



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2019/0005/D5

Andrew Ehi Ukiwa

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Middle Temple

Disciplinary Tribunal

Andrew Ehi Ukiwa

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 8 September 2020, I sat as Chairman of a Disciplinary Tribunal on the 6, 7 and 9 October 2020 to hear and determine four charges of professional misconduct contrary to the Bar Standards Board Handbook against Andrew Ehi Ukiwa, barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:

Tracy Stephenson (Lay Member)

Jonathan Monk (Lay Member)

Hayley Firman (Barrister Member)

Darren Snow (Barrister Member)

Parties Present and Representation

3. The Respondent was present and was represented by David Etherington QC. The Bar Standards Board ("BSB") was represented by Robert Clay.

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Charge and Plea

4. The Respondent, Mr Andrew Ehi Ukiwa, faced four charges of professional misconduct none of which were admitted.
5. The following Charges were found proved:

Charge 1

Statement of Offence

Professional misconduct contrary to paragraph 301(a)(i) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

Particulars of Offence

Andrew Ehi Ukiwa engaged in conduct which was dishonest or otherwise discreditable to a barrister, in that, on a date between March 2013 and November 2013, he deliberately and in an attempt to deceive the court and Mrs R, wrongly stated that Mrs R's address was at [an address unknown to Mrs R and which was not her address], knowing that Mrs R had no connection with that address, and that someone else at that address would complete and return the acknowledgement of service with the intention of obtaining a divorce fraudulently.

Charge 2

Statement of Offence

Professional misconduct contrary to paragraph 301(a)(ii) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

Particulars of Offence

Andrew Ehi Ukiwa behaved in a manner prejudicial to the administration of justice, in that, on a date between March 2013 and November 2013, he deliberately and in an attempt to deceive the court and Mrs R, wrongly stated that Mrs R's address was at [an address unknown to Mrs R and which was not her address], knowing that Mrs R had no connection with that address, and that someone else at that address would complete and return the acknowledgement of service with the intention of obtaining a divorce fraudulently.

Charge 3

Statement of Offence

Professional misconduct contrary to paragraph 301(a)(iii) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

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Particulars of Offence

Andrew Ehi Ukiwa behaved in a manner likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute in that, on a date between March 2013 and November 2013, he deliberately and in an attempt to deceive the court and Mrs R, wrongly stated that Mrs R's address was at [an address unknown to Mrs R and which was not her address], knowing that Mrs R had no connection with that address, and that someone else at that address would complete and return the acknowledgement of service with the intention of obtaining a divorce fraudulently.

Charge 4

Statement of Offence

Professional misconduct contrary to Core Duty 9 and Rule rC65.7 of the Bar Standards Board Handbook.

Particulars of Offence

Andrew Ehi Ukiwa, a BSB regulated person, failed to report to the Bar Standards Board that he had committed serious misconduct, in that, on the 15 December 2016, a Judge found that he had deliberately and in an attempt to deceive the court and Mrs R wrongly stated that Mrs R's address was at [an address unknown to Mrs R and which was not her address], knowing that Mrs R had no connection with that address, and that someone else at that address would complete and return the acknowledgement of service with the intention of obtaining a divorce fraudulently. Mr Ukiwa failed to report to the BSB that finding of serious misconduct promptly or at all.

Submissions

6. Mr Clay presented the case on behalf of the BSB, setting out the background to the offences.

Sanction and Reasons

7. The Tribunal unanimously agreed on sanction.
8. The Tribunal ordered that the Respondent be disbarred.

Mitigating Factors

- i] Limited experience within the profession;

Aggravating Factors

- a. Involvement of others;
- b. Undermining the profession in the eyes of the public.

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- c. Previous disciplinary findings against him;
- d. Lack of remorse for having committed the offences.

