



Espousing the challenges of the right to ownership of land in Nigeria

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Abstract

Nigeria has a land mass of 910, 770 km². Nigeria has an economy ranging from manufacturing, Aviation, agriculture, Oil and gas, entertainment, education and so on. All these sectors and more operate on the vast land mass of Nigeria. The growth and development of Nigeria economy largely depend on the productive use of the available land in the country called Nigeria. In many situations, getting these land for business or agricultural purpose prove a herculean task thereby frustrating business and developmental ideas of entrepreneurs. Several litigations abound in the Nigerian courts over ownership of land and concerning the place of Governors in the ownership of land in each state of the federal republic of Nigeria. The primary objective of this paper is therefore to identify what constitutes land, the ownership of land, the impact of land, land use and the rights of Nigerian in landownership. This paper approaches the topic by reference to Statutes, Law Text Books, Law Reports, Internet sources, Newspapers. The findings in this paper are that, the Land Use Act and the position of the Governor in each state makes the acquisition and ownership of land problematic. This paper makes recommendations for reforms to maximize the use of land and whittle down the frustrating powers of the governor in land acquisition and title perfection.

Keywords: land use act, title to land, governor's consent, land reforms, constitution

Introduction

There is vast land mass in Nigeria which serves several purposes. Land can be accessed via communities and individual families' sources. Land can also be acquired from the government allocation via Governors Certificate of Occupancy (C of O). The fact that land can be accessed via the listed medium in Nigeria does not mean that land is readily available to whoever desires to own or acquire land for industrial activities or for residential purposes. Land is very essential natural resources because it serves as a source of food, textile and shelter through agriculture. It is the main source of raw materials for the manufacturing sector. A country without a specific land mass of its own cannot claim to be independent among comity of nations. This is why proper management and utilization of this all important natural resources called land is essential for the banker, builder, engineer, educationists, town and urban and physical planners and so on and so forth. The importance attached to land resources calls for a proper reforms on land management if the benefit of land resources are to be fully derived. The difficulties in acquisition, alienation of land had led much class of persons to agitate for reforms. Lawyers, academics, religious bodies, building engineers and policy analysts and Judges alike have shed varying opinions on the subject matter of land reforms in Nigeria with a view to developing a sustainable and robust reform. When issues of land ownership and acquisition are brought before the courts, the courts have never failed in making pronouncements and restating the position of the law on estate laws in Nigeria. Sometimes courts award damages against the government for wrongful acquisition of properties. However there have been legal and policy responses of late to address the agitation on issue of land reforms in Nigeria and it is ongoing. Notwithstanding scholarly efforts and Judicial contributions on the subject of land rights, the bottlenecks in land acquisition and title perfection have persisted in most parts of Nigeria. There is

no doubt that a discussion of this nature will serve the immediate and future needs for advancement of land practice and agricultural and industrial development in Nigeria.

Meaning or definition of land and land reform

The Black's law dictionary defines land thus:

"an immovable and indestructible three dimensional area consisting of a portion of the earth surface, the space above and the surface, and everything growing on or permanently affixed to it. (2) An estate or interest in real property"

If we dissect the above definition, land includes trees, rocks, buildings, and other structures whether naturally attached or constructed by man. However, land in law even extends more than this, and it includes further abstract rights and interests like incorporeal hereditaments, right of way, easements and profits enjoyed by persons over the property or ground belonging to other persons.

The interpretation Act on its part defines Land as: "including, any building and any other things attached to the earth or permanently fastened to anything so attached, but does not include minerals"

Legal Frame Work on Land resources in Nigeria

1. Constitution of the federal Republic of Nigeria 1999
2. Land Use Act 1978

The constitution of the federal Republic of Nigeria is the grund norm that is the basic or principal law upon which other laws grow and derive their validity. It is the constitution that first gives the citizens the right to own and dispose of immovable properties in any part of the country called Nigeria. No one can take away this right. The right is

justiceable; not even a dictatorial leader can take it away from the citizens.

The land Use Act is another legislation that regulates land acquisition and ownership in Nigeria.

In Nigeria, a citizen may acquire land by inheritance, that is, if ones ancestral parents owned some portions of land and the parents die, the children acquire such land by inheritance and such land may be partitioned among the children or may be held as family property jointly by the children no matter the number of such children and it will be administered by the children, but the land will be administered by the eldest child as the head of the family.

No matter how you acquire landed property, whenever the need arises, the onus is on you to prove your title on balance of probability.

