

UGANDA / JUDGMENT

Center for Health, Human Rights &
Development
(CEHURD) v Attorney General (Constitutional
Petition 8 of 2019) [2024] UGCC 14 (13 May 2024)
[2024] UGCC 14

COURT

Constitutional Court of Uganda

BEFORE

Egonda-Ntende, JCC, Bamugemereire, JCC,
Mulyagonja, JCC, Monica K. Mugenyi, JCC,
Gashirabake, JCC

CASE / FILE NUMBER

Constitutional Petition 8 of 2019

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THE REPUBLIC OF UGANDA THE CONSTITUTIONAL COURT OF UGANDA AT
KAMPALA, A CONSTITUTIONAL PETITION NO. 8 OF 2019

Coram:

[Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi and Gashirabake, JJCC]

CENTER FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT (CEHURD)
PETITIONER VERSUS ¹⁰ ATTORNEY GENERAL RESPONDENT

JUDGMENT OF THE COURT

This petition challenges provisions of the Venereal Diseases Act Cap 284 for contravening provisions of the Constitution of Uganda, 1995. The petitioner's case is that the Uganda Law Reform Commission (hereinafter referred to as the ULRC) was duty bound and therefore ought to have studied, reviewed and made recommendations for the systematic improvement, modernization and reform of the Venereal Diseases Act as mandated under section 10 of the Uganda Law Reform Commission Act Cap 26. He argues that as a result of the actions and, or inaction on the part of the ULRC, the law is inconsistent with and in contravention of Article 248 of the Constitution.

The petitioner argues that section 2 of the Venereal Diseases Act is inconsistent with and in contravention of Articles 8A (f), Zt (t) (a), 45 and Objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy of the Constitution. They allege that section 3(1), (2), (3) and (a) of the Venereal Diseases Act are inconsistent with and in contravention of Articles 8A(1), 21e), 24,

27e), 28(-), 42, 44(z)(c), 44G), 45 and objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy of the Constitution. They further allege that section 4(1) and (2) of the Venereal Diseases Act is inconsistent with and in contravention of Articles 21e), 24, 27(l) G), ZtQ), 43(2) (c) and 44 (d) of the Constitution.

She asserts that section 5 of the Act is inconsistent with and in contravention of Articles 8A(1), 21(2), 23O), e), 24, 27Q), 43(2)(C), 44(i), 45 and Objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy of the Constitution.

And finally invited this court to find that section 8 of the Act is inconsistent with Articles 8A(1), 21(2), 23O), e), 24, 27(2), 43(2)(C), 44G), 45 and Objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy of the Constitution.

The petition was supported by an affidavit sworn by Ms Noor Nakibuuka Musisi, the representative of the petitioner. The affidavit recapped what was stated in the petition.

The respondent opposed this petition and, in her response, contended that the petition does not raise a question for constitutional interpretation. She contended that section 2 of the Venereal Diseases Act which provides for examination of persons infected or suspected to be infected with venereal diseases is consistent with Article 8A of the Constitution which provides that Uganda shall be governed based on principles of national interest 20 25

and common good enshrined in the National Objectives and Directive Principles of State Policy.

Representation

At the hearing of the petition, Ibrahim Nsereko together with Ms Ruth Ajera represented the petitioner while Ms Lydia Mugisa represented the respondent. With leave of court written submissions were filed for both parties and have been considered in reaching the decision herein.

Grounds for Determination

- 1. Whether the petition raises questions for Constitutional interpretation?
- 2. Whether sections 2, 3 (1), 3e) 66) and (d) of the Venereal Diseases Act which provide for forced testing, examination and treatment of persons suspected to have a venereal disease are inconsistent with and in contravention of Articles 8A(1), 21(2), 24, 41(l)(a), 44 and 46 read together with Objective XIV G) and)O(of the National Objectives and Directive Principles of State Policy of the Constitution.

