

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS  
ON TEUSDAY THE 8<sup>TH</sup> DAY OF DECEMBER, 2020.  
BEFORE HON. JUSTICE C.J. ANEKE  
JUDGE

CHARGE NO: FHC/L/199<sup>C</sup>/2020

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

- COMPLAINANT

AND

1. MR. YUSUF MALGWI
2. MR. EDWARD UNIAJOBO
3. MR. BENSON ADAMS – OTITE
4. MR. HAROLD ECHENDU
5. MR. FOREMAN ONUOHA
6. ROTIMI EWEDEMI

- DEFENDANTS

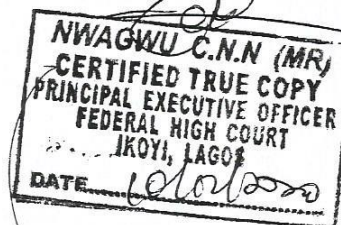
RULING

On 13-7-2020 the Complainant filed a Ten (10) count charge dated 13-7-2020. These are:

COUNT 1

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi sometime between the year 2017 and 2020 at the Institute of Safety Professional of Nigeria Branch Offices within the jurisdiction of this Honourable Court did conspire amongst yourselves to commit a felony to wit: Obtaining property by false pretence and thereby committed an offence punishable under Section 8 of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006.*

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## COUNT 2

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi sometime between year 2017 and 2020 at the Institute of Safety Professional of Nigeria Branch Offices within the jurisdiction of this Honourable Court in the pretence that you occupy various positions in the Institute of Safety Professionals of Nigeria obtained fees for conducting trainings, Summits, Seminars, Issuing Certificates and allegedly admitting members into the Institute; being payments made by persons who believe they were dealing with Executive Members of the Institute of Safety Professionals of Nigeria; positions you know you do not lawfully occupy and thereby committed an offence contrary to Section 1(c) and punishable under Section 3 of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006.*

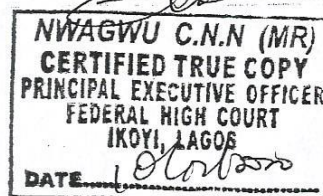
## COUNT 3

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi sometime between the years 2017 and 2020 at the Institute of Safety Professionals of Nigeria Branch Offices within the jurisdiction of this Honourable Court did conspire to commit a felony; to wit: making and uttering of forged documents and thereby committed an offence contrary to and punishable under Section 3(6) of the Miscellaneous Offences Act, Cap. M17, Laws of the Federation of Nigeria, 2004.*

## COUNT 4

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi sometime between*

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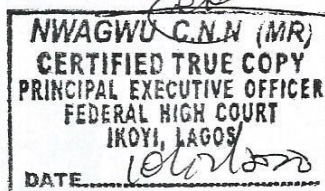
*the years 2017 and 2020 at the Institute of Safety Professionals of Nigeria Branch Offices within the jurisdiction of this Honourable Court made and uttered forged Certificates of the Institute of Safety Professionals of Nigeria with intent that it may be used or acted upon as genuine in Nigeria and with intent that any person may in the belief that it is genuine be induced to pay for the acquisition of the Certificates and there by committed an offence contrary to and punishable under Section 1(2)(c) of the Miscellaneous Offences Act, Cap. M17, Laws of the Federation of Nigeria, 2004.*

**COUNT 5**

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi on the 24<sup>th</sup> June 2017 at the Institute of Safety Professionals of Nigeria Warri Delta State within the jurisdiction of this Honourable Court unlawfully assembled yourselves in an extraordinary general meeting wherein illegal elections were conducted and you elected yourselves as Executive Members of the Institute in such a manner that will needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace of the Institute of Safety Professional of Nigeria and thereby committed an offence punishable under Section 70 of the Criminal Code Act, Cap. C39, Laws of the Federation of Nigeria 2004.*

**COUNT 6**

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi on the 24<sup>th</sup> day of June 2017 at the Institute of Professionals of Nigeria, Delta State Branch, Warri, Delta State within the jurisdiction of this Honourable Court did hold an Extra-*  
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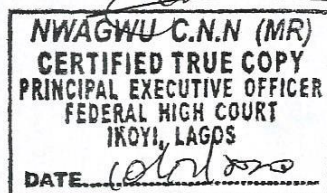
*Ordinary General Meeting of the Institute of Safety Professionals of Nigeria in disobedience to an order of a court of competent jurisdiction restricting you from holding the said meeting and thereby committed an offence punishable under Section 133(9) of the Criminal Code Act, Cap. C39, Laws of the Federation of Nigeria 2004.*

