

UGANDA / JUDGMENT

Okwi and Anothers v Ouka and Others (Miscellaneous Application 170 of 2023) [2024] UGHC 785 (28 August 2024) [2024] UGHC 785

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Application 170 of 2023

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Before: Hon. Justice Dr Henry Peter Adonyo**Ruling**

1. Background:

This ruling is in regard to two applications for revision brought before this court. One is Okwi Johnson and Ebola Michael vs Ouka Michael, Miscellaneous Application No. 170 of 2023 and a cross-application of Ouka Michael vs Okwi Johnson and Ebola Michael on the Miscellaneous Application No. 207 of 2023. These applications are considered jointly herein as they arise 30 from the same subject matter.

2. Introduction:

The 1st application herein was brought by Notice of Motion under Sections 83 and 98 of the Civil Procedure Act, Cap 71, and Section 33 of the Judicature Act, Cap 33 and the 2nd application was brought under <u>Sections 83 and 98 of the Civil</u> 35

Procedure Act Cap. 71, Section 33 of the Judicature Act, and Order 52 rules 1 and \$ \mathsf{S} \\$ 3 of the Civil Procedure Rules

As for the 1st application it was brought for orders that;

- a) The judgment and orders of His Worship Okiror Edmond Okwii Magistrate Grade One, vide Civil Suit No. 09 of 2021 of the Chief Magistrate's Court of Soroti at Soroti dated 18th August 2023, be revised and set aside.

- b) This honourable court be pleased to make an order in respect of the counterclaim by the applicants and costs of the suit
- c) The costs of this application be borne by the respondent.
- 3. Grounds of the application:
 - The grounds under which the applications are anchored are set out therein and 15 expounded in the supporting affidavits deposed by the applicants, and they briefly are that;
 - a) The respondent filed Civil Suit No. 9 of 2021 against the applicants for trespass and recovery of land measuring approximately two gardens situated at Ominit Village, Ojom Parish, Katine Sub-County, Soroti, a declaration that the suit land belongs to the respondent, general damages and costs of the suit.
 - b) The applicants filed a written statement of defence regarding Civil Suit No. 9 of 2021, and the first applicant counter-claimed against the respondent that he is the rightful owner of the suit land, which forms part of the 22 gardens having inherited the same from his maternal grandfather Oumo Abumeriki.
 - c) The matter went through a full trial and the court even visited locus to confirm the testimony of the parties together with their witnesses.
 - d) On 18th August 2023, the Learned Trial Magistrate Grade One in Soroti passed judgment against the applicants on ground that since the matter erroneously proceeded to full hearing for which the counter defendant was an illiterate cannot be blamed, he directed that the matter be tried by the appropriate LC2 Court as a court of first instance.
 - e) The learned trial magistrate acted in the exercise of his jurisdiction illegally, with material irregularity and injustice, when he failed to make pronouncements on the counterclaim, thus dismissing the 1st Applicant's claims on the suit land.
 - f) This application has been brought without any delay, and no injustice shall be caused by granting the orders sought by the applicants.
- 4. Grounds in opposition to the application:

The application was opposed by Ouka Michael, who swore an affidavit in reply 20 setting out the grounds of opposition, which are briefly that:

- a) Whereas it is true that the Learned Trial Magistrate did not pronounce himself on the counterclaim, his pronouncement would still be illegal and irregular, having identified an error with the drafting of the pleadings that the plaintiff/counter-defendant was illiterate.
- b) The irregularity and injustice occasioned by the Learned Trial Magistrate 25 relate to the non-issuing of the orders to remedy the anomaly in the pleadings having been drafted for illiterate without translation by the person who drafted the same.