Various land transaction under native law and custom in Nigeria. These are: sale, absolute gift, condition gift, borrowing of land and pledge.

1. Sale of land

Landed property sale occurs when the initial owner has transferred all his rights and interest in the said property permanently to another person for valuable consideration. Therefore the person owning the land furnishes a consideration acceptable to the initial owner and the said owner willingly accepts, and we say that there is *consensus ad idem*, which is a meeting of the mind of both parties. Henceforth the initial owner ceases permanent to be recognized as the owner. A sale is the permanent transfer of land for monetary consideration or money's worth. The person transferring the interest in land permanently must have valid right to do so, if not, the purported sale is void. This is because no one can give what he does not have. In the case of *Folarin v Durojaiye*, the court held that, in Nigeria, land can be purchased by customary transaction or the English transaction. Either way suffices provided the requirements are fulfilled. Under the customary sales, the seller must lead the purchaser in to possession, evidencing customary transfer of authority to use the property in any way permanently by the new owner. In the English transaction, sale of land absolutely must be evidenced in writing by deed of assignment and execution of the deed by both parties and their witnesses. The execution of the deed confirms that the seller has acknowledged consideration furnished by the purchaser. Further to this, the courts have held that to validate a customary sale of land it must be witnessed physically by persons present. The seller must himself have a title; otherwise it is an invalid sale, as no man can give what he does not have. The seller must lead the purchaser into physical possession as symbolic way of handing over title.

2. Absolute Gift

A gift of land by a person during his life time is a *gift intervivos*. A person making an absolute gift of land should bear in mind that the gift cannot be cancelled or recalled even if the giver later changes his mind after some years. Just like in sale of land, an absolute takes away every right or interest which the giver of the hand had and henceforth the receiver of the land takes over all interest and right associated with the land. A person who alleges that a parcel of land was given to him absolutely has the onus to establish that the gift is an absolute one and not reversible or conditional gift. A gift once carried out confers title on the

receiver. This rule of permanent ownership was confirmed by the court in *Jegede v Eyinogun* that a family which voluntarily makes a gift of land has lost all rights even if the recipient misbehaves thereafter.

3. Conditional Gift

A conditional gift of land can occur where the owner of the land gives out to a person on customary tenancy, whereby the tenant takes possession and recognises the overlordship of the owner. The customary tenant pays tribute referred to in local parlance as *Ishakole* or customary rent, just in recognition of the landlord and tenancy relationship. The receiver of conditional gift of land does not become the owner no matter how long he is in possession. The tenancy has not fixed duration so long as the customary tenant maintains good relationship with the overlord and does not attempt to sell the property. Uniquely, the tenancy could pass to the receiver's next of kin who would also maintain the tenancy by also continuing paying the tribute to the overlord. This customary conditional gift of land is different from the English system because the English law has a fixed term of years but the customary tenancy is continuous. In *Etim v Eke*, the court held in the following words regarding conditional gift of land under customary tenancy:

“It is now settled law that once land is granted to a tenant in accordance with Native Law and custom, whatever may be the consideration, full rights of possession are conveyed to the grantee. The only right remaining in the grantor is that of reversion if at any time the grantee denies title of the grantor or abandon or attempt to alienate. The grantee cannot convey to strangers without the grantor's permission any rights in respect of the land”.

4. Land borrowing practice

There is customary practice whereby a land owner lends a parcel of land to another person for use for definite purpose, after which the land reverts to the owner. The borrowing of land could be a planting season or for cultural festivals which are carried out seasonally, after the specified use the land reverts back to the original owner. This practice of land borrowing suggests that the land cannot be used for a purpose that would deny the owner his reversionary right; such right cannot be denied the owner. This was why the court in the case of *Adeyemo v Ladipo* the court held that a borrowing of land for building houses cannot be customary grant of land for a temporary use because such practice inhibits the reversionary right of the true owner; hence such temporary grant of land for building houses does not exist under customary law.

5. Pledge

This is customary practice whereby a Pledgor, that is, a borrower approaches another person, a creditor or pledgee and obtains a loan and then surrenders his land as collateral for the loan. The pledgee would then exploit the land to derive every benefits possible pending when the debtor or pledgor would come to redeem the land by liquidating the loan. A pledge remains a pledge and can be redeemed no matter how long it takes. The creditor can never become the owner of land he possessed by pledge arrangement. The pledgee or creditor is not entitled to sell or part with any part of the land. The pledgee can plant crops and is entitled to harvest his crops even if the pledgor had paid the loan. The court confirmed this rule in *Amao v Adigun*.

