

COURT OF APPEAL
BENIN DIVISION
3RD DECEMBER, 1997. CA/B/67/96
CORAM:- S. A. AKINTAN, M. MOHAMMED,
R. O. ROWLAND, JJCA.

S. O. AKEGBEJO & 3 OTHERS APPELLANTS
(For themselves and on behalf of the NASU,
NIFOR Branch of Junior Staff, NIFOR)

AND

DR. D. O. ATAGA RESPONDENTS
(Director, Nigeria Institute for Oil Palm Research)
COMMISSIONER OF POLICE, EDO STATE
VINCENT AMADIN (A.S.P.)
NIGERIA INSTITUTE FOR OIL PALM RESEARCH (NIFOR)

JURISDICTION - Federal High Court - Where claim involves a Federal Government Agency - Exclusive jurisdiction belongs to Federal High Court vide s. 230 (1) (q) and (s) of the 1979 Constitution.

JURISDICTION - Raising the issue of the court's jurisdiction - In the course of a reply to a motion is not wrong - And is not against demurrer proceedings.

FAIR HEARING - Jurisdiction - Allegation that the method adopted in raising the issue removed right to fair hearing - Is untenable - As the law requires that the issue can be raised at any stage of the proceedings.

FACTS

The plaintiffs/appellants at the Benin High Court claimed against the defendants/respondents inter alia a declaration that the termination or purported termination of the plaintiffs/appellants from the services of the Nigeria Institute for Oil Palm Research (4th defendant) is against the rules of natural justice, unlawful, null and void; a declaration that the Plaintiffs are still in the employ of the 4th defendant which is a Federal Government agency. The plaintiffs also filed a motion on the same date along with their writ of summons, in which they prayed the court for an order of interlocutory injunction restraining the defendants/respondents from forcibly ejecting the plaintiffs/applicants from their residential houses at NIFOR, Junior staff Quarters, Benin City pending the hearing and determination of the substantive suit. The motion was supported by a 16-paragraph affidavit and some exhibits. The defendants/respondents upon filing their notice of appearance, also filed an 82-paragraph counter affidavit, to which the appellants also filed a 35-paragraph reply.

The motion thereafter came up for hearing before Omaxe J. It was during the course of counsel's submission that learned senior counsel for the respondents raised the issue of the court not having jurisdiction over the claim and that the Federal High Court was the right court where the case ought to have been filed. His objection to the court's jurisdiction over the matter was based on the provisions of s.230(1) (q) & (s) of the Constitution Suspension and Modification Decree (N0. 107 of 1993). The learned trial judge upheld the objection and accordingly declined jurisdiction in the matter. He then ordered that the case be transferred to the Federal High Court, Benin for adjudication in accordance with the provision of s.22 (3) of the Federal High Court Act 1990. The appellants were dissatisfied with the ruling and have appealed against it to the Court of Appeal, Benin Division raising three issues, which the respondents substantially adopted.

ISSUES FOR DETERMINATION

"1. Whether or not, having regards to Order 24 , Bendel State High Court (Civil Procedure) Rules, 1988 as applicable to Edo State, s. 33 of the Constitution of the Federal Republic of Nigeria 1979 (as

amended) and the available evidence, the appellants have been accorded a fair hearing when the learned trial Judge suo motu held the 4th respondent to be a parastatal of the Federal Government, and using same to reach his decision to decline jurisdiction.

2. Whether or not a legal submission offered from the bar as was done by the learned senior counsel can take the place of evidence in the light of the provisions of Order 8, rule 1, of the Bendel State High Court (Civil Procedure) Rules 1988, as applicable to Edo State and judicial authorities and using same to reach a decision in breach of an earlier ruling and in further breach of the provision abolishing demurrer proceedings in the said Court?

3. Whether or not, the learned trial Judge was right in law to have held that Constitution (Modification and Suspension) Decree No. 107 of 1993, in the face of the stage of the proceedings and the applicable rules of court and constitutional provision is one that can be supported having regards to the available admissible evidence?"