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5. The Cross application: $\$S$

Ouka Michael filed Miscellaneous Application No. 207 under Sections 83 and 98 of the Civil Procedure Act Cap. 71, Section 33 of the Judicature Act, and Order 52 rules 1 and 3 of the Civil Procedure Rules for orders that:

- a) That judgment and orders of His Worship Okiror Edmond Okwii Magistrate Grade one, dated 18th August 2023, be revised and set aside.
- b) That this honourable court be pleased to make an order(s) relating to the rectification of the cross-applicant's pleadings and/or any other necessary order in that regard.
- c) Costs of this application be granted

6. Grounds of the cross-application: 15

The cross-application was supported by the affidavit of the applicant, Ouka Michael, where he averred that:

- a) The cross-applicant filed Civil Suit No. 9 of 2021 against the crossrespondents for trespass and recovery of land measuring approximately two gardens situated at Ominit Village, Ojom Parish, Katine sub-county, Soroti, a declaration that the suit land belongs to the Cross-Applicant, general damages and costs of the suit.
- b) The cross-respondents filed a joint written statement of defence in Civil Suit No.9 of 2021, in which the first cross-respondent counterclaimed for ownership of 22 gardens, which the suit land is part of.

The cross-applicant filed a defence to the counterclaim that;

- a) On 18th August 2023, the Learned Trial Magistrate, in his judgment, declined to determine the suit and instead referred the suit to be tried by the appropriate LC II Court as a court of first instance upon finding/observing that the cross-applicant was an illiterate whose pleadings had no jurat.
- b) Despite observing that the cross applicant is an illiterate whose pleadings were drafted without a jurat, the learned trial magistrate, instead of making appropriate orders or directions regarding rectifying the pleadings in form amendments and/or advising the illiterate to seek legal representation, referred the suit to be tried by the appropriate LC II Court as a court of first instance.
- c) The Learned Trial Magistrate acted illegally, with material irregularity and injustice, in exercising his jurisdiction when he failed to make appropriate orders or directions on the rectification of the cross-applicant's pleadings, which were drafted for the cross-applicant without a jurat.

- d) This application has been brought without any delay, and no injustice shall be caused to the cross-respondent if the orders in this application are granted.
- e) In the interest of justice, the orders sought be granted to the applicant.
- 7. Reply of the cross respondents:
- The 1st cross respondent filed an affidavit in reply and averred that: 25
- a) He counterclaimed for ten gardens, not 22 gardens, as averred.
- b) The Trial Magistrate's decision to dismiss the cross-applicant's suit and refer it back to the LC II Court was in accordance with the law since the cross-applicant didn't follow the law's requirements.

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- c) The application is brought in bad faith, misconceived, lacks merit, is an abuse of court process, doesn't meet the test of law, is belated and is a play by the cross applicant to delay Miscellaneous Application No. 170 of 2023.
- 8. Rejoinder of the cross-applicant:
- a) The cross-applicant rejoined in his affidavit in rejoinder and stated thus: 10
- b) That the application discloses questions of law and is brought in good faith and, therefore, not an abuse of the court process.
- c) It was not justifiable for the trial court to refer the cross-applicant's suit to the LC II court as it did, and therefore, this is a proper application for the issuance of an order of revision.

The respondent/cross-applicant by Paragraph 7 introduces a cross-application and wherein it is stated thus:

- The respondent adds that he is equally disgruntled with the decision of the Learned Trial Magistrate His Worship, Okiror Edmond Magistrate Grade One in the Chief Magistrates Court of Soroti at Soroti in as much as orders were not issued to remedy the anomaly in the pleadings filed by the respondent, that instead referred the matter to be determined by LC II court.
- 9. Representation:
- M/s Legal Aid Project of the Uganda Law Society represented the applicants, and 25 the respondent was represented by M/s Asire & Co. Advocates. The parties filed written submissions, which have been considered accordingly. While thankful for the submissions, I will refer to them as and when necessary.

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10. Issues:

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The issues below suffice to determine the instant application, thus.

