

UGANDA / JUDGMENT

**Abucar and 7 Others v Attorney
General (Civil Suit No. 437 of 2019)
[2022] UGHCCD 49 (18 March 2022)
[2022] UGHCCD 49**

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Civil Suit No. 437 of 2019

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****CIVIL DIVISION****CIVIL SUIT NO. 437 OF 2019**

VERSUS**ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: DEFENDANT****BEFORE: HON. JUSTICE SSEKAANA MUSA****JUDGMENT**

The plaintiffs instituted this suit against the defendant seeking for orders that;

- 1. A declaration that the plaintiffs and other eligible members of the Uganda Somali's Community are citizens by birth.
- 2. A declaration that the members of the 8th Plaintiff are citizens by birth.
- 3. A declaration that the Plaintiffs and other eligible members of the Uganda Somali's community are entitled to issuance and renewal of Ugandan identification and citizenship related documents.

- 4. A declaration that members of the 8th plaintiff are entitled to issuance and renewal of Ugandan identification and citizenship related documents.
- 5. An order that the Directorate of Citizenship and Immigration Control issues national identity cards to eligible applicants who are Ugandans of Somali origin as citizens by birth.
- 6. An order that the National Identification Regulatory Authority issues national identity cards to the eligible members of the 8th plaintiff.
- 7. A declaration that the circular issued by the Deputy Passport Control Officer, Mr. Namara Anthony is irregular, null and void.
- 8. Costs of the suit.

The facts of this case are that; the plaintiffs were born in Uganda and to Ugandan parents who they allege to have lived in Uganda all their lives and are entitled by law to all benefits of citizenship. However, the defendant's agencies; the Directorate of Immigration and Citizenship and the National Identification and Registration Authority have denied the recognition of their citizenship by birth and access to and renewal of travel documents such as passports and identification documents such as the Ugandan National Identity card by verifying their citizenship by providing evidence of certificate of registration or naturalization or proof of intermarriages with the indigenous community in Uganda which discriminatory, unfair and illegal.

The defendant (Attorney General) by letter dated 23/06/2007 clarified the position of law and the citizenship status of Ugandans of Somali origin as nonindigenous persons or community being eligible for recognition as citizens by birth. However, the defendant's agents have continued to treat the plaintiffs as ineligible for citizenship by birth.

The defendant filed its written statement of defence wherein he denied all allegations made by the plaintiffs and contended that the criterion for the grant of citizenship is subject to the Constitution of Uganda which the plaintiffs did not prove and thus not entitled to the reliefs prayed for before this court.

The 1st -7 th plaintiffs were represented by *Mr. Francis Gimara (SC), Mr. Lastone Gulume and Mr. Habakurama Elias*, the 8th plaintiff by *Mr. Byabakama Plasto* whereas the defendant was represented by *Ms. Charity Nabaasa (SA)*.

The parties filed a joint scheduling memorandum wherein they proposed the following issues for determination by this court.

- *1. Whether the plaintiffs and the represented persons who are not members of the indigenous communities are eligible for citizenship by birth.*
- *2. Whether the actions of the Directorate of Immigrations and Citizenship in denying the plaintiffs citizenship are lawful.*

- *3. What remedies are available to the parties.*

The parties were ordered to file written submissions and accordingly filed the same. I have read the pleadings, evidence and submissions of all the parties and considered the same to determine this matter.

DETERMINATION OF ISSUES

1. *Whether the plaintiffs and the represented persons who are not members of the indigenous communities are eligible for citizenship by birth.*

The 1st -7 th plaintiff submitted that they are eligible for citizenship by birth under the Article 9 and Article 10 (b) of the Constitution of Uganda. It was stated that in a circular dated 15th March, 2007 on the guide to verification of citizenship, the deputy passport control officer directed all passport processing officers to subject the citizenship of Ugandans of Somali origin among other ethnicities to verification and directed that they can never be citizens by birth.