HELD (Unanimously dismissing the appeal per lead judgment of AKINTANJCA)

Jurisdiction- Federal High court- Federal Government agency

1. The main grievances of the appellants in this appeal are premised on the mode by which the issue of jurisdiction was raised at the lower court, the allegation that the appellants' counsel was caught unawares and the contention that the lower court was wrong in declining jurisdiction, having regard to the plaintiffs' claim before the court. It is clear from the plaintiffs' claim before the court, the contents of the affidavits and other exhibits placed before the court, that the dispute before the court was in respect of industrial action between the Nigeria Institute for Oil Palm Research (NIFOR) and its staff. It is also a fact, of which the court was even entitled to take judicial notice, and which was clear from the contents of the documents placed before the court, that NIFOR is a Federal Government agency. The 1st defendant who was the Director of NIFOR, was sued in his official capacity; so also are the 2nd and 3rd defendants who were also sued in their official capacities as police offic-

ers⁴. The claim therefore comes within what can only be exclusively adjudicated upon by the Federal High Court by virtue of the aforementioned section 230(1) (q) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993. (p. 959 D)

B

Raising the issue of the courts jurisdiction

2. The next question is as to when and how the objection to the jurisdiction of the court should be taken. It is trite law that the issue of jurisdiction can be raised at any time and at any stage of a proceeding. As there is no specified format prescribed for raising such issue on jurisdiction, it will be out of place therefore to say that raising such issues that touch on jurisdiction had to be in the pleading. The point is that jurisdiction is the very basis on which a court or tribunal trying a case stands. It is therefore the life-line of all trials. A trial, therefore without jurisdiction is a nullity and a waste of the court's precious time and energy. The court is even required of its own volition to raise and determine the issue of its own jurisdiction in the matter before it at any stage of the trial: See Osadebay v. Attorney -General of Bendel State (1991)1 N.W.L.R. (Pt.169) 525; Petrojessica Enterprises Limited & Another v. Leventis Technical Co. Limited (1992) 5 N.W.L.R. (Pt.244)675. Applying the law as declared above to the facts of the instant case, I find nothing wrong in the situation where learned senior counsel for the defendants at the trial

⁴ With this holding in this case, does it mean that any case that has any Police man in his official capacity as a party should now be subject to the exclusive jurisdiction of the Federal High Court? In as much as NIFOR is a Federal Government agency and the Nigeria Police Force is also one, officials or staff of such bodies cannot themselves be referred to as Federal Government agencies. The position established by this case could be taken to mean that if a case is challenging steps taken by the agency itself and not just a staff of the agency, Federal High Court has exclusive jurisdiction. But if it is in respect of steps taken by staff of such agencies that cannot be attributed to the agency, whether such staff is sued officially or privately, the Federal High Court may not have exclusive jurisdiction. We hope there may soon be a clearer judicial clarification of this issue.

raising the issue of the court's jurisdiction in the course of his reply to the submission made by learned counsel for the appellant in support of the appellants' motion being argued before the court. Such a procedure was therefore not against the rule which proscribes demurrer proceeding as contained in Order 24 rule 1 of the Bendel State High Court (Civil Procedure) Rules 1988. (p. 960 A) B

Fair hearing - Jurisdiction

3. Similarly the allegation that the appellants' counsel was caught un-
 awares and the method adopted in raising the issue had denied the appel- C
 lants their right to fair hearing are totally untenable. As the law required
 that the issue could be raised at any stage of the proceedings and the
 facts on record show that this was done while the learned Counsel was
 present in court, there is therefore no evidence to support the contention D
 that the appellants were deprived of their right to fair hearing as en-
 shrined in the Constitution. It was not on record, nor was it alleged, that
 learned Counsel for the appellants was prevented from making any input
 for or against the issue of jurisdiction after it had been raised. (p. 960 G) E

REPRESENTATION

O. M. Jamgbadi for the Appellants

Chief C. O. Ihensekhien S.A.N. with, I. Ihensekhien (Miss) for the F
 Respondents

CASES REFERRED TO

Osadebay v. Attorney-General of Bendel State (1991)1 N.W.L.R. (Pt.169)
 525

Petrojessica Enterprises Limited v. Leventis Technical Co. Limited (1992)
 5 N.W.L.R. (Pt.244)675 H

Owoniboy Technical Services Limited v. John Holt Limited (1991)6
 N.W.L.R (Pt. 199)550

Utih v. Onoyivwe (1991) 1 N.W.L.R. (pt. 166)166.

