

UGANDA / JUDGMENT

Hassan & Another vKirabira & 2 Others (Civil Suit 343 of 2023)

[2025] UGHCFD 4 (30 January 2025)

[2025] UGHCFD 4

COURT

HC: Family Division (Uganda)

BEFORE

Echokit, J

CASE / FILE NUMBER

Civil Suit 343 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (FAMILY DIVISION)

CIVIL SUIT NO. 343 OF 2023 (ARISING FROM ADMINISTRATION CAUSE NO. 1322 OF 2021)

HASSAN KIGOZI LATO

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2. SYLVIA TABITHA NANTEZA

PLAINTIFFS

(Suing as beneficiaries of the estate of the late Magala Michael Mukasa alias Balaba)

VERSUS

KIRABIRA RAJAB BAZINDUSE

2. NAKISITU MARGARET MAGARA RESPONDENTS

SSENGENDO JAMES

Before: HON. LADY JUSTICE DR. CHRISTINE A. ECHOOKIT

JUDGEMENT

[1] INTRODUCTION:

This Judgment is in respect of a suit for revocation of letters of administration brought by Hassan Kigozi Lato and Sylvia Tabitha Nanteza (the Plaintiffs) against Kirabira Rajab Bazinduse & 2 others (the Defendants) on the ground of fraud and seeking the following remedies:

- a) Permanent injunction
- b) General damages
- c) Revocation of letters of administration held by the Defendants and grant of fresh letters of administration to the Plaintiffs
- d) An order directing the Defendants to render a true and proper account of the estate affairs to the lawful beneficiaries
- e) Mesne profits
- f) Costs of the suit
- g) Any other just and equitable relief deemed fit by court

[2] The Defendants filed a joint Written Statement of Defence and the Plaintiffs filed a rejoinder.

BACKGROUND:

[3] The Defendants obtained letters of administration to the estate of the late Magala Michael Mukasa on 6th April 2022 vide AC 1322 of 2021. The said letters of administration were allegedly obtained without the consent of the Plaintiffs who fear that the estate property has been left in a dilapidated state and that they are excluded from the affairs of the estate. The Defendants aver that the Plaintiffs were present in the family meetings for appointment of the Defendants as administrators; that the estate property is in good condition; that each of the Plaintiffs in fact occupies a room in the said property; and that the collection of rent from the rental rooms was handed over to a one Kajjo Mohammed until the 7th of July 2023 when he was stopped from collecting rent.

REPRESENTATION:

- [4] At the hearing, the Plaintiffs were represented by counsel Kenneth Kajeke while counsel Ruth Nampija represented the Defendants. The parties filed written submissions which have been duly considered by this Court in arriving at its decision.
- [5] At the trial, the 1st Plaintiff was the only witness (PW1) for the Plaintiffs.

- [6] The Defendants presented 4 witnesses. The first defence witness (DW1) was Mr. Jude Ayela Assistant Administrator General. He handled the file of Magala Michael Mukasa while it was in the Office of the Administrator General. DW2 was Kirabira Rajab Bazindusa who is also the 1st Defendant. DW3 was Nakisitu Margret Magara who is also the 2nd Defendant. DW4 was Nassuna Edith.

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ISSUES FOR DETERMINATION OF COURT:

- [7] In the scheduling notes, the following issues were raised for determination;
- 1. Whether the grant of letters of administration to the estate of the late Magala Michael Mukasa alias Balaba was lawful.
 - 2. Whether the parties are entitled to any remedies.

The Plaintiffs' case:

- [8] The gist of the Plaintiffs case is that they are children of the late Magala Michael Mukasa alias Balaba and so are beneficiaries of his estate; that the Defendants petitioned for letters of administration in respect of the estate of the late Magala Michael Mukasa alias Balaba without the consent of the Plaintiffs; that the Defendants are threatening to alienate and/or dispose and/or waste the estate property, for which the Plaintiffs seek a permanent injunction, mesne profits and general damages. I note that the middle Christian name of the deceased is sometimes spelt "Micheal" and at other times "Michael". Hence, this name is written with those variations throughout this judgement.