- a) Whether there are sufficient grounds for revision?
- b) Whether the applicant(s) are entitled to the orders sought in the application?
- c) What remedies are available? 10

11. Submissions:

a) Applicants' counsel submissions:

On the first issue, counsel for the applicants submitted that in reference to paragraphs 6,7,8,9,10,11 of the affidavit in support of the application, the trial court acted in the exercise of his jurisdiction illegally or with material irregularity or injustice when he failed to make pronouncements on the counterclaim

Counsel pointed out that the failure to make pronouncements on the counterclaim amounted to a failure to exercise jurisdiction vested in him and

dismissing the 1st applicant's claims on the suit land which he has interests.

acted with material irregularity. 20

> Counsel submitted that the trial magistrate departed from the pleadings contrary to Order 6 Rule 7 of the Civil Procedure Rules in deciding against the applicants when he failed to make pronouncements on the counterclaim, which had already been pleaded for in the applicant's pleadings using his own facts. Thus, he acted

25 in the exercise of jurisdiction illegally or with material irregularity or injustice.

Counsel for the applicants submitted that this court has the power to revise the said proceedings and judgment, set them aside, and correct them by issuing an eviction order against the respondent.

Under the issue of remedies, counsel prayed that this court revises and sets aside S the judgment and orders of His Worship Okiror Edmond Okwii Magistrate Garde One dated 18th August 2023 and that this court makes pronouncements on the counterclaim and provides for costs of the application.

b) <u>Respondent's submission:</u>

The respondent's counsel admitted the propriety of the instant application but 10 pointed out that the remedy sought by the applicants to have a pronouncement on the counterclaim before making orders to rectify the respondent's suit is untenable since the trial court noted that the respondent being an illiterate filed the suit together with a reply to a counterclaim without translation required by the provisions of the Illiterate Protection Act. 15

Counsel further submitted that the respondent has equally filed a crossapplication Miscellaneous Application No. 207 of 2023 for revision, seeking the court to issue an order for the lower court to rectify the pleadings and any other subsequent directions.

Counsel submitted that the court should not award any costs since the 20 irregularity that occasioned the filing of the current application is not attributable to the respondent in any way.

Counsel submitted that this court declines to grant an order for the trial court to make a pronouncement on the counterclaim but that this court be pleased to

- make such orders in consideration of the prayers in the cross-application of the 25 respondent.
- 12. Submissions on the cross-application:
- a. Cross-applicant's submission:
 - Counsel for the cross-applicant submitted that it was an error for the trial S magistrate even after rightly observing that the cross-applicant was an illiterate whose pleadings were drafted without a jurat, but continued with the hearing of the suit, contrary to the provisions of the Illiterate's Protection Act which requires that any document written on behalf of the illiterate with the permission of the
 - illiterate to have a jurat. Counsel submitted that it was an irregularity for the trial 10 court to proceed to hear the suit even after getting to know that the crossapplicant was an illiterate who had even expressed a lack of knowledge about some contents in his plaint and as well as those in the defence to the counterclaim.
 - Counsel prayed that this court allows the application and makes orders relating 15 to rectifying the cross-applicant's pleadings and/or any other necessary order in regard to see that the ends of justice are met.
- b. Cross respondent's submission:
 - Counsel for the cross-respondent submitted that the trial magistrate was right to strike out the plaintiff's pleadings and dismiss the suit for failure to comply with 20 the provisions of the Illiterate's Protection Act and that such illegality couldn't be condoned. Counsel cited the case of Kasaala Growers Cooperative Society vs Kakooza & Another SCCA No.19 of 2010 for the position that section 3 of the Illiterates Protection Act is couched in mandatory terms and failure to comply with it renders a document inadmissible and ought to be struck out. 25

Counsel further submitted that the learned trial magistrate was right, even at judgment, to dismiss the suit on that point since an illegality, once brought to the attention of the court at any stage, cannot be condoned.

Counsel referred this court to the case of Makula International Ltd Vs His $\text{\textit{S}}$ *Eminence Cardinal Nsubuga & Anor, 1981* for that position.