That in response to the impugned circular, the Attorney General (defendant) gave a legal opinion wherein he referred to Article 9 of the 1995 Constitution that persons who were citizens of Uganda before the coming into force of the 1995 Constitution remain citizens whether or not they belong to indigenous community in Uganda. Counsel submitted that the defendant however unlawfully neglected or ignored the binding opinion of the Attorney General and continued to deny the citizenship of Ugandans of Somali origin who were citizens by birth. Counsel relied on the case of *Gordon Sentiba & 2Ors vs Inspectorate of Government Supreme Court Civil Appeal No. 6 of 2008* where court held that the opinion of the Attorney General is binding on government.

Counsel further submitted that the plaintiffs presented their evidence of their places of birth in Uganda to the defendant's agencies on several occasions when registering and acquiring travel and identification documents. Notwithstanding that, the agencies that previously issued eligible members of the plaintiffs with passports and national identity cards as Ugandans by birth, have without any lawful justifiable cause denied the same persons benefits of citizenship and access to services.

Counsel further contended that the children of the plaintiffs born after 8th October, 1995 are eligible for citizenship by birth under Article 10 (b) of the Constitution. He noted that the general and liberal construction of Article 9 & 10 (b) of the Constitution shows that any person born after 8th October, 1995 is a citizen by birth where their Ugandan parents or grandparents acquired citizenship under the 1962 or 1967 Constitutions as citizens by birth.

Counsel relied on the case of Oyee Leonard & 2 Ors vs Zubied Abdulrahamn Civ. Appeal Mo. 27 of 2012 where court noted that the determination of the citizenship status question must be examined in the context of constitutional provisions.

Counsel then relied on Article 9 and 10 of the Constitution that provides for citizenship by birth and therefore submitted that the plaintiffs born to the Ugandan parents are eligible for citizenship by birth.

The 8th Plaintiff submitted that citizenship by birth is a creature of the 1995 Constitution and the Uganda Citizen and Immigration Control Act, Cap.66 that provides that all persons born in Uganda one of whose parents or grandparents was or is a member of the indigenous communities existing in Uganda as of 1st February, 1926 as set out in the third schedule to the Constitution is a citizen of Uganda.

It was submitted that the members of the 8 th plaintiff are multiracial Ugandans having one parent from India, Somalia, Yemeni, Oman and some are half castes. The second parent is from Uganda, from the indigenous communities set out in the third schedule of the Constitution most notably; Basoga, Baganda, Nubian, Banyankole, Batoro among others. The members of the 8th Plaintiff are born in Uganda, their parents were born in Uganda as well as their grandparents.

The 8th plaintiff contended that Article 7 (1) of the 1962 Constitution provided inter alia that every person who having been born in Uganda is on the 8th day of October, 1962 a citizen of United Kingdom and her colonies or a British protected person, shall become a citizen of Uganda. It was further noted that Article 9 of the 1995 Constitution saved this citizenship by providing that every person who on/ at the commencement of this Constitution is a citizen of Uganda, shall continue to be a citizen of Uganda.

Counsel cited the case of Oyee Leonard vs Zubeida Abdul Rahma (supra) wherein court observed that in deciding whether or not a person is a citizen of Uganda by birth, the court must carefully examine the question in the context of the constitutional provisions as well as the provisions of the Uganda Citizenship & Immigration Control Act, Cap. 66. It was stated that in order to be a citizen by birth, a person must have been born in Uganda, one of whose parents is a member of the indigenous tribes/ communities existing and residing in Uganda as of the 1st February, 1962.

The 8th plaintiff therefore, asserted that its members are citizens of Uganda by birth as they clearly come within the confines of the law under Article 9, 10 of the Constitution and section 12 of the Uganda Citizenship & Immigration Control Act, cap. 66.

The defendant defined citizenship by birth under Article 11 of the Constitution and section 12 of the Citizenship and Immigration Control Act. Counsel stated

that the plaintiffs rely on an opinion of the Attorney General which however it was concluded that the applications should be handled on a case to case base to determine whether the applicant falls within the categories stated under the Constitution that qualify citizenship or not.