COUNT 7

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi between 2017 till date at the Institute of Safety Professionals of Nigeria within the jurisdiction of this Honourable Court did knowingly disobeyed an order of court of competent jurisdiction when you continued to held yourselves out as Executive Members of the Institute of Safety Professionals in Nigeria in flagrant disobedience of the order of the court you thereby committed an offence punishable under Section 133(9) of the Criminal Code Act, Cap. C39, Laws of the Federation of Nigeria 2004.*

COUNT 8

*That you Mr. Yusuf Malgwi, Mr. Edward Uni Ajobo, Mr. Benson Adams-Otite, Mr. Harold Echendu, Mr. Foreman Onuoha and Mr. Rotimi Ewedemi between 2017 and 2019 in the Institute of Safety Professionals of Nigeria within the jurisdiction of this Honourable Court did represent yourselves to be persons authorized by law to sign Certificates of the above named Institute and did sign documents of the Institute as being so authorized when you know that you are in fact not so authorized and you thereby committed an offence punishable under Section 107(3) of the Criminal Code Act, Cap. C39, Laws of the Federation of Nigeria 2004.*





COUNT 9

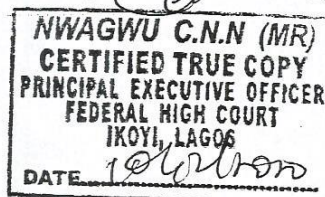
*That you Mr. Benson Adams-Otite sometime in July 2017 at the Institute of Safety Professionals of Nigeria within the jurisdiction of this Honourable Court without authority assumed to be a person authorized by law to invite members of the Institute of Safety Professionals of Nigeria to an Extra-Ordinary General Meeting and did invite the members of the said Institute to an Extra-Ordinary General Meeting as being so authorized when you know that you are in fact not so authorized; your appointment as the Registrar of the Institute having been terminated on the 26<sup>th</sup> day of April 2017 you thereby committed an offence punishable under Section 107(2) of the Criminal Code Act, Cap. C39, Laws of the Federation of Nigeria 2004.*

COUNT 10

*That you Mr. Foreman Onuoha between November 2016 and 2019 at the Institute of Safety Professionals Rivers State Branch in Port Harcourt within the jurisdiction of this Honourable Court did fraudulently convert to your use and the use of one Ibeh Augusta Chinaza and other persons the sum of Ten Million, Nine Hundred and Sixteen Thousand, Four Hundred Naira (N10,916,400.00) being the property of the Institute of Safety Professionals of Nigeria River State Branch which you transferred from the bank account of the Institute to the bank account of the said Ibeh Augusta Chinaza domiciled with Heritage Bank and thereby committed an offence punishable under Section 383(1) for the Criminal Code Act, Cap. C39, Laws of the Federation of Nigeria 2004.*

All the counts are based on the allegations that the Defendants conducted illegal elections and allegedly elected themselves as Executive Members of the Institute of Safety Professionals of Nigeria (ISPN).

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Therefore the charges are based on the grounds that the Defendants are not the executive members of the said institute.

On 16-10-2020 all the Defendants filed a Motion on Notice dated 15-10-2020 in which they sought the following reliefs:

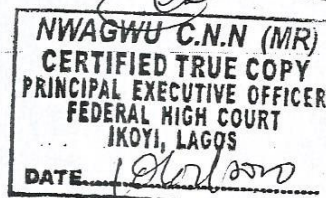
- a) *"An Order of this Honourable Court dismissing and/or quashing the charge, counts of charge, trial and every other process in the charge as same constitutes an abuse of court process.*
- b) *An Order of this Honourable Court dismissing and/or quashing the charge against the Defendants/Applicants as same discloses no criminal cause of action against the Defendants/Applicants.*

**ALTERNATIVELY**

- c) *An Order of this Honourable Court striking out the charge in its entirety for want of jurisdiction to try the alleged offences.*
- d) *And for such further or other Orders that this Honourable Court may deem fit to make in the circumstances."*

The Defendants filed 14 grounds as the basis of this application. Grounds 5 and 7 states as follows:

- 5. That the status position of the Defendants/Applicants and nominal Complainant in this suit as Executive Members of the Institute of Safety Professionals of Nigeria (IPSON) is still a subject of pending litigation in **SUIT NO. FHC/OW/CS/73/2017: ONWUZURUIKE PROSPECT & ORS v. BENSON ADAMS – OTITE & ORS.**



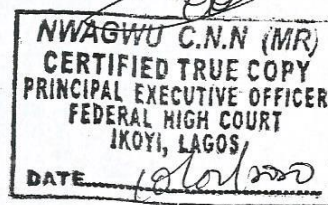


7. To proceed with this charge will be prejudicial and over reaching to the Defendants/Applicants and the outcome of **SUIT NO. FHC/OW/CS/73/2017: ONWUZURUIKE PROSPECT & ORS v. BENSON ADAMS – OTITE & ORS.**

On 14-10-2020 one FAITH JOHNSON, a Litigation Secretary in the Chambers of Counsel to the Defendants swore to a 27 paragraph affidavit to which is attached 10 exhibits marked "A – J".