Judgment

9. THE CHAIRMAN: I am going to read, not too fast, the judgment, or our decision. If you cannot hear please let me know.
10. The respondent, Ehi Ukiwa, faces three charges of professional misconduct contrary to paragraph 301(a), (i), (ii), and (iii), relating to the same alleged facts, namely, that in 2013 he deliberately and in an attempt to deceive the court and his wife, wrongly stated that her address was at an address unknown to her knowing she had no connection with that address and knowing that someone at that address would complete and return the Acknowledgement of Service form sent to that address by the Barnet County Court with the intention of obtaining a divorce fraudulently, and one charge of professional misconduct contrary to Core Duty 9 and Rule C67.7 of the Code of Conduct in that he failed to report to the BSB a finding of serious misconduct by him made by a Judge on 15th December 2016.
11. The respondent married a lady in Lagos, Nigeria, in June 2012, now residing in the UK. I will refer to her as “the wife” rather than identifying her by name.
12. The respondent is now 59 years old. On 14th October 2010, he was called to the Bar of England & Wales as a member of Middle Temple. He qualified in September 2017 having been until January 2017 an unregistered barrister.
13. On 29th May 2012, he visited Nigeria to see his father who was very ill. On the way to Edo State, where his father was, he stayed in Lagos where he met up with the wife with whom he had had no previous relationship. They had met in April on Facebook.
14. She was 32 years old then and a medical practitioner. He says she arranged for them to marry at a mass wedding, which conveniently happened to be taking place a few days after they had met. They did marry on 2nd June 2012 after which he says her attitude to him changed. She wanted nothing to do with him.

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15. In evidence he said he did not want to marry her. It was a mistake. He travelled on to his father and stayed there until he died on 13th June.
16. Having returned on 14th June to England, knowing that she had applied for a spouse's visa, the family settlement application to come to the UK which he had supported, he says, prior to the wedding, he wrote to the British Embassy in Nigeria, the Home Office in the UK and the National Crime Agency on 23rd July 2012 withdrawing any support for her visa application.
17. In his letter to the Home Office, dated 28th July 2014, he called it a sham marriage saying that he was misled and deceived into marrying her and that the sole purpose of her wishing to marry him was to procure a British visa: page 117. In that letter he said: "It is my understanding she is living in the Midlands."
18. On 3rd September 2012, she emailed him to say that she had got her visa and she arrived in England on 9th March 2013 without any prior notification to the respondent of her arrival.
19. On 10th March and 16th March, which dates are admitted by her, she visited the respondent's house in Totteridge without warning. The respondent did not admit her. He reported her to the police in March 2013 and sought an injunction against her in the Barnet County Court, but this application seems to have gone nowhere or became mixed up with the divorce. That was in August 2013.
20. On 16th March, she had sent him a text message, page 129, saying: "Nowhere to go, Andrew. No train (sic). I will have to break door to your house. Not my fault. You left me with little choice."
21. There was allegedly damage to the front door, photographed by the respondent, and given to the police. He had warned her in a text, dated 19th March 2013, that he had made a statement to the police and that "As you know, the divorce case is in Barnet County Court. If you come back to the house, the police might arrest you as they said yesterday. Please get in touch with Barnet County Court, not me."