The Defendants' case:

- [9] The Defendants do not deny that the Plaintiffs are biological children of the late Magala Micheal Mukasa but aver that the Plaintiffs were part of the family meetings for appointment of the Defendants as administrators of the estate. They deny fraud or threatening to alienate and/or dispose and/or waste the estate property. They aver that the estate is still in good condition. They also state that if the Plaintiffs had not obstructed the family meetings, the Defendants would have filed an inventory and given an account about the estate.

DETERMINATION OF THE ISSUES BY COURT:

Issue 1: Whether the grant of letters of administration to the estate of the late Magala Michael Mukasa alias Balaba was lawful

- [10] The letters of administration were granted on 6th of April 2022 vide Administration Cause No. 1322 of 2021 to the Defendants KIRABIRA RAJAB BAZINDUSE (grandson), \$Delta\$

NAKISITU MARGRET MAGARA (daughter) and SSENGENDO JAMES (son) in respect of the estate of the late Magala Micheal Mukasa (exhibited P. EXH.1 and D. EXH.3).

- [11] Mr. Hassan Kigozi Lato (PW1) testified that he was not part of the process of the grant of letters of administration to the Defendants; that he got to know that the Defendants went to get letters of administration when he went to Najjanankumbi where the estate property is, and the tenants at the property as well as the 1st Defendant told him he had no powers there.
- [12] **Mr. Lato** averred in his witness statement that the Defendants got letters of administration illegally and by fraud, and that the Defendants had his signature on the consent and yet he was not there in Rubaga – where the family meeting to which he was not invited took place; that he attended the 1st meeting at Administration General's Office but does not remember signing anything at the Administration General's Office – his signature is a forgery; and that he did not agree to the appointment of the Defendants as administrators. A copy of the petition for letters of administration was exhibited as **P. EXH.2**. The petition includes the minutes of the Administrator General proving the process of obtaining a Certificate of No Objection (CONO) in respect of forwarding the petitioners to court for grant of letters of administration.
- [13] I have carefully examined the pleadings of the parties and the evidence adduced and have considered the submissions of counsel for the parties in arriving at this decision.
- [14] On perusal of the petition for letters of administration in P. FXH.2, I find that Hassan Kigozi and Tabitha Magala are both named among the 11 surviving children of the late Magala Michael Mukasa. The Plaintiffs in the present suit are Hassan Kigozi and Sylvia Tabitha Nanteza. The Defendants admit the Plaintiffs are children of the late Magala Michael Mukasa; so by inference, Hassan Kigozi and Tabitha Magala named in the petition are apparently the same as the Plaintiffs in this suit. There was no evidence brought to deny that inference.

[15] The Plaintiffs are aggrieved that the Defendants obtained letters of administration in respect of the estate of their father the late Magala Michael Mukasa alias Balaba without their consent. **DW1 Mr. Ayela** the Assistant Administrator General testified that he was allocated the file of the late Magala Michael Mukasa on 10th August, 2016; that he referred the family members for a family meeting before the Town Clerk Rubaga Division by letter dated 13th November 2018 and received a response from the Town Clerk by report dated 26th November 2018.

[16] The Town Clerk's letter stated as follows;

".. a family meeting was held and the family members chose the following to administer the deceased estate:

- 1- Kirabira Rajab grandson

- 2- Nakisitu Margret Magala daughter
- 3- Sengendo James son."

[17] Mr. Ayela testified that a total of 13 family members appeared before him on 13th of December, 2018 comprised of mainly grandchildren. Mr. Ayela then recorded in his minute as follows:

"I have explained to the family members the content of the Town Clerk's report and sought their views. They state that whatever is contained in the report is correct and they do consent that a CONO be issued to the people who were chosen in that meeting. They all consented by signing a consent."

[18] Mr. Lato stated that his signature at the Administrator General's Office was forged: however, he does not proceed to prove what his actual signature is and how it varies from the alleged forged one. Additionally, there was no call for a handwriting expert to prove the alleged forgery. In the absence of evidence of the alleged forgery, the account of Mr. Ayela is more believable. Mr. Ayela testified that the 1st Plaintiff (Hassan Kigozi Lato) was among the attendees before him; that Mr. Lato presented his national identity card and signed the

consent and attendance list; and that he usually does not require persons to sign the photocopy of their national IDs. He further testified that the 2nd Plaintiff did not appear before him on 13th December, 2018 but signed in the Town Clerk's report. Hence, he confirmed that both Plaintiffs gave their consent to grant of letters of administration.

