

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

Case No 60735/2021

DELETE WHICHEVER IS NOT APPLICABLE  
(1) REPORTABLE: YES / NO.  
(2) OF INTEREST TO OTHER JUDGES: YES / NO.  
(3) REVISED.

DATE: 20 January

SIGNATURE: [REDACTED]

In the matter between:

**Go Touch Down Resort-Season CC**  
(Registration Number: 2011/040754/23)

First Applicant

**Belrex 478 CC**  
(Registration Number: 2006/108391/23)

Second Applicant

and

**Farm Rural Informal Dwellers Association**  
**Kgomotso Modiselle**

First Respondent

Second Respondent

**Summary:** Interim order - prohibition from acting in contravention of the Regulation of Gatherings Act, 205 of 1993 ("the Gatherings Act").

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## JUDGMENT

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Maumela J.

1. This matter came before court in the urgent roll. The Applicant seeks an order providing for the following:
  - 1.1. That a rule *nisi* is issued, calling upon the Respondents and all other interested parties to show cause, on 16 March 2022 why the following order should not be confirmed:
    - 1.1.1. That the Respondents are interdicted and restrained from: -
      - 1.1.1.1. Participating in, or inciting another/others to participate in any unlawful conduct and/or unlawful gatherings or unlawful protests on the Applicants' premises, and at any entrance or road to the Applicants' premises situated at Portion 116 of the Farm Hartbeesfontein 445, Registration Division J.Q., Province of North-West, consisting of various erven situated in the Bushveld View Extension 12 Township located at Old Rustenburg Road, Brits ("the Applicants' premises");
      - 1.1.1.2. Unlawfully interfering with or obstructing the conduct of the business of the Applicants;
      - 1.1.1.3. Blockading or obstructing the entrances and roads to the Applicants' premises and hindering the entrance and exit of vehicles or people from the Applicants' premises;
      - 1.1.1.4. Conducting any unlawful activities on or outside the premises, or on the roads to the premises of the Applicants including but not limited to destroying or damaging any of the Applicants' property;
      - 1.1.1.5. Interfering with the employment relationship between the Applicants and its staff; and
      - 1.1.1.6. Inciting violence.
2. The applicants seek for the *rule nisi* to serve as an interim order. They seek for the South African Police Service, alternatively a

private security company appointed by the Applicants to be authorised to act in accordance with section 9, read with section 6 (a) of the *Regulation of Gatherings Act*, 205 of 1993 should the Respondents fail to adhere to and to comply with the Order they seek.

3. They also seek for the Respondents to be ordered to pay the cost of the application jointly and severally the one paying the other to be absolved, which shall include the costs of 7 December 2021.
4. The Applicants argue that the scope of the ‘right to freedom of assembly’ does not extend to persons who assemble in a manner that is not peaceful or unarmed. They point out that the scheme of the Act is aimed at restricting unlawful, violent behaviour that violates the rights of others and ensuring that organizers of those gatherings are held liable.<sup>1</sup> It does not undermine the rights of the Respondent to exercise their Constitutional right set out in section 17 of the Constitution. It is to ensure that whenever the Respondents have no intention to act peacefully, they should lose their constitutional protection.<sup>2</sup>
5. The First Applicant seeks to protect its livelihood, its employees, and its guests in circumstances where the Respondents prove to be unwilling or unable to comply with the law or to respect the rights of others in the process of exercising theirs.
6. The Applicants seek an interim order in terms of which the Respondents and those protesting under them are prohibited from acting in contravention of the Regulation of Gatherings Act, 205 of 1993 (“the Gatherings Act”). They point out that in the event that the Respondents are not interdicted, the Applicants will have no remedy against unlawful activities such as the blockading of entrances and the harassment of its staff and its guests.<sup>3</sup> They make the point that every right must be exercised with due regard to the rights of others cannot be overemphasised.

## BACKGROUND.

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<sup>1</sup>. South African Transport and Allied Workers Union and Another v Garvas and Others 2013 (1) SA 83 (CC) at par 22, referring to the findings of the Supreme Court of Appeal in *SATAWU v Garvas and Others* 2011 (6) SA 382 (SCA).