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22. Pausing there, it is obvious from this history that by March 2013 she was in the UK and that she knew from September 2012 he was intending to divorce her and by March 2013 that that would be in Barnet County Court. Furthermore, we note they were able to communicate with each other by email and by text.
23. By the text on page 129, she made a threat to break down the door to his house on 16th March 2013. She says she told him she was living with her aunt in Birmingham but withheld the address: page 19. He asked her for her address, but she did not provide it: page 49. So, there is agreement, in effect, as to the respondent not knowing the address and him asking for it, and she refusing it.
24. The history of the divorce proceedings is as follows: there was a Nigerian Petition which we have not seen which was abandoned unserved, apparently. On 11th March 2013, the first Petition was issued by a County Court and then dismissed on 11th April 2013 as a year had not yet expired from the date of the marriage and it had not been alleged by him that the marriage had not been consummated. That Petition had not been served on the wife in any way.
25. On 5th August 2013, the second Petition was issued and sent to the address given by the respondent to Barnet County Court, namely, 25 Raul Road, Peckham, SE15. Unreasonable behaviour was alleged. It had been drafted by the respondent on 7th June 2013: see page 44. An acknowledgement of service, dated 7th August 2013, purporting to be completed, page 33, and to be signed by the wife, was returned to the court. The Decree Nisi was on 17th September 2013 and it was made Absolute on 4th November 2013. It appears that the respondent remarried on 25th October 2014.
26. In October 2013, the wife sent an email to the respondent asking to be told what was going on: page 108. It is noteworthy that the wife was accepting that the marriage was at an end and was offering to help to file the divorce.
27. He replied saying: "The final divorce order will be issued at the end of October 2013," and promised to send her an "electronic copy" which he did on 11th November 2013.

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28. She then went to see solicitors. They obtained a copy of the Acknowledgement of Service. She asserted (as is accepted by the respondent) that none of the writing on it was hers. She made a complaint to the police, who took a statement from her and eventually interviewed the respondent. A handwriting expert confirmed that none of the handwriting was hers.
29. It is incomprehensible why she refused to provide an address for herself to him or failed to contact Barnet County Court to find out what was going on, but that appears to be what happened.
30. On 27th January 2015, perhaps somewhat surprisingly, the respondent issued an application seeking an order upholding the Decree Absolute. Maybe it was because in 2014 he had remarried or because he was taking the advice of a police officer to do so.
31. At page 16, he explains that the police had asked him to contact the court as the Acknowledgement of Service “was not signed by the defendant”. He asserted she was “at all material times aware of the divorce processing against her but chose to evade service.”
32. On 22nd December 2015, page 137, the Queen’s Proctor wrote to Barnet County Court referring to the history of the case and the police involvement and inviting the court to invite the parties to a hearing for cross-examination in relation to their statements as filed and, “In the event that the court makes a finding that the Decrees had been obtained fraudulently, then the Queen’s Proctor is likely to apply to have the Decrees set aside and the Petition discharged.”
33. On 8th March 2016, at Barnet Family Court, HHJ Karp, referring to that letter in the preamble ordered a fact-finding hearing to be listed to determine whether the Decree Nisi, dated 17th September 2013, and the Decree Absolute, dated 4th November 2013, were obtained by fraud.
34. On 31st March 2016, the Queen’s Proctor wrote declining to attend but saying that, “In the event that the court makes a finding that the Decrees have been obtained fraudulently, then it is likely that the Queen’s Proctor is likely to apply to have the Decrees set aside and the Petition dismissed.”

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35. The hearing took place on 15th December 2016 when the Decree Nisi and Decree Absolute were set aside, and the second Petition dismissed. The Judge took evidence as to whether the Decrees had been obtained fraudulently. She held that they had but her order, page 141, does not say so. In fact, the hearing which took place was entirely unnecessary as at the outset the respondent by his litigation friend, a barrister, conceded that the Acknowledgement of Service had not been signed by or on behalf of the wife and therefore the Decrees should be set aside and the second Petition dismissed.
36. The only reason the Queen's Proctor had requested such a hearing was so that in the event that the court should find that they had been obtained fraudulently the Queen's Proctor could then apply to have them set aside and the Petition dismissed: pages 137 and 139.
37. In view of the admission that the wife had not been validly served, it was not necessary and for that reason the hearing undertaken by the Judge was pointless and, in the event, the result of that hearing was not even recorded in her order.
38. Pausing there, it should be noted that the police investigation as to whether there was any evidence on which to charge the respondent was concluded in January 2015 with the police recording, page 95, that the postal address to which the Acknowledgement of Service has been sent is a multi-occupancy address which has been linked to dozens of people. No link has been made between the suspect and the building. At this stage, there is no evidence supporting that the suspect is involved in the forgery albeit that he has benefited from it by gaining the divorce that he wanted.
39. "With the enquiries conducted and the lack of forensic results, there are no further avenues of enquiry to explore. The matter is complete unless further evidence comes to light, investigation complete, no suspect identified, and crime investigated so far as reasonably possible."
40. Jumping ahead, a third Petition was issued, this time by the wife, on the basis of two years living apart and a Decree Nisi granted on 13th August 2019 and made Absolute on 25th September 2019.

