rafael Gragasín. In her written evidence she said she was not and had never been married to him. She said they had a ceremony in the front room of her family home in 1994 which was to celebrate their relationship but was not legally recognised, not registered and did not comply with the requirements for a legally binding marriage.
43. On the 15th of July 1994 she gave birth to a son Ralph Gaebriel Padero Gragasín.
44. She said that Rafael subsequently abandoned her and emigrated to the United States of America in about 1998 to join his family there. He was granted a single person's Visa. She said that when she applied for a passport in her married name as Gerlie Gragasín that the National Statistics Authority could not find a record and so her passport was issued in her maiden name. This she said led her to the belief that the ceremony she had undertaken had not resulted in a marriage.
45. On being pressed in oral evidence about matters both by the husband and by Mr Murray a somewhat fuller picture emerged. It became clear that following the marriage in March 2005 that the husband and wife encountered very considerable difficulties in securing immigration status both for the wife and for her son Ralph. Having heard from both the husband and the wife I am satisfied that the wife's initial application for a Visa was refused by the Home Office. Although the husband's evidence was not always reliable his account of how the wife came to be granted a Visa seem to me to have the ring of truth about it. The husband's evidence was selective and he disclosed facts tactically in order to advance his case rather than providing a full and complete picture. However, his account of his conversation with the immigration officer when the wife was several months pregnant with their first child in autumn 1995 had a ring of truth about it. Although the Home Office file in relation to the wife's immigration applications has, for reasons which I am unclear,

not been disclosed as ordered, I am satisfied that the wife's Visa was granted, notwithstanding the Home Office suspicion that she was already married.

46. Subsequently when applications were made for Ralph's Visa these were refused by the entry clearance officer. In the course of their enquiries they obtained from the Philippine Statistics Authority a copy of a marriage certificate dated 15 January 1994 which recorded the marriage of Rafael and the wife. When the wife was questioned about this marriage certificate she accepted that it accurately showed,
- i) a ceremony had occurred at her family home on 15 January 1994
 - ii) officiated by the Rev William Englesias
 - iii) that a marriage licence had been obtained on 13 January 1994
 - iv) that several witnesses had been present and signed a certificate
 - v) that she and Raphael had signed a certificate.

Further she accepted that the marriage certificate appeared to have been registered with the National statistics office. She thus accepted that it appeared to show a genuine marriage. As it happens this is consistent with her written statement which recorded that she sought to obtain a passport initially in her married name. Why would she have done that if she had not believed herself to be married? However, she also said that when the National Statistics Office were unable to locate her marriage certificate that she came to believe that Rafael's family had manipulated the register to allow him to present as a single person for the purposes of emigrating to the USA.

47. The immigration application for Ralph also led at some point to the Home Office obtaining a copy of Ralph's birth certificate. It may have been provided by the husband and wife. There are two 'versions' of Ralph's birth certificate. They are identical save that one contains in a section entitled 'DATE AND PLACE OF MARRIAGE OF PARENTS' the entry 'January 15, 1994 Kaloocan City'. The other version has this section blank. In her statement the mother said that she had to annex to the birth certificate an admission of paternity by Rafael. This was plainly untrue. When questioned about the birth certificates the wife accepted that the original birth certificate was that which showed the date and place of their marriage. She said that she applied for a replacement birth certificate at the time of Ralph's entry to school because she was unable to send him to school without his father's consent if they were married. Thus, she obtained, she says, a different version which omitted reference to the marriage.

48. The wife's account in relation to these explanations rings alarm bells. However, some support for her position came from an unlikely source, namely the husband. His position was that one of Rafael's close relatives worked in the Philippine Statistics Office and would have been in a position to alter or suppress the records in relation to Raphael's marriage in order to allow him to present to the US immigration authorities as a single person. The combined effect of their evidence, including the identity of the individual tended to suggest this was so. He also said that over the years he had come to the view that corruption was rife within the Philippines and that official (but inaccurate) documents could be obtained by paying excessive fees for them. He gave

as an example the fee he had paid in order to obtain the 'singleness certificate' or 'Certificate of No Marriage' which enabled he and the wife to marry in March 2005. He said he had paid what he believed to be an 'expedited' fee in order to speed the process but on reflection had concluded that the very large (by comparison to the cost of living generally in the Philippines) fee was paid in order to obtain a certificate which did not refer to the wife's earlier marriage to Rafael.