Madukolu & Ors v. Nkemdilim (1962) 1 ALL N.L.R. 587 at 595.

Oloriode v. Oyebi (1984) 1 SCNLR 3900(1984) 5SC 1 at 32-33

Peenok Investments Ltd v Hotel Presidential Ltd. (1982)12.S.C. 1 at pp68-69.

B Ezomo v Oyakhine (1985) 1 NWLR (Pt2)195; (1985) 2 SC260 at 282

STATUTES AND RULES REFERRED TO

C Constitution Suspension and Modification Decree (No 107 of 1993) s. 230 (1) (q) &(s).

Federal High Court Act 1990, s. 22(3)

Bendel State High Court (Civil Procedure Rules) 1988 Order 214 rule 1, order 8 rule 1.

D Constitution of the Federal Republic of Nigeria, 1979 s.33.

LEAD JUDGMENT BY AKINTAN JCA

E This is an appeal from a ruling delivered by Omage J. at Benin High Court on 10/5/94 in which the learned trial Judge ruled that he had no jurisdiction to entertain the claim before him. He accordingly ordered that the case be transferred to the Federal High Court, Benin for hearing.
F The present appellants were the plaintiffs in the lower court while the present respondents were the defendants. The plaintiffs' claim as amended is as follows:-

G *"1. A declaration that the termination or purported termination, without notice or pay in lieu of notice and by a party who signed letter of 22/ 3 /94 who is an interested party. Dr. D. O. Ataga, as Director of the Nigerian Institute for Oil Palm Research, not served on the junior staff individually or collectively but by pasting on trees in the NIFOR Benin -City from the services of the Nigeria Institute for Oil Palm Research on the purported directive of the Federal Ministry of Agriculture with whom they have no privity of contract of service severally with effect from 10th of March, 1994 is against the rules of natural justice (nemo judex in causa sua), unlawful, illegal, null void and of no*
H

effect, and ultra vires.

2. A declaration that the plaintiffs are still in the employment and service of the NIFOR and are entitled to their full remuneration and all prerequisite of office from the date of the purported termination of appointment by the 1st and or /4th defendant. B

3. N100,000,000 (one hundred million naira claim jointly and severally) against all the 1st-3rd defendants for the arrest, vandalisation of properties, unlawful detention, humiliation and naked display of power causing the plaintiffs pains, torture psychological agony and estrange- C
ment from their environment.

4. That the directive of the 1st defendants that all workers whose names are contained in the letter of 22/3/94 should vacate their residential premises occupied virtuo officii within 48 hours is against the provi- D
sion and tenure of the Landlord/Tenant relationship or the statutory tenancy existing inter-partes.

5. That the letter of the 1st defendant aforesaid directing the 2nd and 3rd defendants by himself or his agents and all other officer serving under him to observe and endorse the order is unlawful, illegal and abuse E
of power.

6. An order of perpetual injunction restraining the defendants jointly and severally from carrying into effect the contents of the letter dated 22/3/94, except on due compliance with terms of contract of ser- F
vice .

7. That the destruction of the properties, and provocative acts of the defendants against the plaintiffs as wholly unlawful and unconsti- G
tutional, and acts designed to intimidate the generality of the workers.'

The plaintiffs also filed a motion on the same date along with their writ of summons. In it they prayed the court for the following reliefs:-

"1. An order of interlocutory injunction restraining the H
defendants /respondents from forcibly ejecting the plaintiffs/applicants from their residential houses at the NIFOR, Junior Staff Quarters, Benin City pending the hearing and determination of the substantive suit.

2. An order of interlocutory injunction restraining the defen-

dants /respondents from carrying into effect their threat to terminate the appointment of the workers on the basis of the letter dated the 22/3/94.