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41. In fact, they had lived apart since June 2012 so with her consent the divorce could have been obtained in July 2014 before the remarriage and, of course, without her consent in July 2017.
42. Since it appears, unless she was trying to mislead him, that by October 2013 she was willing to divorce, page 108, had the respondent put his cards on the table with her, matters might have ended very differently.
43. The case against the respondent was and is entirely circumstantial. There is no evidence of him having any connection with Raul Road. It seems that whether the wife had any connection with Raul Road in the sense of her knowing anyone there or even living there was not explored by the police.
44. On the assumption she did not, then the obvious question is, why would anyone open an envelope addressed to someone not known there and then return the Acknowledgement of Service in the name of the wife, having completed it answering the various questions, pages 33 and 34, in the way that the respondent would have wished.
45. The inference invited is that the respondent must have known someone there who then completed and returned the Acknowledgement of Service and, therefore, not some stranger. Why would anyone bother to do that if she had no connection with anyone in the property and how would they be able sensibly to answer the questions. There is no direct evidence of that and the police discovered no connection between the respondent and that address.
46. Why did the respondent give that address? He says he was given it by a man called MK, who lives in Nigeria. He, MK, made enquiries, page 10 of the respondent's bundle, and a "lady that I accosted within the neighbourhood volunteered and informed me orally that 'the wife' currently resides at 25 Raul Road, Peckham, London SE15 5HR, which I immediately wrote down on the palm of my hand."
47. The statement of MK was agreed to be read by the BSB but not on the basis of it being admitted by the BSB. He says he passed on the information to the respondent on the phone.

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48. The evidence of the respondent that he had asked a lawyer called GO was wholly unconvincing given the absence of any paperwork evidencing even his existence. In truth, we do not even know whether MK exists. The statement made by him to LJ, a barrister and solicitor in Lagos, does not exhibit a passport or some other documentary evidence that MK was the person making the statement.
49. The timing, in fact, of this communication of the Peckham address, if it happened, is very important. It must have been before June 2013 when the second Petition was granted.
50. In 2013, the respondent's only grounds for divorce were either two years separation with the consent of the wife or unreasonable behaviour, although two years, of course, had not yet elapsed. Without her consent he would have had to wait until July 2017 for the five years to expire.
51. Given that he believed she had married him to obtain entry to the UK, and had sent his letters in 2012 to various official authorities denouncing her, he would not have expected her to consent to a divorce in July 2014 when two years would have expired, or to accept the allegation of unreasonable behaviour simply to get the divorce done. The ground for the Petition in August 2013 was unreasonable behaviour.
52. Although the respondent had asked the wife for her address, and she had refused to provide it, he did know her email address which never changed at any material time, and her telephone number.
53. He could have emailed the content of his Petition to her. He could have told the court what her email address was, explaining he had no address in England for her. He did not do so, although in November he did by email, page 108, send a copy of the Decree Absolute which set in train subsequent events.
54. The evidence before us is obviously sufficient to make a finding against him of dishonest conduct on the balance of probabilities but is it sufficient for proof beyond reasonable doubt? We have to direct ourselves as to how circumstantial evidence is to be treated but it has to be treated with care to see whether it is reliable and whether it does prove

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guilt; furthermore, whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the case against the respondent.