<sup>2</sup>. *SATAWU v Garvas* supra at par 53.

<sup>3</sup>. The South African Police Service has indicated that absent an interdict they can only ensure that people are not physically assaulted or injured – see par 17.4, p 002-13.

7. The first gathering of the Respondents took place on the 11<sup>th</sup> of October 2021. It was preceded by an email to the Applicants and there were about 40 people present. On the 26<sup>th</sup> of November 2021, another gathering took place. This time around, the gathering came as a total surprise to the Applicants. Its size and the unlawful actions by the participants escalated exponentially in that there were about 80 people present; entrances were blocked; remote controllers for entrances and exits were forcefully seized. One Joubert was shoved around.
8. Due to the protest action of the 26<sup>th</sup> of November 2021, the Applicants' approached their attorney of record to address a letter of demand to the Respondents.<sup>4</sup> In that letter of demand, all the Applicants asked for was an undertaking that the Respondents will cease and desist from their unlawful actions. The said actions were cited and specifically mentioned in the letter of demand. No response was received from the Respondents. This was despite the fact that numerous guarantees had to been given by the Second Respondent that the demonstrators will comply with the law in the process of conducting the gatherings.
9. As a result, this matter was instituted to be heard on the 7<sup>th</sup> of December 2021 if unopposed. In the event where it was to be opposed, it was to be set down to be heard on the following week which was to be the week of the 14<sup>th</sup> of December 2021. The parties thereafter agreed, and only in order for the Respondents to have more time to draft their affidavit, that, should the Respondents undertake not to conduct any illegal gatherings until the matter has been heard, the matter may be set down by agreement to be heard on the 21<sup>st</sup> of December 2021.
10. The Applicants point out that the only reason why the matter was only set down when it was, was due to the undertaking of the Respondents that they will not proceed with their gatherings until such a time as this application has been heard.

#### URGENCY AND THE POINTS *IN LIMINE*.

11. The Applicants argue that the matter remains urgent due to the statements made by the Second Respondent that they will carry on with the gatherings into the whole of December 2021. Absent any evidence by the Respondents contrary to the facts set forth

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<sup>4</sup>. Annexure "FA11", p 003-24

by the Applicants, it remains reasonable to assume that these gatherings will be out of control and in contravention of the Gatherings Act.

TWO POINTS *IN LIMINE* RE: JURISDICTION:

12. The Respondents raised the following two points *in limine*:
  - 12.1. JURISDICTION OF THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA.

The jurisdiction of this court regarding this matter is not in dispute. On the 15<sup>th</sup> of January 2016, the Minister determined that the district of Madibeng shall fall under the area of jurisdiction of Gauteng Local Division, Pretoria as per Government Notice 39601 filed herewith as “A”. On the 31<sup>st</sup> of March 2017 the Minister published an intention to excise the district of Madibeng to the North West Division and asked for comments to be addressed on the issue and as set out in Government Notice 40753 filed herewith as “B”. The district of Madibeng was not excised and it still falls under the area of jurisdiction of the Gauteng Division, Pretoria, as set out in Government Notice 41552 filed as “C”. on that basis, the Gauteng Division, Pretoria has jurisdiction over this matter. Therefore, the point *in limine* regarding jurisdiction is dismissed.
  - 12.2. JURISDICTION OF THE HIGH COURT.

The Respondents argue that the application ought to have been instituted in the Labour Court.
13. The Labour Court is established in terms of the Labour Relations Act and derives its jurisdiction from the Act. The preamble of the Act provides for the establishment of the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act. The Supreme Court of Appeal has held in relation to the purpose of the Labour Relations Act in the case of *Motor Industry Staff Association v Macun NO and Others*, at paragraphs 18 to 20 that “*The LRA was enacted, inter alia, to “change the law governing labour relations”, to “give effect to section 23 of the Constitution”, and to “promote and facilitate collective bargaining at the work place and sectorial level”... The Constitutional Court has put it beyond doubt that the primary objective of that Act was to establish a comprehensive legislative framework regulating labour relations. An allied objective, expressly stated in the preamble to the LRA, was to “establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide*