13. Resolution:

As noted in the background of this ruling, the two applications all revolve around the same issue of revision and the facts are the same. Accordingly, I will resolve

- 10 both concurrently, with any reference to "application" connoting either. Of note is that the common ground in both applications is that this Honourable Court does find it fit to revise and set aside the judgment and orders of His Worship Okiror Edmond Okwii Magistrate Grade One, vide Civil Suit No. 09 of 2021 of the Chief Magistrate's Court of Soroti at Soroti dated 18th August 2023.
- The first application, MA No. 170 of 2023, seeks for orders of this court, among 15 others, that this honourable court be pleased to make an order regarding the counterclaim by the applicants and costs of the suit.

In contrast, MA No. 207 of 2023 seeks out, among others, that this honourable court be pleased to make an order(s) to rectify the cross-applicant's pleadings and/or any other necessary orders.

- Nevertheless, in reiteration, both the applicants and the cross-applicant want this court to exercise its revision powers under Section 83 of the Civil Procedure Act. Section 83 (c) of the Civil Procedure Act, Cap 71, provides that the High Court may call for the record of any case which has been determined under this Act by
 - any magistrate's court and if that court appears to have -25
 - a) Exercised A Jurisdiction Not Vested In It In Law;
 - b) Failed To Exercise A Jurisdiction So Vested; Or
 - c) Acted In The Exercise Of Its Jurisdiction Illegally Or With Material Irregularity or injustice,
- the High Court may revise the case and may make such order in it as it thinks fit; 30 but no such power of revision shall be exercised—
 - a) unless the parties shall first be given the opportunity of being heard; or
 - b) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

The application was also brought under Section 98 of the Civil Procedure Act, Cap 71 (CPA), which inherently empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. It is trite that the duty and burden of proof lies on the applicant because he is the one who seeks to get a decision of this court in her favour. (See Sections 101 and 102 of the Evidence Act, Cap 6).

- a) Whether there are sufficient grounds for revision?
- Section 83 of the Civil Procedure Act Cap 71 provides the parameters for the High 15 Court to properly apply in its revisional jurisdiction. The said powers can be invoked when a magistrate's court has either
 - (a) exercised a jurisdiction not vested in it in law,
 - (b) failed to exercise a jurisdiction so vested, or
 - (c) acted in the exercise of its jurisdiction illegally or with material irregularity or 20 injustice.

The Black's Law Dictionary (9th Edition) defines revision as a reexamination or careful review for correction or improvement of an altered version of work. According to the case of **Eliazali Bameka vs Dodovico Nviiri** [1973] 1 ULR 134; the

- High Court can call for a record of any case of a lower Court if it appears that; 25
- i. A lower court failed to exercise jurisdiction so vested in it; or
- ii. It exercised jurisdiction not vested in it; or
- iii. It acted irregularly or illegally.

In the case of **Mabalaganya v. Sanga** [2005] E. A 152, it was held that in cases where the High Court exercises its revisional powers, its duty entails the 30 examination of the record of any proceedings before it to satisfy itself as to the

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correctness, legality or propriety of any finding, order or any other decision and $\$ \{S\}$ the regularity of any proceedings before the High court.

In *Elelu Samuel vs Eriona Charles* Revision Application No.02 of 2022, I had the occasion to discuss the import of section 83 of the Civil Procedure Act. Cap 71. In that case I restated the position of the law as found in section 83 of the Civil

- Procedure Act, Cap 71 thus that the High Court may call for the record of any 10 case that has been determined under the Act by any magistrate's court and if that court appears to have (a) exercised a jurisdiction not vested in it in law; (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice, then the High Court

- may revise the case and may make such order in it as it thinks fit. 15 In *Uganda Telecom Limited Vs. Adratere Oreste* Misc. Application No. 0021 of 2015, Mubiru J noted that revision:

"...entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a maaistrate's court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice, occurred."