3. *An order of interlocutory injunction restraining the defendants/ respondents jointly and severally from further harassing, intimidating or destroying the properties of the plaintiffs until the hearing of this suit.*

4. *And for such further order(s) as the Honourable Court may deem fit to make in the circumstances."*

The motion was supported by a 16-paragraph affidavit sworn to by the 1st plaintiff/appellant. A number of documents were exhibited along with the affidavit. Among the documents so exhibited is a copy of a letter of termination of the appointment of some NIFOR staff and addressed to all Heads of Departments among others. The defendants (now respondents) upon filing their notice of appearance in the case, also filed an 82- paragraph counter- affidavit sworn to by the 1st defendant/respondent. A number of relevant documents were also attached to the said counter -affidavit. The appellants also filed a 35- paragraph reply to the counter -affidavit deposed to by the 1st appellant. The motion thereafter came up for hearing before Obaseki J. It was during the course of counsel's submission that learned senior counsel for the defendants/ respondents raised the issue of the court not having jurisdiction over the claim and that the Federal High Court was the right court where the case ought to have been filed.

The learned Senior Counsel based his objection to the court's jurisdiction over the matter on the provisions of section 230(1) (q) & (s) of the Constitution Suspension and Modification Decree (No.107 of 1993). The subsections provide as follows:

'230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from:-

(q) the administration or the management and control of the Federal Government or any of its agencies;

(s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies."

The learned trial Judge upheld the submission by learned Senior Counsel for the defendants and accordingly declined jurisdiction in the matter. He then ordered that the case be transferred to the Federal High Court, Benin for adjudication in accordance with the provision of section 22 (3) of the Federal High Court Act 1990. The court also subsequently granted an application for stay of action against the defendants pending the trial of the case at the Federal High Court..

The plaintiffs were dissatisfied with the ruling of the court in which it declined jurisdiction in the matter and they have appealed against it to this court. In all, six grounds of appeal were filed against the ruling.

The parties filed and exchanged their briefs of argument in this court. The appellants formulated the following 3 issues for determination in the appeal:-

"1. Whether or not, having regards to Order 24 , Bendel State High Court (Civil Procedure) Rules, 1988 as applicable to Edo State, S. 33 of the Constitution of the Federal Republic of Nigeria 1979 (as amended) and the available evidence, the appellants have been accorded a fair hearing when the learned trial Judge suo motu held the 4th respondent to be a parastatal of the Federal Government, and using same to reach his decision to decline jurisdiction.

2. Whether or not a legal submission offered from the bar as done by the learned senior counsel can take the place of evidence in the light of the provisions of Order 8, rule 1 , of the Bendel State High Court (Civil Procedure) Rules 1988, as applicable to Edo State and judicial authorities and using same to reach a decision in breach of an earlier ruling and in further breach of the provision abolishing demurrer proceedings in the said Court?

3. Whether or not, the learned trial Judge was right in law to have held that Constitution (Modification and Suspension) Decree No. 107 of 1993, in the face of the stage of the proceedings and the applicable rules of court and constitutional provision is one that can be sup-

ported having regards to the available admissible evidence?"

The respondents adopted the issues as formulated by the appellants except that the 3rd issue was reworded. As I do not consider the third issue as reworded as making much difference from the original draft of the appellants, I consider it unnecessary to reproduce it in this judgement.

The appellants' main complaint against the ruling as canvassed in the 3 issues in the brief and in the oral presentation of their case by Mr. Jamgbadi, learned counsel for the appellants, is that it was wrong for the learned trial Judge to have based his ruling on the submission of Chief Ihensekhien, S.A.N., learned Senior Counsel for the respondents. It was alleged that the issue of the court's jurisdiction was raised by the learned Senior Counsel for the first time during the course of his reply to the submission made by the appellants' counsel in support of their motion. The court was said to have acted erroneously by accepting the submission because the appellants were caught unaware and that the proper procedure the learned Senior Counsel ought to have followed was either to give the appellant due notice of the objection or raise such in their pleading or in an affidavit.

Reference was also made to Order 24 of the Bendel State High Court (Civil Procedure) Rules 1988 which prohibits demurrer practice and directs that all objections are to be raised in the pleading. It was then submitted that the procedure adopted was totally improper and deprived the appellants the right to fair hearing guaranteed under the 1979 constitution.

It was finally submitted that the High Court was the proper court having jurisdiction to try the case having regarded to the plaintiffs' claim.