*matters arising from the [LRA]”.*

14. It stated further that the Labour Court and Labour Appeal Court were designed as specialist courts that would be steeped in workplace issues and be best able to deal with complaints relating to labour practices and collective bargaining. Put differently, the Labour and Labour Appeal Courts are best placed to deal with matters arising out of the LRA.<sup>5</sup> The Applicants stated unequivocally that it is not their employees taking part in the protest actions and that it is the Respondents and the community. The Applicants attached confirmatory affidavits to their application. The Respondents allege that it is a labour related issue, yet admits that they are not a registered trade union and they are not employed by the Applicant. They offer no proof that they employees of the Applicant are involved.
15. The Respondents admit that the Applicants operate completely independent from the Seasons Eco Golf Estate and so its reliance on any kind of labour issues which the Seasons Eco Golf Estate might have is unrelated to the Applicants and the gatherings by the Respondents. The Respondents rely only on the Memorandum of Demands<sup>6</sup> which mentions two of the employees of the Applicants; one of whom had already been dismissed due to misconduct long before the gatherings and another who has indicated that the Respondents have no instruction from her to mention her in the documents and who states that she was not even aware of the gatherings.<sup>7</sup>
16. There is absolutely no labour relationship between the parties and there is simply no labour dispute that stands to be adjudicated. The Applicants point out that the dispute is solely whether the Respondents have complied with the Gatherings Act and whether an interdict should be granted against them to ensure that they comply with the Gatherings Act whilst they want to exercise their Constitutional rights. There is no strike or lockout and no conduct in furthering a strike or lockout. On that basis, the Applicants contend that the Labour Relations Act is not applicable. It has clearly been stated by the Constitutional Court that the purpose of

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<sup>5</sup>. National Union of Metal Workers of South Africa and Others v Dunlop Mixing and Technical Services (Pty) Ltd and Others (Case no 6/2020) [2020] ZASCA 161 (7 December 2020) at par 30.

<sup>6</sup> Annexure “KM2”, p 002-39

<sup>7</sup> Replying Affidavit, par 4.7, p 012-4.

the Labour Court is to dispose of issues arising under the Labour Relations Act and labour disputes. Consequently, the point *in limine* regarding the Labour Court as a forum for the dispute in this matter ought to be dismissed and the court finds as such.

17. THE GATHERINGS ACT.

18. The Respondents admit to convening the gathering of the 11<sup>th</sup> October 2021. The Applicants point out that the Respondents offer only a bare denial regarding the gathering of the 26<sup>th</sup> of November 2021. They argue that this cannot be accepted in light of the fact that the Second Respondent was in fact present and conducted meetings on behalf of the protesters.<sup>8</sup> The Gatherings Act requires notice to be given by parties who wish to convene a gathering<sup>9</sup> and lists further requirements and prohibitions such as the appointment of marshals<sup>10</sup> and the prohibition to barring entrances and preventing access to and from buildings or premises.<sup>11</sup>

19. The Gatherings Act requires compliance on the following two fronts:

19.1. Giving the required notice prior to the gathering and

19.2. By refraining from taking action as prohibited in the Act throughout the gathering such as barricading roads and interfering with the employment relationship of the Applicants, to only mention a few.

The Respondents need to satisfy the Court that it has complied with both.

20. The Respondents aver that they have complied with the Gatherings Act by attaching the permission granted by the Local Government. However, they cannot provide any information which refutes the allegations by the Applicants that roads and access gates were blockaded, employees and guests interfered with and intimidated and that there were no marshals appointed. The Applicants contended that in the absence of proof to the contrary, where they have set out in great detail how there has been non-compliance with the Gatherings Act, it must be accepted that the Respondents did in fact contravene the relevant

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<sup>8</sup> Replying Affidavit, paras 5.5 to 5.6, p 012-6.

<sup>9</sup> Section 3 of the Gatherings Act.

<sup>10</sup> Section 8(1) of the Gatherings Act.

<sup>11</sup> Section 8(9) of the Gatherings Act.

sections as referred to by them, (the Applicants).