The Court of Appeal in *Kibalama Mugwanya Vs. Butebi Investment Enterprises Ltd* Civil Appeal No. 190 of 2013 also considered the said provision and opined on page 7 that:

> "... Section 83 of the Civil Procedure Act gives the High Court power to revise the case which has been called for Revision on the ground that the court appears to have exercised jurisdiction not in it in law, or failed to

exercise jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Upon such revision having taken place, the High Court has discretion to make such order as it thinks fit. However, no such power of Revision shall be exercised unless the parties are given the opportunity of being heard unless where, from the lapse of time or some other cause, the exercise of that power would involve serious hardship to any person.

In a nutshell, the powers of revision by the High Court are exercisable where the trial magistrate exercised jurisdiction not vested in him or her or where he or she failed to exercise such jurisdiction vested in him or her or where the jurisdiction so vested was exercised with material illegality or irregularity..."

Both applications were premised on the ground that the learned trial magistrate acted in the exercise of his jurisdiction illegally or with material irregularity and injustice.

- For the main application, it was premised on failure to make pronouncements on the counterclaim, thus dismissing the 1st applicant's claims on the suit
- For the cross-application, it was based on failure to make appropriate orders or directions regarding the rectifying of the pleadings in the form of

amendments and/ or advice to the illiterate to seek legal representation Therefore, both applicants want this court to investigate the lower court's correctness of its orders and whether it was able to fully exercise its jurisdiction in the terms cited.

In the case of *Friendship Taxi (U) Limited vs Adriana Matovu* Miscellaneous Civil Revision No.003 of 2019, Justice Stephen Mubiru on page 4 posited that 30

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"An application for revision can lie only on the ground of jurisdiction, and the High Court in exercise of its revisional jurisdiction is not a court of appeal on a question of law or fact. This provision applies to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it (see *Matemba v. Yamulinga* [1968] EA 643).

The Learned Judge further opined that: 10

> "This Court will not interfere under this section merely because the court below came to an erroneous decision on a question of fact or of law. This Court will not in its revisional jurisdiction consider the merits of the case however erroneous the decision of the court below is on an issue of law or of fact but will interfere only to see that requirements of law have been properly followed by the court whose order is the subject of revision. Where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even of law. A court is said to exercise jurisdiction illegally when it assumes a jurisdiction that is not vested in it by law, and is said to exercise jurisdiction with material irregularity when such a court is seized with jurisdiction but does so wrongly through some procedural or **evidential defect**. (*Emphasis is mine*)

For the \$1^{st}\$ application in the instant case, I find that failure to consider the 25 counterclaim is not a material irregularity because the counter-defence was found defective for failure to contain a jurat, which, in my view, was not remediable.

This is because the failure to contain a jurat is a plausible ground for appeal which cannot be disguised as a ground for revision as whereas the court has powers on appeal to reappraise the evidence and reach its own conclusions and decision, it

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- does not have this power in the exercise of its reversionary powers. Thus, the \$5\$ main application would fail as it does not disclose sufficient grounds for revision. As regards the cross-application, the failure to make appropriate orders or directions regarding the rectifying the pleadings in the form of amendments and/ or advice to the illiterate to seek legal representation did not amount to an
- irregularity in the exercise of jurisdiction because, as submitted by counsel for 10 the counter-applicant.

In my considered view, the non-compliance with the provisions of section 3 of the Illiterates Protection Act Cap 78 is fatal and cannot be corrected by any amount of reference or amendment as the law is couched in very directive terms

15 as is provided for by Section 3 of the Illiterates Protection Act, Cap 78 which states that;

Any person who shall write any document for or at the request, on behalf or in the name of any illiterate shall also write on the document his or her own true and full name as the writer of the document and his or her true and full address, and his or

her so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and **explained to him or her.**[Emphasis Mine]

According to the case of Kasaala Growers Cooperative Society vs Kakooza & Another SCCA No.19 of 2010, the Supreme Court was of the firm view in such a matter thus;

> "In the instant case, the affidavit of Bumbakali Sande sworn on 24th August 2010, shows in the jurat that it was drawn by Bumbakali Sande himself. Yet he confesses his illiteracy in the English language in which the affidavit was written. In his own admission, the document was drawn by one Charles Kaddu. Unfortunately, the said Kaddu did not

comply with the provision of section 3 of the Illiterate Protection Act above.