- 3. Whether sections 4(f) and (D) of the Venereal Diseases Act which provide for forced disclosure of a contact are inconsistent and in contravention of Articles 24, 27G)G) & 2, (A) (c) and 44 of the Constitution.
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- 4. Whether sections 5(3) and 6(c) of the Venereal Diseases Act which provide for detention of a person suffering from a venereal disease are inconsistent with and in contravention of Articles 25(1) & (2), 24, 25(z)(c) and 44 (a) of the Constitution.
- 5. Whether section 3(a) of the Venereal Diseases Act, which restricts the right of appeal, is inconsistent with and in contravention with Article 28(1) and 44(c) of the constitution.
- 6. Whether the failure of Uganda Law Reform Commission (OLRC) to study, review and make recommendations for systematic improvement, modernization and reform of the Act is inconsistent with and in contravention of Article 248 of the Constitution.
- 7. Whether section 8 of the Act which provides for criminal penalties against persons suspected or infected with a venereal disease is inconsistent with and in contravention of Articles 8A (1), 21(2) and 46 as read with Objective (iv) (b) and (v) of the National Objective and Directive principles of state policy of the Constitution.
- 8. Whether the petitioner is entitled to the declaration and other reliefs prayed for.

Submissions for the Petitioner

Ground One: Whether this Petition raises questions for constitutional interpretation?

Counsel submitted that on the face of it, the petition calls for interpretation of the Constitution which jurisdiction is the preserve of the Constitutional Court and that as a result this court is vested

with jurisdiction to determine the petition. He cited *Ismail Serugo v KCCA & AG* Supreme Court Constitutional Appeal No. 2 of 1998 to that effect.

Counsel relied on section 137 (S) of the Constitution, to submit that the constitutional court is the court mandated to handle matters where an act of Parliament or any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution.

Counsel contended that the Uganda Law Reform Commission has omitted to review, improve and modernize the Venereal Diseases Act, which is in contravention of Article 248 of the Constitution and also contended that sections 2, 3(1), (2), (3), (4), (5), (6), (7), (8) and 9 of the Venereal Diseases Act are inconsistent with and in contravention of Articles 8A(1), 21(D), 23(1) & (2), 24, 27(t) & (2), 28(7), 42, 3(2)(c), 44(a), (c) and 45 read with objectives XIV (b) and XX of the Constitution.

He prayed that the first ground be resolved in the affirmative.

Ground Two: Whether Sections 2, 3(D, 3e) 66) and (O of the Venereal Disease Act which provide for forced testing, examination and treatment of persons suspected to have a venereal disease are inconsistent with and in contravention of Article 8A(L), 21(2), 24, 27(1Xa), 44 and 46 read together with Objectives XV (b) and (O) of the National Objectives and Directive Principles of State Policy of the Constitution.

Counsel contended that sections 2, 3(1), (2), 5(b) and (d) of the Venereal Diseases Act violate the right to health, freedom from discrimination, freedom from cruel, inhumane and degrading treatment, the right to privacy and they are inconsistent with and in contravention of Articles 8A(1), 24, 27(1Xa), 44 and 45 read together with objectives XIV (b) and XX of the National objectives and Directive Principles of State Policy of the Constitution.

Counsel argued that while the Government undertook its positive duty by enacting the Venereal Diseases Act, it breached its negative duty of respecting the right to health when it provided for forced testing, examination and treatment of individuals suffering or suspected to suffer from a venereal disease in sections 2, 3 and 6 of the Venereal Disease Act. Counsel averred that coerced testing, examination and treatment gravely offends the right to informed consent and refusal of treatment by any patient provided for in the Uganda's Patients Charter. Further, that the World Health Organization condemns coerced treatment of persons suffering from sexually transmitted diseases or infections.

Counsel contended that subjecting a person suffering from ^a venereal disease to forced testing, examination and treatment exposes them to suffering indignity, humiliation, dehumanization and gravely violates their right to dignity and freedom from cruel, inhumane and degrading treatment guaranteed under Articles 24 and 44 (1) of the Constitution.