49. It is of course possible, as suggested by the husband in cross examination that the wife's obtaining of a passport which showed her to be single was a result of her own fraudulent actions but on fine balance I accept that as a result of actions probably taken to support Rafael's emigration to the USA the wife had come to believe that the fact of her marriage to Rafael might have been erased from the National Statistics Office records. However, I do not accept that she did not believe that she had been lawfully married on 15 January 1994. The totality of her evidence in relation to that event together with the marriage certificate produced at the request of the Home Office and Ralph's full birth certificate point plainly at the existence of a lawful marriage having been undertaken. Her evidence in its totality leads me to conclude that at that time of the marriage she believed she was lawfully married. She was pregnant at the time. The Philippine Family Code appears to require only five essential or formal requisites of marriage. These are the legal capacity of the contracting parties who must be a male and a female, consent freely given in the presence of the solemnising officer, the authority of the solemnising officer, a valid marriage licence, a marriage ceremony taking place with the appearance of the contracting parties before the solemnising officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age. All of those essential and formal requisites are present in relation to the January 1994 marriage. Thus, I conclude that according to Philippine law she was lawfully married and she believed herself to be lawfully married.
50. I am prepared to accept that subsequent events may have caused her to believe that the records of her marriage may have been 'lost' and that she may have believed that her marriage no longer appeared on the national statistics office registers. However, if she did believe that it was not because she doubted the lawfulness or the validity of her marriage but only because the records had somehow been interfered with. The wife gave no evidence which would support the existence of any reason for or court process which could have led to the annulment of her marriage under the Philippine Family Code. None of the reasons for annulment under article 35, article 45 or 46 are alleged to have existed so as to render the marriage void or voidable. No court process was undertaken. The only provision of the Philippine Family Code which might have potentially been open to the wife was article 41 which applies where a spouse has been absent for four consecutive years and the left behind spouse has a well-founded belief that the absent spouse is dead. Even in those circumstances a summary process must be undertaken to obtain a declaration of presumptive death. None of this applies in the subject case.
51. I am therefore satisfied on the balance of probabilities that the wife was lawfully married on 15 January 1994 and that that marriage continued to subsist up to March 2005.
52. Thus, I conclude that the marriage entered into by the wife and the husband on 21 March 2005 was undertaken when the wife remained lawfully married to Rafael

Gregasin. That the wife may have believed that the records of that marriage no longer existed does not affect the fact that she was lawfully married. Even if she believed that the absence of records meant she was not lawfully married that is of no relevance to the fact that under Philippine law she remained lawfully married. The husband's state of knowledge at the time was of course derived from the information that the wife gave him. I did not hear sufficient evidence to enable me to reach a conclusion as to whether his state of mind was one of genuine belief that the wife's earlier 'marriage' was no more than an informal celebration or whether he turned a blind eye to a suspicion that the wife may have remained lawfully married.

53. Having reached that conclusion the marriage of 21 March 2005 would not constitute a valid marriage under Philippine law and thus on the *lex loci celebrationis* principles it would not be a marriage that would be capable of recognition in English law. It thus could not be a marriage that would be capable of being dissolved pursuant to section 1 of the Matrimonial Causes Act 1973. It would however be a 'marriage' that could be subject to a decree of nullity pursuant to section 11(b) of the Matrimonial Causes Act 1973.
54. The marriage certificate of the wife and husband appears to be issued by the office of the civil registrar general. The husband's name is recorded as Rodger Darrel Mernagh born on 21 April 1953 in Huddersfield. His citizenship is given as British and his then address of 19 Ash Meadow Close, Huddersfield HD2 1EX is given. His status is given as divorced. It gives the name of his father John Chadwick Mernagh and his mother Mona Mernagh.
55. The wife's name is recorded as Gerlie C Padero and her date of birth is given as 13 December 1972. Her place of birth is given as Valenzuela, Bulacen and her nationality as Filipino with an address in Quezon City. Her status is recorded as single. Both parties certified they are acting of their own free will and are solemnising the marriage in the presence of the person and witnesses and take each other as husband and wife. The certificate is signed by the husband and by the wife. The signatures appear to be similar to those which appear on documents signed by the parties. The certificate certifies that a marriage licence issued on 21 March 2005 at Quezon City in favour of the parties was shown to the solemnising officer, Rogelio T. Gumayod. His designation is given and the names and signatures of four witnesses appear. The marriage certificate appears to have been received at the office of the civil registrar on 5 April 2005.
56. A receipt dated 21 March 2005 in respect of the issuing of a marriage certificate to the husband and wife was issued by the Philippine statistics authority. The copy I have appears to have been generated on 31 October 2018.
57. I need not go into much detail in relation to the circumstances of the marriage or the procedural defects which the husband maintains would render the marriage invalid and susceptible to a decree of nullity under section 14 Matrimonial Causes Act 1973 given my conclusions on the 1994 marriage. The evidence of the parties was clear that the marriage ceremony took place at Casa Milan probably on the Friday, 18 March 2005. The solemnising officer attended at Casa Milan and the witnesses signed the documents at Casa Milan as did the wife and the husband. The parties then went on a honeymoon to a hotel some distance away. Neither of them seemed to think they were in Diliman, Quezon City on 21 March 2005 which is when the marriage