21. The Applicants argue that the prejudice to them is clear and cannot be disputed. They state that once it is accepted that the Respondents have contravened the Act, then the question arises about whether they are likely to do it again or not. The Respondents have stated in their affidavit that they intend to convene gatherings throughout December. They argue that it is clear from the affidavit that the Respondents do not deem themselves bound by the provisions of the Gatherings Act in so far as it relates to the sections mandating or prohibiting certain actions. They state that alternatively, the Respondents are unable to control the situation. The Applicants point out that in these circumstances there is a reasonable apprehension that further harm will be caused to them if the Respondents convene further gatherings.
22. The Applicants state that urgency also lies in the fact that they are fully booked until March 2022. Some of the tourists who had made reservations have already made it known that they will not return due to the protest actions of the Respondents. At the same time, homeowners get prevented from accessing their properties. Parties get prohibited from exiting the premises which causes a health risk. The Applicants state that they suffer great financial and reputational harm because of the actions of the Respondents. They state that the cordoning off and the barricading of their premises poses a risk to the public.
23. Based on the reasons stated above, the Applicants seek an interim interdict, prohibiting any unlawful actions by the Respondents. They do not seek for the Respondents to be prevented if such the gatherings will be complained to the provisions of the Gatherings Act. They also envisage an order in terms of which they (Respondents) shall be able to advance their side of the story in that they only seek a rule *nisi* with a return date. That will allow the Respondents room to approach the Court and to state reasons if any, why the interim order should not be made final.
24. The Applicants submit the granting of the interim order shall bring no prejudice to bear against the Respondents. They point out that they shall have ease of mind knowing that their business operations will not be hamstrung, or disturbed during the busiest



season. At the same time, the Respondents will still have the latitude to continue gathering subject to compliance with the provisions of the Gatherings Act. They submit that the Respondents failed to comply with the provisions of the Act as has happened on two occasions. If the disturbances happen while they are armed with an order to intervene, their interests shall be best protected. Based on that, they submit that the balance of convenience favours the granting of their application.

25. The Applicants submit that since the Respondents are not under their employ, they have no business at all interfering with their operations. It is also pointed out that the Respondents are not a registered Trade Union and they therefore do not represent the Applicant's employees. In a case where the EFF sought to interfere in matters where they had no *locus standi*, the court was very clear that there is no place in the workplace for the involvement of political parties. It held that the practicing of any form of politics; be it under the guise of protecting employee rights or other socio-economic aspirations is an untenable proposition. It said that the workplace should be free of these kinds of influences. It held that entities that are not trade unions cannot be allowed to get involved in issues that arise at the workplace. Basically, the court viewed that there is no place at the workplace for the involvement of political parties and therefore, the Respondents should have no business in obstructing the business activities of the Applicants. They should also not be allowed to conduct gatherings in a manner that is not compliant with the provisions of the Gatherings Act.<sup>12</sup>
26. The Applicants submitted that on the basis of the facts indicated, they have made out a case for the interim relief to be granted. They point out that the Respondents do not stand to suffer any prejudice if the order is granted because all they have to do is to keep their operations and activities within the ambit of the provisions of the Gatherings Act.
27. The Respondents oppose this application. They however abandoned their points *in limine* and the court shall not make a ruling there on. They contend that there is no urgency in this matter. They dispute having already arranged two unlawful gatherings during which the business operations of the Applicants

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<sup>12</sup>. See *Calgan Lounge (Pty) Ltd v NUFAWSA and Others* (J2648/18) [2018] ZALCJHB 334 at paragraph 41.

were interrupted and hamstrung. They contend that the only march or protest they organised was staged on the 11th of October 2021. They submit that for that march, they obtained permission from the Madibeng Municipality.