It was counsel's further contention that subjecting a person suffering or suspected to be suffering from a venereal disease to)q

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coerced examination and treatment undermines the right to privacy, freedom from discrimination and is in contravention of Articles 21(2) and 27(1)(d) of the Constitution.

He implored this Court to find that sections 2, 3(1), (2), 6(b) and (d) of the Venereal Disease Act, are inconsistent with and in contravention of Article 8A(1), 21(2), 24, 27(LXs), 44 and 46 read together with objectives XfV 0) and)O(of the National objectives and Directive Principle of State Policy of the Constitution.

Ground three: Whether sections a(1) and (D of the Venereal Diseases Act which provide for forced disclosure of a contact are inconsistent and in contravention of Article 24, 27(O)G) &' 2, 43(9,) (c) and 44 of the Constitution. 10

Counsel contended that the requirement for forced disclosure of a contact by a person suffering from a venereal disease invades a person's intimate life and privacy, which is safeguarded under Article 27(1X) of the Constitution. Counsel cited *JRB et al v Ministry of Defence* Case No. 14000, Supreme Court of Justice of Venezuela, (1998) where the court reasoned that the right to privacy included privacy with respect to one's intimate life and state of health.

Counsel submitted that forcing a person suffering from a venereal disease to disclose a contact is arbitrary, unfair and invades privacy of a person and undermines their human dignity which is unacceptable and not a demonstrably justifiable limitation in a free and democratic society in Uganda. and thus inconsistent with and

in contravention of Article na @)(d of the Constitution. He prayed that this court finds that sections 4(f) and 4(Z) of the Venereal Disease Act, which provide for forced disclosure of a contact are inconsistent with and in contravention of Article 24, 27(t)(o), 43(e)(c) and aa(d) of the Constitution.

Ground Four: Whether sections 3(3) and 6(c) of the Venereal Diseases Act which provide for detention of a person suffering from a venereal disease are inconsistent with and in contravention of Article 23(D & (D, 24, 43(2)(c) and 44 (a) of the Constitution.

Counsel submitted that the right to protection of personal liberty is guaranteed under Article 23(1) of the Constitution and it is also provided in Article 9 of the International Covenant on Civil and Political Rights ratified by Uganda and Article 3 of the Universal Declaration of Human Rights. Counsel referred to *Hon. Simeon Kuteesa & 2 Ors v Attorney General* Constitutional Petition No. 46 of 2011 and Constitutional Reference No. 64 of 2011 where this court found that the subject of the preservation of personal liberty is so crucial in the Constitution that any derogation from it, where it has to be done as a matter of unavoidable necessity, the Constitution ensures that such derogation is just temporary and not indefinite.

Counsel contended that venereal diseases such as genital hepatitis, herpes simplex virus, HIV are incurable and to subject persons suffering such diseases to detention until they are cured as

provided for in the impugned sections of the Act may lead to life incarceration which is arbitrary and unjustified derogation of the right to protection of personal liberty. Counsel added that the provision for detention of persons suffering from a venereal disease is further aggravated by the proviso for detention of persons in a hospital or clinic, which are not authorized places of detention envisaged under Article 23(D) of the Constitution.

It was counsel's submission that detention of a person suffering from a venereal disease subjects them to cruelty, dehumanization and undermines their human dignity. He cited Attorney General v Salvatori AbuH Constitutional Appeal No. 1 of 1998 where this court found that cruel degrading and inhuman treatment involves anything that causes severe pain and suffering to the victim either physically or mentally and should be construed in accordance with the circumstances of the case.

He prayed that this court finds that sections 3(3) and 5(c) of the Venereal Diseases Act are inconsistent with and in contravention of Articles 23(1) & Q, 24(3) and 44(a) of the Constitution.