In paragraphs 8, 12, 14, 22 and 24 of the said affidavit, the deponent deposed as follows:

8. That the 1<sup>st</sup> to 3<sup>rd</sup> Defendants/Applicants were lawfully elected into office as the Executive Officers of the Institute of Safety Professionals of Nigeria. Find attached Newspaper publication showing their election which is marked as Exhibit C, the 4<sup>th</sup> to 6<sup>th</sup> Defendants are valid State or Branch Chairmen of the Institute respectively.
12. That the Defendants/Applicants in this suit have filed processes before the Federal High Court Owerri for the Honourable Court to set aside the said judgment. The process filed by the Defendants/Applicants seeking to set aside the judgment of the Honourable Court in Suit No. FHC/OW/CS/73/2017 is herewith attached and marked as **Exhibit E** respectively.
14. That the Federal High Court Owerri is bound to determine the Applications before it to set aside the judgment order one way or the other and a continuance of the hearing of this charge will over-reach the Defendants/Applicants.





22. That the Honourable Court lacked the jurisdiction to hear and determine the charge and counts therein.

24. That it will be in the interest of justice if the charge is struck out and/or dismissed.

On 16-10-2020 the Defendants filed a Written Address dated 15-10-2020 in which they framed a sole issue for determination to wit:

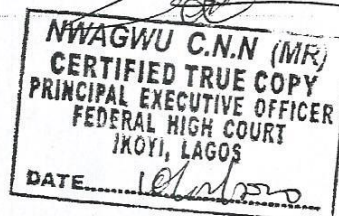
*“Whether from the facts of this case and applicable law, this charge should be dismissed and/or struck out for lack of jurisdiction, abuse of court process, absence of cause of action and prejudicial to the outcome of Suit No: FHC/OW/CS/73/2017?”*

The Defendants submitted that this court has no jurisdiction and relied on Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). They also cited the cases of **MADUKOLU v. NKEMDIHIM** (1962) 2 SCNLR 341 and **A.G. LAGOS STATE v. DOSUNMU** (1989) 3 NWLR (PT. 111) 552.

The Defendants submitted that this charge is an abuse of process of court because the complainant instituted different actions between the same parties in different courts. They cited the cases of **PAVEX INTERNATIONAL CO. LTD v. IBWA** (1994) 5 NWLR (PT. 347) 685; **MAINA v. EFCC** (2020) 2 NWLR (PT. 1708) 230; **LADOJA v. AJIMOB** (2016) LPELR – 40658 (S.C.).

The urged the court to dismiss the charges.

The Defendants also submitted that setting this charge down for trial will interfere with the pending proceedings before competent courts of law.





On 25-10-2020 the Defendants filed a Further Affidavit of 7 paragraphs through one UMWENI JAMES ALLEN, the Defendants Counsel. This Further Affidavit exhibits the Record of Proceedings of 25-11-2019 in **SUIT NO. FHC/OW/CS/73/2017: ONWUZURUIKE PROSPECT & ORS v. BENSON ADAMS – OTITE.**

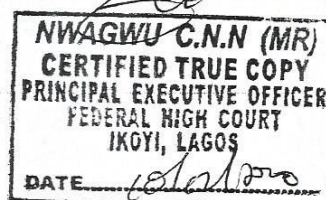
On 26-10-2020 the Complainant filed a Reply on Points of law dated 26-10-2020 in which it raised four (4) issues for determination, these are:

- (i) "Whether the Defendants can challenge the jurisdiction of the court to try them on the offences they are charged with before arraignment?"*
- (ii) Whether the charge before the court amounts to abuse of court process?*
- (iii) Whether the Defendants/Applicants can raise the issue of "No case submission" before their arraignment?*
- (iv) Whether the courts lack the jurisdiction to try the Defendants on the offences they are charged with?"*

#### ISSUE i

On issue i, the Complainant submitted that the Defendants can only raise objection to the jurisdiction of the court to try them or any objection to the charge before the court after they had taken their plea. It concluded that the objection raised by the Defendants by their Motion on Notice at this stage before arraignment is premature and that the court should disregard it. It relied on **Section 396(1) and (2) of the ACJ Act 2015**; and the case of **ASAKITIPI v. STATE (1993) 5 NWLR (PT. 296) 641.**

#### ISSUE ii





On issue ii, the Complainant submitted that the Defendants relied on civil suits in raising their objection to the instant charge and that a civil suit cannot be relied upon to raise an objection to a criminal charge.