He submitted that it is not the Attorney General's opinion that the plaintiffs should all be given automatic citizenship by birth. He stated that the plaintiffs relied on Article 9 of the Constitution that provides for citizenship to persons born in Uganda or to Ugandan parents before the coming into force of 1995 Constitution. He notes that the Directorate of Citizenship issued eligible members of Ugandan Somali's with passports and National Identification Card but contends that the plaintiffs do not show how they have been denied these services.

Counsel submitted that the question to court is whether the plaintiffs and multiracial community who have brought a representative action fall under Article 9. He contended that court to determine this, an assessment would have to be made and every person would need to bring documentation to prove and show his or her parents or grandparents and the need to follow what the law states/ prescribes.

Counsel further contended that the plaintiffs can also apply for citizenship under registration under Article 12 of the Constitution and section 14 of the Citizenship and Immigration Control Act.

The Defendant relied on the case of Centre for Public Interest Law & Anor vs Attorney General Const. Pet. No. 34 of 2010 to state that one of the cardinal rules of constitutional interpretation is that all provisions of the Constitution must be read together, one provision not negating the other, especially provisions touching the subject matter. He therefore invited court to use the general and liberal construction in interpretation of Article 9 of the Constitution.

He therefore submitted that Article 10 (b) of the Constitution does not qualify the Somali community because they would still have to prove that one of the parents or grandparents is a citizen by birth. He prayed that the rule of harmony in the case of Centre for Public Law Clinic (supra) should be used since section 9 must be read with other laws to come to a conclusive finding.

In rejoinder, the plaintiffs submitted that all documentation proving citizenship by birth that the defendant demands was compiled in the trial bundle and filed before court. He noted that the defendant admits that citizenship by birth is not for indigenous groups exclusively but proposes that the plaintiffs pursue citizenship by naturalisation and registration which is unjust for the plaintiffs as citizens by birth to be subjected to the process and requirements for registration or naturalisation.

Counsel submitted that the plaintiffs are citizens by birth and have no need for registration or naturalisation and prayed that this court finds so.

Analysis:

I have had the benefit of reading the pleadings, evidence and submissions on the court record as filed by the parties.

The Constitution of the Republic of Uganda, 1995 as amended and the Citizenship and Immigration Control Act, Cap.66 is very instructive and clear on who a citizen and the nature of citizenship. Thus whether a person is or is not a citizen of Uganda, the court must carefully examine the question in the context of the constitutional provisions and the provisions of the Uganda Citizenship and Immigration Control Act.

Article 9 provides that every person who on the commencement of this Constitution is a citizen of Uganda and shall continue to be such a citizen.

The plaintiffs in the instant case claim that they are citizens of Uganda by birth having been born in Uganda to parents were also citizens of Uganda. *Article 10 of the Constitution* provides for the citizenship by birth and states as such;

The following persons shall be citizens of Uganda by birth-

(a) every person born in Uganda one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926 and set out in the Third Schedule to this Constitution; and

(b) every person born in or outside Uganda one of whose parents or grandparents was at the time of birth of that person a citizen of Uganda by birth.

The plaintiffs argued that they are citizens of Uganda by birth under Article 10 of the Constitution. Further, the plaintiffs produced birth certificates, passports, national identity cards as proof of their citizenship by birth. The 8th plaintiff's

witness, Yasin Omari Assiniin who is a local council II Chairperson of Bukasa Ward-Kampala and the leader of the 8th plaintiff stated that he holds a national identity card and born in Uganda on the 15th December 1952. He stated that his parents were also born in Uganda and grandparents were from Buganda and Nubian and that his family has constantly lived in Uganda.

Yasin further stated that the plaintiffs have had challenges accessing national identification documents due to their skin colour as the immigration and passport officers insist that all persons ought to fulfil the requirement of being from indigenous tribes of Uganda or to be naturalised as the only options. He stated that the officials insist that all persons of Somali, Yemeni, Omani and Indian origin have to provide evidence of registration as citizens by birth or naturalisation and/or proof of intermarriages with an indigenous community and those who acquired the identification documents have had them confiscated by the border and immigration officials on grounds that they were illegally and/or irregularly issued to them because of their skin colour.