55. As the court held in R v Saqib Jabber [2006] EWCA Crim 2694, no jury could properly convict unless on looking at the evidence as a whole it rejected any other realistic possibility from which it might reasonably be inferred that there was an innocent explanation. We have to reject reasonably any innocent explanation before deciding that the only inference proper to draw on the facts is one of guilty.
56. The hearing in December 2015 was unnecessary. The Queen's Proctor had asked for the issue of whether the Decrees were obtained fraudulently only because if the court so found the Queen's Proctor would have applied to set aside the Decrees.
57. The respondent accepted that the wife had not completed or signed the Acknowledgement of Service and that the Decrees should be set aside and the Petition dismissed. No agreement was required as all that judge had to do was to make the order she made: page 141.
58. The Counsel seemed to roll over and agree to proceed to a hearing where the respondent and the wife gave evidence. The procedure adopted by the judge could perhaps have been appealed, although the respondent did not object to the case proceeding in that way.
59. There was a degree of antipathy on the part of the judge towards the respondent but when all is said and done a hearing took place consensually, however unsatisfactory the circumstances, and the findings were made which we cannot ignore.
60. We considered that we should initially look at the evidence afresh. It is entirely circumstantial but sometimes, as I indicated before, circumstantial evidence can be very compelling and prove the case to the criminal standard which was and is required here.
61. The Judge did not report the respondent to the BSB. Counsel for the wife did after that hearing.

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62. Whoever completed the Acknowledgement of Service not only answered the questions in a way which was coherent and in the way the respondent would have wanted to see, but also, and very significantly, attempted to copy the wife's signature. It is patently impossible for some random stranger to have attempted that. Just to bother to open an envelope addressed to some unknown person and then complete the Acknowledgement of Service and to return it within a couple of days to the Barnet County Court would be extraordinary enough, but the attempt to copy the signature demonstrates beyond any doubt that whoever filled in the Acknowledgement of Service was working in concert with either the respondent or the wife in order to have a signature to copy.
63. There was a very superficial investigation by the police of who was living in the house at the material time although, page 95, they concluded that no link was found between the respondent and the house, or the occupants.
64. If one looks at the text sent on 11th October 2013, in which the wife says: "Dear Andrew. Good morning. I write to plead with you to kindly let us draw a conclusion to pending matters. I understand you have made up your mind to end the marriage. This is OK with me. You have since collected the marriage certificate. You are yet to fill me in or give me a feedback on the divorce proceedings. I am pleading with you in the name of God please let me know what is going on and if you haven't been able to file for the divorce kindly send me the certificate so that I can do the filing. Thank you in anticipation of your kind response."
65. It should be noted, of course, that without an address for her he would not be able to send the certificate except by way of email.
66. The obvious inference is that it could not have been the wife who filled in the Acknowledgement of Service, or signed it, as she was asking for information as to the divorce.
67. The alternative possibility that she had been living at the Peckham address and that when the Petition arrived she got someone else to fill it in for her in the way that it was answered and then pretended she knew nothing about it, is incredible.

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68. There is no reason to suppose that she arrived before 9th March 2013 or that she went to live anywhere other than Luton, initially. Presumably, documentation or evidence could have been obtained to show that she was living in Luton or possibly Birmingham on arrival and until 7th August 2013 when the Acknowledgement of Service, page 33 and 34, was completed, or 12th August when it was stamped as received by Barnet County Court.
69. The possibility that in some way she contrived to create a false document, a copy of which she later asked a solicitor to obtain, and as a result of which she then set in train a police investigation, is not a realistic possibility and, in fact, in our judgment incredible. If it was not her, then it has to be the respondent who was responsible for bringing about the false Acknowledgement of Service.
70. So, for very different reasons we have come to the same conclusion as HHJ Karp, page 177, that he deliberately and in an attempt to deceive the court and the wife wrongly stated that the wife's address was 25 Raul Road knowing that the wife had no connection with that address and that someone else at that address would complete and return the Acknowledgement of Service with the intention of obtaining a divorce fraudulently.
71. As to the Judge's findings, contrary to the findings of the Judge, the wife was behaving aggressively towards the respondent and he did have cause to be concerned about her. Her emails were aggressive and volatile. She made threats to break his door down. She only became more conciliatory when he told her he had reported her to the police.
72. She was told by the respondent that she could find out what the situation was by contacting Barnet County Court, but she did not do so, so far as we know. Also, again, contrary to the finding of HHJ Karp, there was no point in the respondent asking her what her address was. He had done so, and she refused to tell him.
73. In fact, she had lied to him, page 129, saying she had nowhere to go but in fact she had friends in Luton and her aunt in Birmingham.
74. Apart from the mantra that he was an unconvincing and unreliable witness, if at all, on those two mistaken matters, the judge, however, quite rightly rejected the Monday story. From the failure to send a copy of the Petition by email, or to alert the Barnet County