It cited several cases including:

- (1) **OKORODUDU v. OKOROMADU (1977) 3 SC 21;** (2) **OYOGBOLA v. ESSO WEST AFRICAN INC. (1966) 1 ALL BLR 170;** (3) **ARUKO V. AIYELERU (SUPRA).**

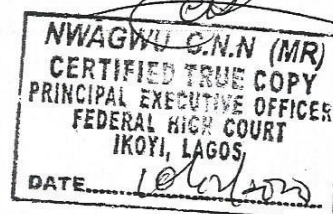
It submitted that there is no evidence that the Complainant has charged the Defendants for the offences they are charged with in the instant case in any other court, neither is there any evidence that they have been convicted, discharged or acquitted of the instant offences with which they are charged in any other court. It therefore urged the court to dismiss the Defendants argument that this charge is an abuse of court process.

### ISSUE iii

On issue iii, the Complainant submitted that the charge disclosed criminal offences against the Defendants contrary to the contention of the Defendants. It submitted that the Defendants have a right to make a no case submission but that that could only be done after the prosecution has closed its case. It relied on Section 302 of the Administration of Criminal Justice Act (ACJA) 2015. It urged the court to discountenance this submission.

### ISSUE iv

On this issue it submitted that some of the counts with which the Defendants were charged were under the Advanced Fee Fraud and Other Related Offences Act 2006 and





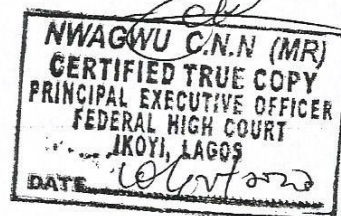
that Section 14 of the said Act gives the Federal High Court the jurisdiction to try the said offences.

It also submitted that some of the charges are under the Miscellaneous Offences Act, CAP M17 LFN 2004 and the Criminal Code which is a schedule under the Criminal Code Act and that this court also has the jurisdiction to try offences under both the Miscellaneous Offences Act and the Criminal Code. For the power of this court to try offences under the Criminal Code it relied on Section 7(4) of the Federal High Court Act.

It further submitted that the offences charged in the instant criminal matter arose from the exclusive civil jurisdiction of the Federal High Court over the Institute of Safety Professionals of Nigeria, an Institute chartered by an Act of the National Assembly and therefore that this court has the jurisdiction to try the offences charged. It relied on Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It urged the court to discountenance this issue and to dismiss the Defendants application in its entirety.

On 10-11-2020 the Defendants filed a Reply on Points of law dated 10-11-2020 to the Complainants Reply on Points of law. I have read the said Reply on Points of law filed by the Defendants.

I have summarized the points and arguments presented by the Defendants and the Complainant on the Defendants' application filed on 16-10-2020 and dated 15-10-2020. For the resolution of the Defendants' application this court will adopt the sole issue as formulated by the Defendants which is:



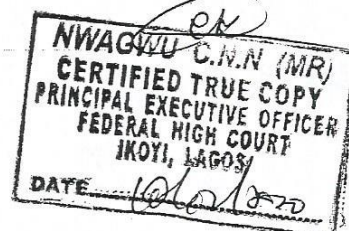


**“WHETHER FROM THE FACTS OF THIS CASE AND APPLICABLE LAW, THIS CHARGE SHOULD BE DISMISSED AND/OR STRUCK OUT FOR LACK OF JURISDICTION, ABUSE OF COURT PROCESS, ABSENCE OF CAUSE OF ACTION AND PREJUDICIAL TO THE OUTCOME OF SUIT NO: FHC/OW/CS/73/2017?”**

From the 27 paragraph affidavit of Faith Johnson in support of the Defendants’ Motion on Notice dated 15-10-2020 and filed on 16-10-2020 especially paragraphs 8, 12, 14, 22 and 24 of the said affidavit, and the written address of the Defendants, the real complaint of the Defendants is that the charges before this court is based on the judgment in **Suit No. FHC/OW/CS/73/2017: ONWUZURUIKE PROSPECT and Others v. BENSON ADAMS – OTITE & Others** and that there is an application to set aside the said judgment which application is still pending before the court. What the Defendants are saying is that it is the judgment in the said **Suit No. FHC/OW/CS/73/2017** which decided that they, the Defendants in the instant suit, are not the Executive Members of the Institute of Safety Professionals of Nigeria (ISPN) and that this charge in the instant criminal case is based on the ground that they (the Defendants) are not the Executive Members of the Institute of Safety Professionals of Nigeria (ISPN).