In the circular dated 15/03/2007, the Deputy Passport Control Officer, Mr. Namara Anthony wrote to all processing officers and stated that "... *any immigration officers worth his salt must be able to tell a non-citizen from an indigenous person. He further stated that other tribes the Somalis, Indians, Yemenis can never be citizens by birth unless there was an intermarriage with local communities as listed in the constitution. Thus half castes must first convince you that in their

line, there is or there was an intermarriage. Short of that, let them show evidence that they were either registered or naturalized! And the evidence is a copy of a certificate, nothing else! Lastly,*
all of you should internalize Article 12. The import of Article 12 is simple; once a refugee, always a refugee whether born in Uganda or not, inclusive of all your offspring.

I entirely disagree with this assessment made by the Deputy Passport Control Officer in his circular as the Constitution is very clear as to who a citizen by birth is. As earlier noted the plaintiffs filed before this court several documentations for all persons represented by the 8th plaintiff to include birth certificates that were issued by the government of Uganda declaring their places of birth and nationality as Ugandans such as national identity cards issued by the government of Uganda, Ugandan passports issued by the government of Uganda and birth certificates all declaring their nationality as such.

Section 32 (2) of the Citizenship and Immigration Control Act provides for the requirement of a person applying for a National Identity Card to fill in a form D to the Third Schedule. The information required to be furnished in that form includes; place and date of birth of the applicant, the village, sub-county, county and district of birth, indigenous community to which the applicant belongs, the father's names and place of birth (particulars of clan are required), mother's names and place of birth (particulars of clan are required), two contemporary descendants among others. I believe that upon issuance of the identity cards birth certificates and passports to the applicant, it would ordinarily appear that in the officers in charge of issuing these documents verified all the information and arrived to a conclusion that the person has provided the required information as to be granted the same and declared as a citizen.

In determining citizenship status, *Section 22 of the Uganda Citizenship and Immigration Control Act*, permits receipt as proof thereof, every document purporting to be a notice, certificate, order or declaration, or any entry in a register, or a subscription of an oath of allegiance or declaration of renunciation, given, granted or made under the provisions of Part III of the Act. However, documents in support of proof of citizenship will not be confined to those mentioned in that provision as court may admit other documents having a bearing on the question of citizenship in the sense of having some persuasive value on the mind according to ordinary process of reasoning. These may include birth certificates, a passport issued by the Government of Uganda, etc. *See: Oyee Leonard & 2 Ors vs Zubeida Abdulrahman Civil Appeal No. 0027 of 2012, Lal Babu Hussein and Others vs Electoral Registration Officer and others, 1995 AIR 1189, 1995 SCC (3) 100.*

In this case, presentation of documents such as a passports, birth certificates or national identity card by the plaintiffs is prima facie evidence of citizenship and may be rebutted by the defendant in some cases by proof of fraudulent acquisition or misrepresentation. Therefore, citizenship can be annulled even where the claimant is the holder of valid documents if such documents were obtained by fraud.

However, in the circumstances of this case, the defendant did not adduce any evidence claiming that the plaintiffs acquired their documents fraudulently but rather relied on the circular issued by the Deputy Passport Control Officer who seemed to base his position on the plaintiffs colour rather than the constitutional provisions thus being discriminatory and unfair to the plaintiffs.

This court therefore finds that the plaintiffs that were born in Uganda one of whose parents or grandparents is or was a member of indigenous communities existing within the borders of Uganda at 1st February, 1926 and those born to parents or grandparents who at the time of birth were a citizen of Uganda are citizens of Uganda by birth and should be declared as such upon providing the required documentation. The circular issued to give guidance is very erroneous, skewed and gives whims to immigration officers to determine citizenship by looking at skin colour based on indigenous Ugandans which is extremely dangerous, derogatory and discriminatory.

This issue is therefore answered in the affirmative.

Whether the actions of the Directorate of Immigration and Citizenship in denying the plaintiffs citizenship are lawful.

The 1st -7 th plaintiffs submitted that the actions of the Directorate of Immigration and Citizenship are unlawful and disregard the binding opinion of the Attorney General. Counsel further contended that the actions of the defendants agencies in denying the members of the Ugandan Somalis community who are citizens by birth, issuance of travel and identification documents as well as renewal of the same are discriminatory, illegal, irregular and an affront of the rule of law.