Ground Five: Whether section 3() of the Venereal Diseases Act, which restricts the right of appeal, is inconsistent with and in contravention of Article 28(f) and 44(c) of the Constitution. Counsel submitted that the restriction of the right to appeal in section 3(4) of the Venereal Diseases Act violates the right to a fair hearing and therefore contravenes and is inconsistent with and in contravention of Articles 28(1) and 44(G) of the Constitution. He 20 25

submitted that the right to fair hearing is protected under Article 28(1) of the Constitution and cannot be derogated whatever the circumstances. He cited Uganda Law Society & Anor v Attorney General Constitutional Petition No. 2 & 8 of 2002 on the right to a fair hearing.

Counsel further contended that the right to a fair hearing is embedded in Article 42 of the Constitution, which guarantees ^a right to just and fair treatment in administrative decisions. Counsel submitted that the right to challenge an administrative decision made under the Venereal Diseases Act is guaranteed under Articles 28(f) and Article 42 and cannot be dispensed with whatever the circumstances.

Counsel submitted that it would be deplorable if the courts were estopped from bringing into question decisions of a Chief Medical Officer. He prayed that this honourable court finds and declares that section 3() of the Venereal Diseases Act is inconsistent with Article 28(1) and 44(c) of the Constitution.

Ground Six: Whether the failure of the Uganda Law Reform Commission (OLRC) to study, review and make recommendations for systematic improvement, modernization and reform of the Act is inconsistent with and in contravention of Article 248 of the Constitution.

Counsel submitted on the mandate of the Uganda Law Reform Commission under section 10 of the Uganda Law Reform Commission Act which is to study and keep under constant review

the acts and other laws comprising the laws of Uganda with a view of making recommendations for their systematic improvement, development, modernization and reform.

Counsel argued that despite the numerous visible anomalies in the Venereal Diseases Act, the Uganda Law Reform Commission has omitted to review, study and make recommendations for elimination of anomalies and or repeal of the Act, which contravenes and is inconsistent with Article 248 of the Constitution.

Ground 7: Whether section 8 of the Act which providee for criminal penaltiee against perœons suspected or infected with a venereal disease is inconeistent with and in contravention of Articles 8A (1), 21(2) and 46 ae read with Objectives XIV G) and)Q(of the National Objectives and Directive princplee of state policy of the Constitution.

Counsel submitted that criminal penalties premised on a person's health status as provided in section 8 ofthe Act violate the right to health and freedom from discrimination. Further, that it contravenes and is inconsistent with Articles 8A(1), 27(2) and 45 read together with objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy of the Constitution of Uganda.

Counsel contended that criminal sanctions targeting people with venereal diseases are unlikely to serve a valid purpose since they advance discrimination and deter access to health services.

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Counsel submitted that coercive public health measures drive away the people most in need of such services and fail to achieve their public health goals of prevention through behavioural change, care and health support. He relied on a paper by Prof Lawrence O Gostini the Politice of AIDS: Compulsory State Powere, Public Health and Civil Liberties, Ohio State Law Journal 1989; 49:1017 for his submission.

Counsel prayed that this court finds and declares that section 8 of the Act is inconsistent with and in contravention of Articlee 8A (1), 21(2) and 46 as read with Objectives XIV (b) and)O(of the National Objectives and Directive princplee of State Policy of the Constitution.

Ground 8: Whether the petitioner ie entitled to the declarations and other reliefs prayed for.

Counsel submitted that where statutory provisions offend the Constitution, the Constitutional Court is duty bound to declare it unconstitutional. Counsel prayed that this court be pleased to allow the petition and grant the petitioner all the declarations and orders sought in the petition.

The Respondent's Submissions

In reply, counsel for the respondent contended that the petition does not disclose any question for interpretation of any provisions of the Constitution. He cited *Christopher Martir Madrama v Attorney General Constitutional Appeal No. 1 of 2016* for the proposition that there is a rebuttable presumption that every

legislation is constitutional and the onus of rebutting the presumption rests on the person challenging the constitutionality of such legislation.

Counsel submitted that the petitioner has not disclosed any *prima facie* case of infringement of any rights guaranteed by the Constitution.

Further, that there was no evidence laid before court by the respondent to support the allegations against the respondent. He prayed that the petition be dismissed with costs.