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Court to the fact that he had her email address, we infer he believed if she saw the contents of the Petition she would not agree to it so he decided to go behind her back in the way that we are sure he did.

75. The explanation as to how the respondent got the address is lacking in any real evidence. There is no paperwork, not even the instructions to the lawyers in Lagos have been produced. It is alleged that MK, a businessman, was sent to make enquiries and some woman by chance told him the wife was living at the Peckham address. He reported by telephone to the respondent, not to the lawyer in Lagos. It is weak evidence, not capable of being tested, and inherently improbable, unsupported by any paper trail. So, as did the judge, we reject it.
76. In accordance with the requirements of the rules, E169, there was a decision by a court in previous proceedings to which the respondent was a party. That judgment has been proved by producing an official copy of it and although some of the findings of fact on which that judgment was based were flawed, the conclusion was not, and the burden on the balance of probabilities passes to the respondent to prove it to have been inaccurate. He has failed to do so.
77. Mr. Etherington accepted the BSB's submission, at page 26, paragraph 53, namely, that if Mr. Ukiwa did what all three charges suggest and brought it about that an Acknowledgement of Service indicated falsely that his Petition had been served on the correct address and was not opposed by the respondent, then that is conduct which falls within all three limbs of paragraphs 301(a) of the Code of Conduct.
78. We unanimously find the three charges proved against the respondent.
79. Turning to the fourth charge, Core Duty 9 required the respondent to be open and cooperative, with his regulator, the BSB. The handbook states that as an individual barrister you should report your own serious misconduct: see rule C65 and associated guidance.
80. Serious misconduct includes dishonesty. Rule C65.7 requires self-reporting if you have committed serious misconduct. We agree with Mr. Etherington that the rules could and

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perhaps should have been more specific in relation to any findings of the court. If a finding of dishonesty of a court is a self-reportable event, then the rules should say so.

81. However, the respondent knew he had been guilty of serious misconduct, even though he did not and does not accept the Judge's finding that he had. It probably never crossed his mind to report himself, or even to make an enquiry of the BSB.
82. So, on the basis of a duty to self-report serious misconduct which he knew he had committed, and the finding of the Judge being to that effect, we find the charge proved.

Appropriate Sanction

83. THE CHAIRMAN: As you can see, we have spent a very long time discussing this but our conclusion is that the public expect the highest ethical standards of barristers, not just in their professional lives but in their personal lives. This dishonesty was not only related to his wife but also it was dishonesty in relation to a court in providing a false address for her to which the Acknowledgement of Service was to be sent by the court with a view to him answering the questions in order to obtain a divorce behind her back.
84. It occurred when he was not yet a qualified barrister. However, over the years since, particularly in 2015 and then December 2019, he has persisted in denying what he had done and regrettably we have come to the conclusion that the only sanction is disbarring the respondent on Charges 1, 2 and 3, with no separate penalty on Charge 4.
85. The Treasurer of the Honourable Society of Middle Temple Inn is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Approved: 16 October 2020

His Honour Witold Pawlak
Chairman of the Tribunal

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