It was submitted in reply both in the respondents' brief and in the oral presentation made by Chief Ihensekhien, S.A.N. learned Senior Counsel for the respondents, that it was clear from the plaintiffs' claim as framed that the High Court lacked jurisdiction to try the case. Specific reference was made to the provisions of section 230 (1) (q) & (s) of the Constitution of the Federal Republic of Nigeria 1979 as amended by De-

cree No. 107 of 1993 by which exclusive jurisdiction to try cases arising from disputes emanating from the administration or management and control of the Federal Government or any of its agencies is conferred the on Federal High Court. It was further contended that since the present action was against the Director of NIFOR and NIFOR itself and the dispute was over trade dispute between NIFOR and its workers, the matter therefore came within what only the Federal High Court could exclusively try by virtue of the afore-mentioned section 230 (1) (q) & (s) of the Constitution as amended by Decree No. 103 of 1993.

As to the time of raising the objection, it was submitted that the issue of jurisdiction could be raised at any stage of the proceedings and the mode of raising it could be viva voce without the formality of a motion. The decision in Petrojessica Enterprises Limited & Another. v Leventis Technical Co. Limited (1992) 5 N.W.L.R. (Pt 244) 675 was cited in support of the submission.

The main grievances of the appellants in this appeal are premised on the mode by which the issue of jurisdiction was raised at the lower court , the allegation that the appellants` counsel was caught unawares and the contention that the lower court was wrong in declining jurisdiction, having regard to the plaintiffs` claim before the court. It is clear from the plaintiff s` claim before the court, the contents of the affidavits and other exhibits placed before the court, that the dispute before the court was in respect of industrial action between the Nigeria Institute for Oil Palm Research (NIFOR) and its staff. It is also a fact, of which the court was even entitled to take judicial notice, and which was clear from the contents of the documents placed before the court, that NIFOR is a Federal Government agency. The 1st defendant who was the Director of NIFOR , was sued in his official capacity; so also are the 2nd and 3rd defendants who were also sued in their official capacities as police officers. The claim therefore comes within what can only be exclusively adjudicated upon by the Federal High Court by virtue of the aforementioned section 230(1) (q) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993.

The next question is as to when and how the objection to the jurisdiction of the court should be taken. It is trite law that the issue of jurisdiction can be raised at any time and at any stage of a proceeding. As there is no specified format prescribed for raising such issue on jurisdiction, it will be out of place therefore to say that raising such issues that touch on jurisdiction had to be in the pleading. The point is that jurisdiction is the very basis on which a court or tribunal trying a case stands. It is therefore the life-line of all trials. A trial, therefore without jurisdiction is a nullity and a waste of the court's precious time and energy. The court is even required of its own volition to raise and determine the issue of its own jurisdiction in the matter before it at any stage of the trial: See Osadebay v. Attorney -General of Bendel State (1991)1 N.W.L.R. (Pt.169) 525; Petrojessica Enterprises Limited & Another v. Leventis Technical Co, Limited (1992) 5 N.W.L.R. (Pt.244) 675; Owoniboy Technical Services Limited v. John Holt Limited (1991)6 N.W.L.R (Pt. 199)550; and Utih v. Onoyivwe (1991) 1 N.W.L.R. (pt. 166)166.

Applying the law as declared above to the facts of the instant case, I find nothing wrong in the situation where learned senior counsel for the defendants at the trial raising the issue of the court's jurisdiction in the course of his reply to the submission made by learned counsel for the appellant in support of the appellants' motion being argued before the court. Such a procedure was therefore not against the rule which proscribes demurrer proceeding as contained in Order 24 rule 1 of the Bendel State High Court (Civil Procedure) Rules 1988.

Similarly the allegation that the appellants' counsel was caught unawares and the method adopted in raising the issue had denied the appellants their right to fair hearing are totally untenable. As the law required that the issue could be raised at any stage of the proceedings and the facts on record show that this was done while the learned Counsel was present in court, there is therefore no evidence to support the contention that the appellants were deprived of their right to fair hearing as enshrined in the Constitu-

tion. It was not on record, nor was it alleged, that learned Counsel for the appellants was prevented from making any imput for or against the issue of jurisdiction after it had been raised.

In the result, I hold that there is totally no merit in the appeal. I accordingly dismiss it in its entirety. The ruling of the lower court is B accordingly affirmed and the respondents are awarded N2,000.00 costs.