Regarding the second ground, counsel submitted that the wording of section 2 of the Act is not mandatory or forceful as it states that a medical officer "may require any person..." counsel argued that the word "may" is permissive. It was counsel's submission that the application of the canon of constitutional interpretation is that where words in a section are clear and unambiguous, they should be given their natural or ordinary meaning. He cited *Attorney General v Salvatori Abuki Constitutional Appeal No. 1 of 1998* to that effect.

Counsel contended that the wording of section 2 of the Act denotes that there is no force required of a person and that the infected person whether known or suspected is at liberty to refuse to be examined. Counsel added that the Act does not prescribe a penalty for any person who refuses to comply with the provisions of section 2 of the Act. 25

Counsel further submitted that the object and purpose of the Act is to curb the spread of venereal diseases through encouragement of testing and treatment of infected persons. He averred that the Act does not prescribe any differential treatment to a person subject to the Act as envisaged in Article 21 (D) of the Constitution thus it does not discriminate against people. In addition, counsel submitted that pursuant to section 10 of the Venereal Diseases Act, it must be read together with the Public Health Act and must be construed from the perspective of public health.

Counsel prayed that this court finds that section 2 does not contravene the said Articles of the Constitution.

Grounds No. 3 and 6

Counsel submitted that the impugned provisions of section 3 and 5 of the Act form part of laws that were in existence before the coming into force of the 1995 Constitution, and Article 274 of the Constitution laid down a remedy for all laws that were not in conformity with the Constitution. Counsel cited Article 274 (1) of the Constitution, which provides that:

"Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution." 25

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It was counsel's argument that section 3 and 5 of the rD Act ought to be construed with the necessary modifications as to bring them into conformity with the Constitution. Counsel invited this court to construe the impugned sections mutatis mutandis to bring them in conformity with the Constitution.

Gnound No. 4

Counsel submitted that the promulgators of the Constitution envisaged scenarios where there were laws in force before the coming into operation of the 1995 Constitution and made provision for them under Article 274. Counsel contended that section 4 of the Act ought to be construed with the necessary modifications that bring them into conformity with the Constitution.

Gr.ound No. 6

Counsel submitted that the offences and sanctions set out in section 8 of the Act are acceptable and demonstrably justifiable in a free and democratic society to ensure compliance with the law. Counsel contended that section 8 does not violate the right to freedom from discrimination as alleged by the petitioner and therefore prayed that this court should hold Ground No. 6 in the negative.

Ground No. 7

Counsel referred to Article 248 of the Constitution, which establishes the Uganda Law Reform Commission and he contended that the mandate of the Law Reform Commission is to study and keep under constant review the Acts and other laws comprising the

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Laws of Uganda with a view to making recommendations for their systematic improvement, development, modernization and reform. Counsel submitted that Uganda Law Reform Commission has not failed to exercise its mandate under the Constitution and the Law Reform Act because the Venereal Diseases Act is still a valid law and it is recognized to be legal in a free and democratic society. Counsel prayed that the ground be resolved in the negative.

Ground No. 8

Counsel submitted that the petition is misconceived and the impugned sections of the Venereal Diseases Act ought to be construed in accordance with Article 274 of the Constitution. Counsel urged this court to dismiss the petition with costs.

Representation

At the hearing of the petition, Mr. Ibrahim Nsereko together with Ms. Ruth Ajera represented the petitioner while Ms. Lydia Mugisa represented the respondent.

The following issues were raised for determination by this court:

- 1. Whether the petition raises questions for Constitutional interpretation?
- 2. Whether sections 2, 3 (1), 66 and (d) of the Venereal Diseases Act which provide for forced testing, examination and treatment of persons suspected to have a venereal disease are inconsistent with and in contravention of Articles 8A (1), 24, 27(1)(d), 44 and 46 read together with Objective (IV) (G) and (O) of the National Objectives and Directive Principles of State Policy of the Constitution.