certificate records the marriage as having taken place. The husband recalled attending the law offices of the solemnising officer in order to collect a copy of the marriage certificate. The wife attended an interview with immigration officials on 23 March 2005 in Manila. Thus, the marriage certificate contains a number of details which are wrong. However, none of those errors would appear to amount to an absence of one of the essential or formal requisites for marriage as required by article 2 or article 3 of the Family Code of the Philippines. But for the fact that the wife remained legally married to Rafael Gragasín on 18 and 21 March 2005 I conclude that the steps the parties undertook would have resulted in the creation of a lawful and valid marriage. Even the obtaining of an erroneous 'singleness certificate' does not appear under Philippine law to result in invalidity.

58. Following the marriage, the wife and husband acted on it and both worked on the basis that they were lawfully married. They set up home in England and the former matrimonial home is in Huddersfield and is held in the husband's sole name. There are two children born of the marriage. The usual address of the family was 19 Ash Meadow Close (that given by the husband on the marriage certificate). Immigration applications eventually resulted in the wife obtaining a spouse's Visa and subsequently becoming a British citizen. After protracted immigration proceedings Ralph was granted permission to join them following the decision of Designated Immigration Judge McClure on 29 September 2008. That was granted on the basis of Ralph's right to family life.
59. The parties separated in 2011 when the wife appears to have left the husband. In any event the husband remained in the former matrimonial home and the children of the marriage including Ralph appear to have remained living with him.
60. It was the wife's application for financial relief that prompted the husband's challenge to the validity of the marriage. He said in evidence that he regretted having challenged it because he now realised that he could have brought a claim for financial relief against the wife and she would have been entitled to nothing. I believe he was referring to a claim for spousal maintenance; she working full-time in the NHS as a nurse and he being retired. This was perhaps another example of the husband's unreliability both in the positions he takes and his understanding of the law. The husband adopts a manipulative stance on his willingness to accept a divorce provided there were no financial consequences for him. It is indeed as Mr Murray submits an unattractive stance to adopt – perhaps far more than unattractive. Parliament has provided for financial remedies to be available to divorcing spouses and for the husband to say that he was prepared to be divorced but only on the basis that the law relating to financial remedies was not to apply to him is indeed unattractive, particularly coming from a member of the legal profession. However, having raised the issue of the validity of the marriage it was never going to be possible for the husband to go into reverse. The duty of the court on matters of status such as this would be to enquire into the facts and to reach a conclusion as to the parties' true status. Had the evidence established that the husband had knowingly participated in a bigamous marriage in the Philippines, this combined with his manipulative stance in relation to the granting of a divorce might have constituted sufficient reason on public policy grounds to decline to grant a decree of nullity. However, his unattractive position on the divorce does not on its own require me to consider further the public policy issue.

61. Neither the wife nor the husband emerge from these proceedings with much credit. Ultimately the marriage they entered into is void because the wife remained lawfully married to Mr Gragasin. I will therefore grant a decree of nullity. This does not affect the status of the parties children who continue to be treated as legitimate by operation of section 1(1) – (4) Legitimacy Act 1976; the presumption in sub-section (4) continuing to apply given my findings) .
62. I do not consider that a costs order should be made in favour of the wife in relation to the costs she incurred in the suit. Applying a ‘clean sheet’ approach she failed to secure a decree of divorce. The husband’s conduct of the proceedings both in the stance he adopted and his failure to file documents as required and his at times abusive attitude to the court would amount to conduct which would potentially weigh in favour of a costs order being made against him. However, he ultimately won on the issue. I therefore consider that no order for costs on the petition and cross petition is the right order to make. Mr Murray drew my attention to the provisions of section 8(2) MCA 1973 which provides the court with the “ability to make such order as may be just as to the payment by other parties to the costs incurred by the Queen’s Proctor.” However, the wife as an NHS nurse and the husband as a retired person are of limited means. The Queen’s Proctor made submissions at my direction rather than at any invitation of the parties. I therefore consider that it is just to make no order as to the Queen’s Proctor’s costs.
63. The orders I will make are:
- i) I dismiss the wife’s application for a decree of divorce.
 - ii) I grant the husband’s application for a decree of nullity
 - iii) I make no order for costs.