28. The Respondents deny that in conducting the protest-march of the 11<sup>th</sup> of October 2021 they did not comply with the Regulations of the Gatherings Act. They submit further that there were marshals organised to maintain order and that the protesters did not participate in any unruly and unbecoming behaviour during the march or protest. They point out that had the march or protest not been compliant with the provisions of Gatherings Act, members of South African Police Services, who were present, would have taken steps or arrested any of the protesters found acting unlawfully or in contravention of the law.
29. The Respondents question why it happened that throughout the whole of October and November 2021, Applicants did not take any action concerning the unlawful conduct alleged to have accompanied the staging of the protest-march. The question why the Applicants only approached the Court during December 2021 on an urgent basis. On that basis, they submit that there is no urgency in this application. They contend that whatever urgency that is alleged can only be self-created and as such, it ought to fall to be dismissed and the application should be removed from the urgent roll on an attorney and client scale.
30. Regarding the March of the 26th of November 2021, the Respondents deny having organised or participated in such a protest. They therefore denied that it wasn't their responsibility to make sure that the conduct of this protest is compliant with the terms or prescripts of the Gatherings Act. The Second Respondent; Kgomotso Modiselle, contends that he only participated in the meeting which was called upon by different stakeholders to try and resolve the issues raised by the protesters. He submits that he did not participate in that meeting as a member of FRIDA but only as a member of the community who was also affected by the march. The Second Respondent is a home-owner in one of the affected estates.
31. The Second Respondent submits that he was called in by the employees of the Applicant to assist in calming down the protesters. He states that it is then that he became aware of the

march or protest. The Respondents deny therefore that they organised or participated in this protest action. He disputes that he participated in it in his capacity as a member of FRIDA. He submits therefore that this application is directed at the wrong people.

#### CONCERNING THE INTERIM INTERDICT.

32. To succeed in the application for an interim interdict, the Applicants must establish:
  - 32.1 That they have a *prima facie* right,
  - 32.2 That there shall be irreparable harm if the interim interdict is not granted,
  - 32.3 That the balance of convenience favors the granting of the order and
  - 32.4 That there is no other alternative available through which to safeguard the interest of the Applicant.
33. The Respondents argue that the Applicants only established two of the requirements pertaining to prima facie right(s) and the irreparable harm but they failed to take this court in to their confidence regarding how their rights to participate in lawful protest shall remain protected by the Constitution of the Republic of South Africa if this application is granted. They point out that they participated in the march of the 11th of October 2021, which march was permitted by the Madibeng Municipality. If need be, they aim to participate in protests subject provided that they shall have obtained permission from the relevant authorities.
34. They submitted that they only participated in this march in their capacities as the concerned members of the community who pledge solidarity with farm-workers and other employees who are abused by their respective employers. They argue that the Applicants do have other means at their disposal to protect their interest because all parties, (the Applicants and the Respondents), have been engaging with each other hence the undertaking by the Respondents that there won't be any protests until this application is dealt with and will only do so if permission to do so has been sought and has been granted.
35. The Respondents submit therefore that granting of the orders sought by the Applicants in the Notice of Motion will be tantamount to taking away their rights to picket, protest and demonstrate, which rights stand enshrined in the Constitution.

The Respondents submit therefore that the Applicants did not make up a case for the interim interdict to be granted and on that basis, the application has to be dismissed with costs. They submit however that in the event where the Court finds in favour of the Applicants, when dealing with costs, it ought to take into account that the Respondents are just community leaders who only meant to pledge solidarity with the abused workers. It was submitted that the Court should rather grant no order as to costs or the costs order on the party and party scale.

#### THE STATUS OF FRIDA.

36. The Respondents have conceded that FRIDA is not a Trade Union, but is a community-based organisation which stands to support the interest of the abused farm workers around the area of Madibeng. In participating in the march or protest, the Respondents were doing so in support of abused farm workers. The Respondents state that they did not lead this march, but purely participated as supporters of the abused employees or farm workers. FRIDA has never declared itself to be a trade union. It was submitted that the case of *Calgans Lounge (Pty) Ltd v National Union of Furniture & Allied Workers Union of South Africa and Others*<sup>13</sup> does not apply in this case.