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- 3. Whether sections 4(f) and (o) of the Venereal Diseases Act which provide for forced disclosure of a contact are inconsistent and in contravention of Articles 24, 27(G) & 2, 43(2) (c) and 44 of the Constitution.
- 4. Whether sections 3(3) and 5(c) of the Venereal Diseases Act which provide for detention of a person suffering from a venereal disease are inconsistent with and in contravention of Articles 23(D & (2), 24, 48(c) and 44 (a) of the Constitution.
- 5. Whether section 3(a) of the Venereal Diseases Act, which restricts the right of appeal, is inconsistent with and in contravention with Article 28(1) and 44(c) of the constitution.
- 6. Whether the failure of Uganda Law Reform Commission (LRC) to study, review and make recommendations for systematic improvement, modernization and reform of the Act is inconsistent with and in contravention of Article 248 of the Constitution.
- 7. Whether section 8 of the Act which provides for criminal penalties against persons suspected or infected with a venereal disease is inconsistent with and in contravention of Articles 8A (1), 21(2) and 46 as read with Objective (V) (b) and (O) of the National Objectives and Directive principles of state policy of the Constitution.
- 8. Whether the petitioner is entitled to the declarations and other reliefs prayed for.

The petitioner sought to challenge various provisions of the Venereal Diseases Act Cap 284 as elaborately submitted by his counsel above. The respondent replied to each of the grounds propounded by the petitioner. We had opportunity to look carefully at the submissions of both parties, at the law and the case law. We thank counsel for all the effort applied. As a court we regret that it took this long to come up with a decision. Having had a careful look at the Public Health Act of Uganda we found that at the time the petition was filed, the Venereal Disease Act was still good law. However, on 24th March 2023, the amendment to the Public Health Act 2023 came into force. Its preamble is to the effect that it is:

"An Act to amend the Public Health Act; to provide for the repeal of obsolete provisions to provide for the revision of the fine payable for offences committed in contravention of the Act; to provide for the repeal of the Part on venereal diseases to provide for the repeal of references to construction and public sewers; to repeal the Venereal Diseases Act, Cap. 284 and the Immunization Act, 2017 and for related matters."

Section 97 of the Public Health (Amendment) Act provides as follows: 20

"97. Repeal of Venereal Diseases Act, Cap. 284 and Immunization Act, 2017. The Venereal Diseases Act, Cap. 284 and the Immunization Act 2017 are repealed."

In essence, while at the time the petition was filed it raised a question for the interpretation of the Constitution, by the time we heard the matter and delivered the Judgment, the Act had been repealed. This means that the matters in controversy are moot.

In *County of Ine Angelee v Davie*, 440 US 626, 631 (1978), the US Supreme Court stood for the proposition that a case is moot when the issues presented are no longer live or the parties lack a cognizable interest in the outcome.

The court added that:

"Jurisdiction, properly acquired, may abate if a case becomes moot because (1) there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. When both conditions are satisfied, the case is moot because neither party has a legally cognizable interest in the final determination of the underlying questions of fact and law."

We are persuaded by the reasoning in *Lewie v Continental Bsnl Corporation* 494 US 472, 474, that a lawsuit predicated upon a federal statute may also become moot if Congress amends the statute while the suit remains pending.

This petition essentially would have engaged in a discourse regarding the constitutionality of the provisions of the Venereal Diseases Act, Cap 284. A full discussion of the grounds becomes futile after the repeal of the Act since there is now no live

controversy before this court. This petition has been rendered moot and is hereby dismissed.

We would make no order as to costs.

Done at Kampala this 15th day of May, 2024.

F DRICK EGONDA NTENDE 10 JUSTICE OF THE CONSTITUTIONAL COURT

CATHERINE BAMUGEMEREIRE JUSTICE OF THE CONSTITUTIONAL COURT

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IRENE MULYAGONJA 20 JUSTICE OF THE CONSTITUTIONAL COURT

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25 MONICA K MUGENYI JUSTICE OF THE CONSTITUTIONAL COURT

CHRISTOPHER GASHIRABAKE JUSTICE OF THE CONSTITUTIONAL COURT

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