In other words, the Defendants are saying that the judgment is not final because of their application to set it aside and that as the **Suit FHC/OW/CS/73/2017** is still pending, if the application to set aside the judgment in **Suit No. FHC/OW/CS/73/2017** succeeds then that this charge automatically will fail because its basis has disappeared.

The Complainant did not file any counter affidavit. Therefore it accepted the contents of the Defendants’ affidavit in support of their application that **Suit No. FHC/OW/CS/73/2017** is still pending and that the Defendants have an application to





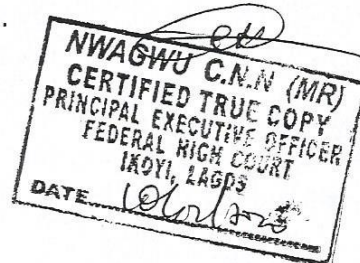
set aside the judgment that they, the Defendants, are not Executive Members of the Institute of Safety Professionals of Nigeria (ISPN).

This court agrees with the Defendants that until **Suit No. FHC/OW/CS/73/2017** is finally determined in the sense that the said application to set aside the judgment is determined by the court and there is no appeal arising from or pending in the said **Suit No. FHC/OW/CS/73/2017: ONWUZURUIKE PROSPECT and Others v. BENSON ADAMS – OTITE & Others**, the issue as to whether the Defendants are the Executive Members of the Institute of Safety Professionals of Nigeria (ISPN) would not have been determined and therefore the charges in this criminal case based on the grounds that the Defendants are not the Executives of ISPN will remain premature.

I agree with the Defendants that if a case is premature the court will not have jurisdiction. That is to say that until the facts crystalize or occur which in this case means until the court finally determines **Suit No. FHC/OW/CS/73/2017** this court will not have the jurisdiction to determine the instant criminal case.

The Complainant in this case has argued that it is only after plea has been taken in this criminal case that the Defendants could properly file their application dated 15-10-2020 and filed 16-10-2020.

I agree with the Complainant that this is the normal procedure but the question is this: why allow the Defendants to travel all the way from the various branches of the Institute of Safety Professionals of Nigeria to Lagos State to take their plea only to thereafter hold that the charge is premature. After all, rules of practice, whether civil or criminal are handmaids of justice and could be disregarded by the court where to strictly adhere to them will not result in doing justice.



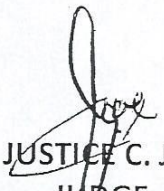


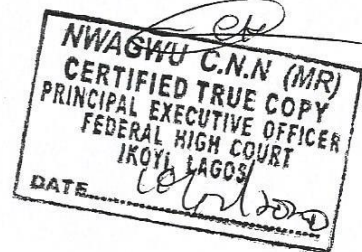
I therefore agree with the Defendants as they submitted in their Reply on Points of law that in the circumstances of this case, their application dated 15-10-2020 and filed on 16-10-2020 was properly moved before the court.

Moreover, based on the very recent Supreme Court decision in the case of **MUHAMMAD DELE BELGORE & ANOR v. FEDERAL REPUBLIC OF NIGERIA AND PROF. ABUBAKAR SULAIMAN** SUIT NO: SC/1236C/2018 delivered on Friday 3<sup>rd</sup> April, 2020 none of the 10 counts were alleged to have occurred anywhere within Lagos State in which the Supreme Court decided that a criminal charge filed in a court outside the State where the alleged crime occurred, that that court would not have jurisdiction to try the case. For this additional reason, this court lacks jurisdiction to try this criminal matter.

In the circumstances, I therefore strike out this charge for want of jurisdiction to try the same.

This is the Ruling of this court.

  
HON. JUSTICE C. J. ANEKE  
JUDGE  
8<sup>TH</sup> DAY OF DECEMBER, 2020.



**PARTIES:**

The Defendants/Applicants are absent in Court.

**APPEARANCES:**

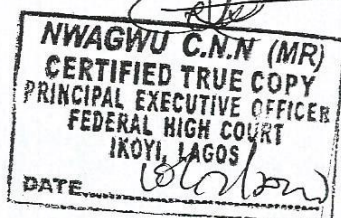
14 | FHC/L/199C/2020.



V.I. OKOYE ESQ, for the Complainant/Respondent;

CHIEF OKEY OBIKEZE for the Defendants/Applicants with J.A. UMWENI ESQ and  
T.A. UGBARESE ESQ; and CHUKS NWACHUKWU ESQ, holding watching brief for  
the Complainant.

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