[19] Mr. Ayela's minute action was then that the consent of the beneficiaries who did not attend the meeting in Rubaga should be obtained. During cross examination, Mr. Ayela testified that it was not necessary for the 2nd Plaintiff to appear before him since she had appeared before the Town Clerk. This court observes that indeed Mr. Lato's name did not appear among those who attended the meeting in the Town Clerk's report. However, according to the testimony of Mr. Ayela in paragraph 17 above and Mr. Lato's own testimony as appears in paragraph 12 above, he attended the meeting at the Administrator Generals office.

Subsequently, a family consent was submitted to Mr. Ayela referring to a family meeting held on 24th of April 2019 and was signed by;

- 1) Nanteza Annet Mary (granddaughter)
- 2) Nakajjo Christine (granddaughter)
- 3) Walusimbi Ssebagala Ronald (grandson)
- 4) Nabaggala Caroline (granddaughter)

- [20] Certified copies of minutes from the Administrator General and minutes from the Town Clerk were admitted as Defence exhibits D. EXH.1 and D. EXH.2, respectively.
- [21] Mr. Lato testified that his father's name is Michael Magala Balaba and not Magala Michael Mukasa. He showed the certificate of discharge of Mikael Magala from Uganda Protectorate Police dated 3/02/1954 and a General Receipt of City Council of Kampala of 8/4/1974 in the name of M. Balaba Magala in the name of M. B. Magala. He testified that the names variously stated in those documents belong to his father, while "Mukasa" has never been used to describe his father. The Uganda Protectorate Police discharge

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certificate and the General Receipt of City Council of Kampala were exhibited as Plaintiffs' exhibits P. EXH.4 and P. EXH.5, respectively.

- [22] It was submitted for the Defendants that the complaint by the 1st Plaintiff about the names of his late father was an afterthought because he had a chance to complain about the same when he attended the office of the Administrator General and the Town Clerk, but he did not.
- [23] I agree with counsel for the Defendants that if indeed it was true that the deceased was never called Mukasa, Mr. Lato ought to have brought that fact to the attention of the Administrator General during the meeting he attended. He cannot keep quiet about a presumed misrepresentation of the deceased name when the certificate of death of the deceased as presented to the Administrator General bore the name "MUKASA" (which meeting he attended) and only now come to court to voice his grievance. In any case, even if it was true that the deceased's name did not include "MUKASA", Mr. Lato apparently acquiesced to that name when he and his co-Plaintiff filed this suit stating that their consent to the grant of letters of administration in respect of the estate of the late Magala Micheal Mukasa was not obtained.
- [24] In my view, the parties ought to address the substance of their grievance rather than dwell on the issue of names – which, as shown in the exhibits, actually vary and are not used consistently, and the name "MUKASA" has been used right from the certificate of death upto lodging of the petition for letters of administration and the institution of this suit.
- [25] In paragraph 2 of his witness statement and during cross examination Mr. Lato testified that the 2nd Defendant Nakisitu Margret Magara is not a biological child of his late father. This is also reflected in the minutes of the family meeting held on 21st of May 2023 (Defence EXH.5(a) and (b) being the English translation). However, the petition for letters of administration named Nakisitu Margret Magara as a daughter to the deceased. On the 13th of December 2018 before the Administrator General, it is indicated that both Kasozi

Hassan Lato and Margaret Magala Nakisitu appeared as son and daughter of the deceased, respectively. At that time, Nakisitu was recorded as the daughter of the deceased. Other than Mr. Lato's assertion in his witness statement and during cross examination that Nakisitu was not a biological child of the deceased, there is no evidence to prove that claim, either by way of pronouncement by the deceased before his death, a DNA test or other cogent means. Hence, I will disregard that assertion.