#### EVALUATION.

37. It is fact that some protest-action was staged at least on two occasions at the premises of the Applicants. A permit had been sought and obtained for purposes of at least one of the protest actions. The Respondents deny having been part of the protest-action. However, the Second Respondent states that he was present at one of the marches albeit merely just to give support to the workers who were being abused by their employers.
38. It is not disputed that operations of the Applicants were interfered with while protest actions were underway. The Respondents submit that their presence at the time of at least one of the protest actions was so that they can support workers who are being victimized if not abused by their employers. However, they do not give details around what measures they took in order to ensure that participants in the protest actions comply with requirements that are put in place in terms of the Gatherings Act. They also do not explain measures they intend taking in order to ensure that

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<sup>13</sup>. (J2648/18) ZALCJHB 334; (2019) 40 ILJ 342 (LC); [2019] 4 BLLR 393 (LC) (9 October 2018).

there is no repeat of the contravention seen during the cause of the protest actions that were staged.

39. None of the incidents the Applicants complained about; (blockages of exits and interference with operations), wasting to happen when there was no protest action underway. Yet, some of the times when some of those incidents took place, the Second Respondent admits to having been present for purposes of rendering support to workers whose rights were being undermined. The rest of the Respondents simply dispute that they participated in expert undermined provisions of the Gatherings Act.
40. At the time when the Applicants launched this application, the participants in the protest-action had indicated that they intend to continue staging the protest-marches until the grievances of the workers will have received attention. This was at the time when the Applicants in their capacity as employers, were engaging with the workers with a view to resolve the prevailing disputes.
41. While the Respondents deny having conducted acts that tended to interfere with the business conduct of the Applicants; nothing refuted allegations that such conduct coincided with protest-marches. Based on this, the court finds that the apprehension on the part of the Applicants is both founded and reasonable. If there is no interference by the court, nothing guarantees that the contraventions of the Gatherings Act that were seen before shall not repeat themselves. It is on that basis that the court finds urgency to be attendant to this case.
42. The Applicants do not seek for the rights of the Respondent to exercise their Constitutional rights set out in section 17 of the Constitution to be undermined indefinitely. All they request is an order which is structured to ensure that participants in protest-marches adhere to the provisions of the Gatherings Act. It cannot be unreasonable or inappropriate to seek such an order. The court finds therefore that this application stands to be granted, all be it with each party paying their own costs.

#### ORDER

43. In the result, the following order is made:

- 43.1. A rule *nisi* is hereby issued, calling upon the Respondents and all other interested parties to show cause, on 16 March 2022 why the following order should not be confirmed:
- 43.2. The Respondents are interdicted and restrained from:
  - 43.2.1. Participating in, or inciting other to participate in any unlawful conduct and/or unlawful gatherings or unlawful protests on the Applicants' premises, and at any entrance or road to the Applicants' premises situated at Portion 116 of the Farm Hartbeesfontein 445, Registration Division J.Q., Province of North-West, consisting of various erven situated in the Bushveld View Extension 12 Township located at Old Rustenburg Road, Brits ("the Applicants' premises");
  - 43.2.2. Unlawfully interfering with or obstructing the conduct of the business of the Applicants;
  - 43.2.3. Blockading or obstructing the entrances and roads to the Applicants' premises and hindering the entrance and exit of vehicles or people from the Applicants' premises;
  - 43.2.4. Conducting any unlawful activities on or outside the premises, or on the roads to the premises of the Applicants including but not limited to destroying or damaging any of the Applicants' property;
  - 43.2.5. Interfering with the employment relationship between the Applicants and its staff; and
  - 43.2.6. Inciting violence.
- 43.3. The *rule nisi* shall serve as an interim order.
- 43.4. The South African Police Service, alternatively a private security company appointed by the Applicants are authorised to act in accordance with section 9 read with section 6(a) of the *Regulation of Gatherings Act*, 205 of 1993 should the Respondents fail to adhere to and comply with this Order.
- 43.5. Each party shall pay their own costs.



T.A. Maumela.  
Judge of the High Court of South Africa.

## REFERENCES

For the Applicant:  
Instructed by:

Adv. L Pretorius  
Neil Esterhuysen & Associates Inc.  
Attorneys

For 1<sup>st</sup> and 2<sup>nd</sup> Respondents:  
Instructed by:

Adv. M M Maelane  
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