It was submitted that section 22 of the Uganda Citizenship and Immigration Control Act permits receipt of citizenship proof documents. Counsel relied on the case of Oyee Leonard & 2 Ors (supra) where court held that the proof of documents among others include birth certificates and a passport issued by the government. He contended that the actions of the defendant violate the guaranteed right of equal treatment and protection under the law and freedom from discrimination of persons on basis of race, colour, ethnic origin tribe or birth under Article 21 and 42 of the Constitution and this being contrary to Article 2 and the binding advise of the Attorney General which is an illegality.

The 1st -7 th plaintiff submitted that effects of the impugned circular actions thereunder in denying the Ugandans of Somali origin who are citizens by birth access to and renew travel and identification documents are evident under Article 17 of the Constitution as the plaintiffs have been unjustly denied their rights and entitlements. Counsel noted that the International Court of Justice in the **Nottebohm case (Lichtenstein v Guatemala)* [1955] ICJ* court noted the importance and effects of nationality as serving above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligation which the law of the state in question grants to or imposes on its nationals.

The 8th plaintiff submitted that the Deputy Passport Control officer issued a circular to the effect that Somalis, Yemenis, Oman, Indian and all half castes can never be citizens by birth and that before the issuance of new passports or renewing the same, the said persons must provide proof of registration and/ or naturalisation, proof of intermarriage with an indigenous community among others.

The 8th plaintiff cited Article 10 of the 1995, Constitution and section 12 of the Citizenship and Immigration Control Act on who qualifies to a citizen and noted that race, colour, ethnic origin, intermarriage are not among the legal requirements provided for under the law regarding proof of citizenship.

It was submitted that most of the members of the 8th plaintiff have one black parent from the indigenous communities of Uganda and one coloured parent that makes their skin light which does not mean that they are alien thus warranting denial of citizenship and other documents in proof of citizenship such as National identity card and passports.

The 8th plaintiff therefore submitted that the actions of the officers of the defendant in denying the members of the 8th plaintiff citizenship and documents in proof thereof are unlawful, arbitrary, callous, irregular and discriminatory under Article 21 (1) of the Constitution and as stated in the case of Christopher Madrama vs Attorney General Const. Pet. No. 1 of 2016.

The defendant submitted that the circular issued by the directorate does not override the Constitution of Uganda and other laws that govern the citizenship of an individual. He contended that the Constitution is clear as to who is a citizen by birth and not every person of Somali origin is a citizen by birth. The defendant contended that the plaintiffs have not shown that applications were presented to the secretary of the board and the same were rejected.

The defendant further contended that people who acquired citizenship after birth by way of registration or naturalization cannot transmit citizenship to their children. Citizenship is only limited to members of the indigenous communities of Uganda listed in the third schedule to the Constitution. Counsel stated that the case of the Somali's community and multiracial community citizenship by birth is not automatic.

The defendant noted that in the case Oyee Leonard & 2 Ors (supra), the judge stated that presentation of documents such as a passport, voter's card or national identity card will only be prima facie evidence of citizenship which may be rebutted in some cases by proof of fraudulent acquisition. The defendant thus contended that citizenship needs proof on a case by case basis and should not have been handled as a representative action.

The defendant relied on the case of Carolyn Turyatamba & 4 Ors vs Uganda Land Commission and Attorney General, Const. Pet. No. 15 of 2006 to explain discrimination for purposes of Article 21 to mean to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth or religion, social or economic standing, political opinion or disability.

He therefore submitted that discrimination does not arise in the above circumstances as citizenship is determined by the law.

Analysis

As earlier noted, the Constitution provides for a citizen by birth under Article 10 and this is further provided for under section 12 of the Citizenship and Immigration Control Act. Having found that the plaintiffs upon presentation of their documentations proving their citizenship by birth such as a passport, voter's card or National Identity Card that were issued by the government of Uganda was is prima facie evidence of citizenship and in the absence of any rebuttal by the defendant by proof of fraudulent acquisition or misrepresentation were entitled to be declared as citizens of Uganda by birth.