- [26] The Plaintiffs averred that the Defendants have acted fraudulently by undervaluing the estate property, not obtaining the consent of the family members, neglecting to file an inventory and to render a true and proper account of the affairs of the estate to the lawful beneficiaries, and mismanaging the estate. DW2 who is also the 1st Defendant Mr. Kirabira testified that at the time of the petition for letters of administration, the petitioners had only estimated the properties of the estate. Mr. Kirabira admitted that he did not file an inventory at the time required in the letters of administration, nor did he file the final account. In his defence, he testified that when the letters of administration were obtained, the administrators called for family meetings to discuss how to distribute the estate but the meetings did not yield any result as the Plaintiffs used to distract the meetings.
- [27] It is my finding that fraud in respect of letters of administration and managing estates of deceased persons, involves dishonest or illegal actions taken during the administration process. Mr. Lato testified that the 2nd Defendant was not a daughter of the deceased, implying that she had falsely held out to be entitled to administer the estate when in fact she was not. I have discounted that claim in paragraph 25 above.
- [28] There was also a claim that the Defendants undervalued the properties of the deceased, and the rent collection was not clearly undertaken and accounted for. The Plaintiffs further contend that they have been excluded from the affairs of the estate; that if they had occupied the estate property they would have earned money; and that the inventory and final account of the estate were not filed in time, apparently due to the negligence of the administrators; and that they have suffered great loss and inconvenience due to the Defendants' acts, for which they are entitled to general damages.

- [29] In my view, valuation of property is not the mandate of the Defendants and their inability to do so should not be visited upon them as fraud. In the circumstances of the present suit, the failure by the Defendants to file an inventory and to make a final account of the estate has been adequately explained by the Defendants. Hence, it does not amount to fraud as alleged by the Plaintiffs. Instead, it is a failure to comply with a statutory function created by section 273(1) of the Succession Act. The Plaintiffs ought to have reference themselves to this fact as a lack of compliance on the part of the Defendants. Indeed, failure to fulfil a statutory duty calls for penalties but not in the nature of penalties for fraud, unless the ingredients of fraud are proved, which was not the case in the present suit.

- [30] As regards the rooms rented out to tenants and the open space near the road rented to welders, Mr. Kirabira testified that the rental rooms are 20, with each room fetching UGX 100,000/=. His witness statement, however, had "about 250,000/= per month." He further testified that a one Kajo Mohammad who is not an administrator of the estate collects rent from the rentals and was appointed by the family meeting to do so.
- [31] The Plaintiffs aver that they never consented to the appointment of a one Muhammad to manage the rented estate property. This court, however, has observed from the minutes of the family meeting held on 15th of May 2022 (Defence exhibit D. EXH. 4(a) and (b) being the English translation thereof) that Mr. Hassan Kigozi Lato is listed in the attendance list of the said meeting. The meeting established a committee comprised of; 1) Kigozi Samuel as the Defence/Disciplinary chief, 2) Walusimbi Ronald as Treasurer for rent, and 3) Kajjo Muhammad as Treasurer for rent. Rent collection and renovating the house of the late Micheal Magala were discussed at length in the said meeting. The minutes of the family meeting held on 21st of May 2023 (Defence exhibit D. EXH.5(a) with (b) being the English translation thereof.), at Minute 14 expressly appointed Mr. Kajjo Muhammad as the treasurer of the estate. The minute records that this was "after Mr. Hassan Kigozi seconded him that he is the only one he trusts."
- [32] As regards the claims by the Plaintiffs that the estate is being wasted, wasting an estate may happen where the value of the estate is diminished or eroded due to mismanagement, negligence, or fraud during the administration process. The evidence on record does not show that the administrators have wasted the estate. That notwithstanding, the issue of rent collection, how much is collected and how the rent money is used when collected, is certainly a pressing matter that the parties have to address to ensure that a plan is developed and agreed to for the collection of rent and equitable distribution of rental proceeds to the beneficiaries.
- [33] It is the Plaintiffs' contention also that the Defendants have been threatening to alienate and/or dispose and/or waste the estate property, for which the Plaintiffs seek a permanent injunction. Mr. Lato testified that he broke into, and occupied the dining area of the suit premises on 8/08/2023 and has been staying therein since it is his father's house. Mr. Kirabira and Ms Nakisitu Margaret Magara both confirmed that indeed Mr. Lato occupies the residential house which is part of the estate property and that one grandson called Ronald Walusimbi also occupies it. Ms Nakisitu Margaret Magara testified further that it is close to a year since the two started residing there.
- [34] This court visited locus on 18th of September 2024 and found that indeed Mr. Lato occupies one of the rooms, said to be a sitting room. It was also found that there was a room designated for the 2nd Plaintiff as well, and a number of single and double rooms were rented out. Of the beneficiaries presented at the Administrator General's office, the Plaintiffs and a one Ronald Walusimbi occupy rooms in the house. DW4 testified that she was also given a room for her accommodation but she rents it out.