MOHAMMED JCA

The main issue being raised in this appeal is one of jurisdiction. C
It is also apparent that the main complaint of the appellant rests with the way and manner the learned Senior Counsel for the respondents raised the question at the lower court. It must be emphasised that the issue of D
jurisdiction is so radical that it forms the foundation or pivot of adjudication. If a court lacks jurisdiction, it also lacks the necessary competence to try the case at all. A defect in competence is fatal, for the proceedings are null and void ab initio, however well conducted and well decided they may otherwise be. A defect in competence is extrinsic to adjudication. E
The court must first of all be competent, that is, having jurisdiction, before it can proceed on any adjudication - Madukolu & Ors v. Nkemdilim (1962) 1 ALL N.L.R. 587 at 595. It is also trite that the issue of jurisdiction is a very fundamental one as it goes to the competence of the court F
or tribunal and so it can be raised at any stage of the proceedings in the High Court of first instance or in the Court of Appeal or even in the Supreme Court and by any of the parties or by the court itself suo motu. See Oloriode v. Oyebi (1984) 1 SCNLR 390 (1984) 5SC 1 at 32-33, Ezomo v Oyakhire (1985) 1 NWLR (Pt2)195 (1985) 2 SC260 at 282. It is there- G
fore the duty of the Judge where there are sufficient facts on the face of the records establishing a want of jurisdiction or competence in the court to raise the issue suo motu if the parties fail to draw the attention of the court to it. See Odiase v Agho (1972) 1 ALL NLR (Part 1.) 170. Thus H
the issue being radical and at the foundation of adjudication cannot be defeated by the provisions of Order 24, Bendel State High Court (Civil Procedure) Rules, 1988 as applicable to Edo State being raised and relied

upon by the appellant in this appeal. On the face of the records of this appeal, I am of the firm view that the issue of jurisdiction was correctly raised by the learned Senior Counsel for the respondents and rightly determined by the learned trial Judge.

B In the circumstances, I also see no merit in this appeal which is hereby dismissed with N2,000.00 costs to the respondent.

ROWLAND JCA

C I had the privilege of reading in draft the judgement just delivered by my learned brother Akintan, J.C.A. I agree with his reasoning and conclusion.

I would, however, add the following bit by way of emphasis.

D The real grievances of the appellants in this appeal are centred around the mode by which the issue of jurisdiction was raised at the lower court, the allegation that the appellants' counsel was caught unawares and the contention that the lower court was wrong in declining jurisdiction, E having regard to the plaintiffs' claim before the court. It is clear from the plaintiffs' claim as borne by the record of proceedings and the contents of the affidavits and other exhibits placed before the court, that the dispute before the court below was in respect of industrial action between F the Nigeria Institute for Oil Palm Research (NIFOR) and its staff. It was also clear from the documents placed before the lower court, that NIFOR is a Federal Government agency. The 1st defendant who was the Director of NIFOR, was sued in their official capacities as police officers. There is no doubt that the claim falls within the purview of G what can only be exclusively adjudicated upon by the Federal High Court by virtue of section 230 (1) (a) and (2) of the 1979 Constitution as amended by Decree No. 107 of 1993.

H Another question that is germane is when and how the objection to the jurisdiction of the court should be taken. It is now trite law that the issue of jurisdiction can be raised at any time and at any stage of the proceeding as the issue of jurisdiction is very fundamental to a trial court. It is, for instance, well known that where a court takes upon itself

to exercise a jurisdiction which it does not possess, its decision amounts to nothing see Peenok Investments Ltd v Hotel Presidential Ltd. (1982)12.S.C. 1 at pp68-69. Osadebay v Attorney-General of Bendel State (1991)1 N.W.L.R. (Pt .169) 525.

It seems to me therefore that there is nothing wrong in the situation where the learned counsel for the defendants at the trial raising the issue of the court's jurisdiction the course of his reply to the submission made by the learned counsel for the appellants in support of the appellants' motion being argued before the court. For this reason and for the fuller reasons ably given in the lead judgement of my learned brother Akintan, J.C.A. I, too hold that there is totally no merit in the appeal. It is therefore dismissed. I award N2,000.00 costs in favour of the respondents against the appellants.

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