I accept Mrs. Murangira Kasande's argument that Mr. Bumbakali Sande cannot own the contents of the affidavits since it is not shown that they were explained to him and that he understood them."

Also in the case of Ngoma-Ngime - vs - Electoral Commission and Hon. Winnie 10 Byanyima, Election Petition Appeal No. 11 of 2002, the Court of Appeal confirmed the rejection by the trial High Court judge of an affidavit by an illiterate deponent which did not comply with the provision of that Act thus;

"I agree with and endorse that decision as the correct one. The Act was intended to protect illiterate persons and the provision is couched in mandatory terms. Failure to comply with it must render the document inadmissible. Likewise, in the instant case, failure of the said Charles Kaddu to write his full name and address and to state in the document that the same was read over and explained to Bumbakali Sande in the language he understands and that he appeared to have understood it **rendered the affidavit inadmissible.**" (*Emphasis is mine*)

In respect of the matter before me in the \$2^{nd}\$ application, the trial magistrate, on page 4 of his judgement, found that PW2 was illiterate because as on 21/02/2022, PW2 informed the court that "I do not know how to read and write." This was in contrast to the pleadings which clearly show that he was the one

- drafted them and therefore, would mean that all his pleadings did not comply with the provisions of section 3 of the Illiterates Protection Act, Cap 78. Thus, after carefully examining the plaint together with the record of proceedings, I would find no need to disturb the finding of the learned trial
- magistrate or call it a material irregularity as he arrived at the correct finding in 30 that regard.

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- It would not also be right to find as counsel for the cross-applicant submitted that $\$5$ the delay in finding this irregularity was an act that amounts to a material irregularity. It would have been one if it was not at all discovered. Moreover, noncompliance with Section 3 of the Illiterates Protection Act renders the pleadings defective and not amenable to amendment. I, therefore, find that
- the cross-application fails to show sufficient grounds for revision as well. 10 Overall, both the main application and the cross application do not disclose grounds sufficient for this court to exercise its revisionary powers.
- b) Whether the applicant(s) are entitled to the orders sought in the application?
- From the main application, as shown above, the applicants prayed for, among 15 other things, this court to enter a decision on the counterclaim. As stated in the resolution of issue 1 above, this court does not sit as an appellate court in the exercise of its reversionary powers; it cannot therefore enter a decision in place of that entered by the magistrate court. That would be disguising an appeal as an application for revision. 20

Besides, as already noted from my resolution in issue 1 above, in light of the provisions of Section 3 of the Illiterates Protection Act, once the pleadings of the plaintiff/respondent were expunged off the record, which the court rightly did, the trial court could not sit to hear any counterclaim.

I, therefore find, and as it necessarily follows from my finding in issue 1, that the 25 applicants are not entitled to the orders sought in the main application. Regarding the cross-application, the prayers for directions to correct the crossapplicant's pleadings cannot be granted because Section 3 of the Illiterates' Protection Act is couched in mandatory terms.

Once there was non-compliance, the resultant effect was the striking off the $\$S$ repugnant plaintiff's pleadings, which could not be rectified by any act of revision as it became an illegality which cannot be corrected by any direction of this court. I, therefore, find that the cross-applicant, as it necessarily also follows from the resolution of issue one, is not entitled to any orders sought in the crossapplication. 10

14. Conclusion:

This court finds that both applications, that is, Miscellaneous Application No. 170 of 2023 and Miscellaneous Application No. 207 of 2023, all of which do arise from Civil Suit No. 09 of 2021 of the Chief Magistrate's Court of Soroti at Soroti) are devoid of any merit to be considered by way of revision and thus each would be

dismissed accordingly, with each party to bear own costs.

I so order.

Hon. Justice Dr Henry Peter Adonyo

Judge

28th August 2024

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