Furthermore the plaintiffs were denied the issuance of their passports and renewal together with other travel documents under this impugned circular. In the circumstances, the defendant's actions were in violation of the equal treatment and protection guaranteed under Article 20 and 21 of the Constitution as the plaintiffs were unfairly treated due to their colour and origin as stated

under the Deputy Passport Control Officer.

As rightly noted in the **Nottenbohm Case (Liechtenstein vs Guatemala) 1955 ICJ**, nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the state in question grants to or imposes on its nationals. In denying the plaintiffs their citizenship in accordance with the Constitution, the defendant acted unlawful as they were denied their basic rights their under as citizens of Uganda. However, in the circumstances of this case, the defendant did not adduce any evidence claiming that the plaintiffs acquired their documents fraudulently but rather relied on the circular issued by the Deputy Passport Control Officer who seemed to base his position on the plaintiffs colour rather than the constitutional provisions thus being discriminatory and unfair to the plaintiffs by denying them citizenship whimsically.

All cases of inequality or indifferent treatment of persons must comply with the Constitution, otherwise they would be declared unconstitutional and invalid. It is a general rule in international law that a state may only legislate on the citizenship laws of that state, and not with regard to other states. Every state therefore has its own rules pertaining to citizenship, immigration control and other related issues. The position that states individually regulate citizenship can sometimes lead to a situation where more than one state can acknowledge a person as a citizen of that state (dual citizenship).

The authority of states to regulate citizenship laws can also lead to a situation whereby a person is not regarded as a citizen of any state (often referred to as 'statelessness'). Many International Conventions have been established to safeguard against the negative effects of statelessness and double citizenship.

Article 15 of the Universal Declaration of Human Rights (the Universal Declaration) states that "[e]veryone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality".

The 1961 Convention aims to prevent statelessness and reduce it over time. It establishes an international framework to ensure the right of every person to a nationality. It requires that states establish safeguards in their nationality laws to prevent statelessness at birth and later in life.

The 1961 Convention on the Reduction of Statelessness provides; Article 1

A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) At birth, by operation of law, or

The right to be a citizen of a state has been called "man's basic right for it is nothing less than the right to have rights." *With citizenship being the "right to have rights,"* stateless persons have traditionally been seen as having no rights.

I therefore find that the actions of the defendant's officers were unlawful and in contravention of the Articles of the Constitution and other laws and their actions may render the plaintiffs and other persons in that category stateless due to denial of citizenship which is a violation of Uganda's international obligations.

What remedies are available to the parties?

The 1st -7 th plaintiff submitted that court has power under section 33 of the Judicature Act to grant all such remedies in respect of any legal or equitable claim. Counsel cited the case of Petnum Pharmacy vs National Drug Authority Misc. Cause No. 56 of 2018 where court observed that it is at liberty to grant discretionary remedies where there has been violation of principles of natural justice to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to.

Having found that the defendant's actions were unlawful and in contravention of the Constitution and the Citizenship and Immigration Act, this court makes the following orders;

- *1. A declaration that the circular issued by the Deputy Passport Control Officer, Mr. Namara Anthony is irregular, null and void.*
- *2. An order that the defendant declares the plaintiffs that fulfill the requirements under Article 10 of the Constitution and section 12 of the Citizenship and Immigration Control Act as citizens by birth.*
- *3. A declaration that the eligible Plaintiffs and other eligible members of the Uganda Somali's community that qualify for citizenship by birth are entitled to issuance and renewal of Ugandan identification and citizenship related documents.*

- *4. An order that the Directorate of Citizenship and Immigration Control issues national identity cards to eligible applicants who are Ugandans of Somali origin as citizens by birth.*

The 8th plaintiff prayed for general damages. As far as general damages are concerned, it is trite law that general damages are awarded in the discretion of court. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the defendant's actions. The plaintiffs did not lead any evidence to prove general damages and the same is disallowed.

This is a matter of public interest to all affected persons; therefore it is in the interest of justice that each party bears its costs.

I so order.

SSEKAANA MUSA JUDGE 18th March 2022

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