- [35] From the observation of this court during the locus visit, the estate of the deceased has not gone to waste but definitely needs maintenance - which can only happen if the administrators put aside money from rental collections towards the same.

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In view of the evidence presented, the legal arguments advanced, and the analysis of the facts and the law, this issue is resolved in the negative.

Issue 2: Whether the parties are entitled to any remedies

- [36] In the petition, the Plaintiffs pray for mesne profits since they were allegedly excluded from the property on which they would have earned money. Mesne profits refer to the profits or income derived from property that is wrongfully withheld from its rightful owner, typically following a dispute over possession or ownership. The Plaintiffs wish to be compensated for the loss of the use and enjoyment of their property during the period of the alleged wrongful possession by the Defendants.
 - [37] Mr. Lato testified that since 2012 upto date, he has never collected rent from the suit property; that the 1st and 2nd Defendants have been collecting rent there; and that the Defendants attended a meeting he called for renovation of the house but the parties never agreed about the rent collected or on the renovation of the house.
 - [38] On perusal of the minutes of the family meeting held on 15th of May 2022 (Defence exhibit DEXH. 4(a) and (b) being the English translation thereof), I find that Mr. Kirabira the chairman of the meeting suggested that the matter of renovating the house would be discussed again when the family was all together. A follow up meeting was fixed for 19th of June 2022 at 10.00am.
 - [39] Mr. Kirabira testified that they did not open up an account where the rent was to be paid because they wanted to do so with the consent of the family members; that the consent was not given because the meetings were disrupted by the 1st Plaintiff; that currently Kajjo keeps the money and the expenditure is determined by the administrators but he does not have formal records of that expenditure although the money is used for family activities.
- [40] I find that the Plaintiffs did not prove the amount of rent they were rightful entitled to receive, which rent amount they did not receive. In terms of use of property, there was no

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evident contention as to whether the Plaintiff were excluded from possession. On the contrary, the Plaintiffs each had a room they occupy in the residential house. Ms Nakisitu testified that the administrators normally call the person who collects rent to give money to the beneficiary who has a need; that the 1st Plaintiff was given money from the rent some months ago; even in the previous years. She further testified that the 2nd Plaintiff used to live in

the property and she used to live on the money from the estate, but that the 2nd plaintiff no longer lives on the property of the estate and the administrators no longer send her money from the estate. There was no evidence adduced to dispute Ms Nakisitu's testimony, which is likely believable in the circumstances.

- [41] The Plaintiffs also prayed for **general damages**. In the context of administration of estates of deceased persons, general damages may be claimed to compensate for noneconomic losses caused by actions that interfere with the proper administration of the deceased's estate. Counsel for the Plaintiffs relied on the case of James Fredrick Nsubuga vs. Attorney General HCCS No. 13 of 1993 where it was held that the object of the award of damages is to give the Plaintiffs compensation for the damage, loss or injury he or she has suffered.
- [42] It was submitted for the Plaintiffs that the Defendants caused a lot of inconveniences to the Plaintiffs. The reasons advanced by the Plaintiffs are that; rent was collected by a one **Kajjo**, books of accounts were absent, there was no evidence that the beneficiaries are given their entitlement from the estate property, and that the 3rd Defendant was being excluded from running the estate yet he is also an administrator. Accordingly, it was submitted for the Plaintiffs that they are entitled to an award of general damages of Ug. Shs 100,000,000 (One Hundred Million Only) for loss suffered, although that amount is not mentioned in the Plaintiff.
- [43] In reply to the claim for general damages by the Plaintiffs, it was submitted for the Defendants that the Plaintiffs have never suffered any damage occasioned to them by the Defendants; that if at all any damage was caused, it was self-inflicted by the Plaintiffs

themselves; and that it is the Plaintiffs who should pay to the Defendants damages for the inconvenience caused to them. The Defendants, however, do not proceed to prove why the Plaintiffs should pay them damages.

- [44] For a claim of general damages to succeed, it must be proved that the actions of the Defendants were wrongful and that the Plaintiffs were harmed by those wrongful actions. From the facts of this case, I do not find any justification for payment of general damages to the Plaintiffs. The issue of collection of rent by a one Kajjo has been handled in paragraph 31. There is also evidence that the Plaintiffs occupied rooms in the suit premises unlike other beneficiaries of the estate. In a way, that amounts to a benefit accorded to them, although from the facts, equitable distribution of benefits to all beneficiaries seems not to have been addressed.
- [45] The Plaintiffs further prayed for revocation of letters of administration held by the Defendants and grant of fresh letters of administration to the Plaintiffs. Section 230(2) of the Succession Act Cap. 268 provides for the grounds of revocation of letters of administration which include inter alia; becoming useless and inoperative through circumstances, omitting wilfully and without reasonable cause to file an inventory or filing an untrue account in a material respect, or mismanaging the estate. It was submitted for the Plaintiffs that the

letters of administration should be revoked for non-filing of an inventory. The Plaintiffs cited the case of Amina Kanyesigye vs. Mujungu Sayuni & 5 Ors HCCS No. 151 of 2014 (Family Division) in support of their argument.

- [46] The law on revocation of letters of administration by reason of not filing an inventory and rendering an account of the estate of a deceased person is settled. It is indeed paramount that the estate should be well managed and distributed among the beneficiaries so that not only an inventory but a final account may be filed in court. Paragraphs 26 and 29, however, indicates that the delay in filing the inventory was explained.
- [47] The minutes of the family meeting of 15th May 2022 D. EXH.4(a) and (b) being their English translation (at minute 3, 11, 21, 28 and 41) and minutes of the family meeting of 21st May 2023 D. EXH.5(a) and (b) being their English translation (at minute 2 and 3) indicate that Mr. Kirabira the chairman of the meeting notified the beneficiaries about the letters of administration granted to the Defendants and the duties of administrators.
- [48] Mr. Kirabira also testified that the Defendants have not been able to distribute the property because the family members have not yet agreed for the property to be distributed to them. In the family meeting of 21st of May 2023 D. EXH. 5(a) and (b) being their English translation (at minute 4, 5, 7, 10, 11 and 12) some of the family members wanted the property sold while some wanted to keep it as a legacy of the deceased on which only rental proceeds were collectable and shared.
- [49] From the evidence of the parties, I do not find an adequate justification for the revocation of the letters of administration. The non-compliance by the administrators in respect of filing of inventory and a final account, while a ground for revocation under section 230(2) of the Succession Act, is not so grave in the present suit so as to require revocation. Instead, it calls for measures to be put in place by the administrators to ensure compliance, within the ambit of the law.
- [50] As to the prayer for a permanent injunction to issue against the Defendants, the Plaintiffs have not really adduced evidence in proof thereof. Hence, I will not entertain it.
- [51] In conclusion, I do not find that the Plaintiffs are entitled to mesne profits or general damages, or any other remedy for fraud since the Plaintiffs have failed to prove their claims in regard thereto.

DECISION OF COURT:

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[52] In the final result, this Court makes the following orders;

- a) The suit succeeds in part.

- b) An order doth issue directing the Defendants to file an application for leave to file an inventory and to render a final account in respect of the estate of the late Magala Michael Mukasa out of time.
- c) The Defendants shall work with the beneficiaries to streamline the rent collection from the rental rooms for the benefit of the estate, including refurbishment of the property and other matters incidental thereto.
- d) Each party shall bear their own costs.

I so order.

Dated at Kampala this.....

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Hon. Lady Justice Dr. Christine A. Echokit Judge.

The right of appeal explained.

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