Ways of acquiring original title to land in Nigeria

1. Settlement

A person, family or group will acquire title by settlement if it is well established that such a person first arrived and settled in such a place. Similarly a family, group of person who arrived at a place becomes the first settlers if there is no claim to the contrary. Settlement of that nature confers and that is why the court in *Owoyin v Omotosho* held that ownership goes to the first settlers unless the first settler grants joint ownership to the new comers. The court further said: "But ownership or title must go to the first settler in the absence of any evidence that they jointly settled on the land or that a grant of joint ownership was made to the later arrival by the first. The question, therefore, resolves itself to this – who was the first settler on the land". What the court implies is that first settlers are the original title holders of such a place. This is why the court requires a person claiming title must trace his root to the initial settler to convince the court that he has a superior title. Ownership by first settlement is not possible nowadays because all lands in Nigeria has first settlers and no free land exists any more. Anybody who lacks the knowledge of the history of the land in dispute will fail in any law suit.

2. original titles to land by conquest

There are situations where original settlers had already taken possession and assume ownership of a vast area of land in a location or a community for years. These initial settlers might be engaged in warfare and become defeated by external invaders and the invaders began to assume ownership to the extent of compelling the defeated settlers to be paying tribute to the new comers who had now assumed ownership. The title the owners would have becomes ownership by conquest. It is however doubtful if any group can derive title by conquest nowadays as there are international laws prohibiting invasion of one state by another no matter how powerful the intended invaders might be, and no matter how weak the original settlers might be. All is now governed by the international law of peace. Violent acquisition of properties including land acquisition is a crime punishable under domestic laws of member nations of the United Nations Organisation (UNO) In the case of *Mora v Nwalusi* the Privy Council noted that it is not in doubt that proof of possession following conquest will suffice to establish ownership". This implies that for title to be derived by conquest, the conquerors must be in long possession and occupation without been removed by another superior invaders.

3. Derivative title to land

In the ancient African setting, native law and tradition, it was unheard of that land was sold absolutely to a stranger or anybody at all. The African natives may make conditional gift of land, pledge land or borrow land for specified purposes, after which the land reverts back to the native land owners. The African idea is that land belongs to the present generation and generation yet to come. It was therefore thought as strange for anyone to want to sell what belongs to both present and future generation. Land serves for farming and residential purposes, so why would anyone want to sell what serves as a source of survival and residential to a stranger absolutely? So complete alienation of land is alien and was never contemplated. Land was held as communal asset or family

assets for the common good of all members of the community or a family, but never held on individual bases, although any member of the community that desires to build houses could receive allocation of land for such purposes, but did not entitle such a member to sell absolutely to another person. Despite this traditional notion of non alienability of land, the idea began to change when Europeans and foreigners began to troop into Africa in their hundreds and thousands for commercial and business purposes. Pressures began to mount on the natives to release land for agricultural purposes for raw materials and building of factories. The African natives began to alienate land absolutely for valuable consideration. Prior to the arrival of Europeans and other foreigners, land was thought as inalienable. No wonder therefore in *Lewis v Bankole*, Osborne C.J. bared his mind and said "the idea of alienation of land was undoubtedly foreign to native ideas in the olden days". Other judicial authorities began to recognise the alienation of land in various forms different from the initial norms of inalienability. This was also understandable because the native African desire urbanization and development and yielded to the pressure of absolute alienation of land. However, with the advent of colonialism, and improvement in commercial activities, influx of foreigners to cities, the initial and old idea that land is in alienable began to change and also judicial attitude. Permanent sale of land was therefore further confirmed in the case of *Oshodi v Balogun*, where the Privy Council unequivocally also stated as follows:

"In the olden days it is probable that family lands were never alienated; but since the advent of Europeans and foreigner in Lagos many years ago, a custom has grown up of permitting alienation of family land with the general consent of the family and a large number of premises on which substantial buildings have been erected for purposes of trade or permanent occupation have been so acquired. Their lordships see no reason for doubting that the title so acquired by these purchasers was an absolute one and that no reversion in hand of the chief was contemplated".

From all judicial pronouncements, it follows that land can now be acquired by derivative title as thoroughly explained in the above context. However for permanent alienation to be valid every member of the family especially the head of the family and principal members must agree to it.

Ownership as it applies to land

To appreciate the meaning of ownership, I will adopt the meaning given by the learned justice of the court of appeal, Niki Tobi JCA (as he then was) in *Abraham v Olorunfemi* wherein the court said: "It connotes a complete and total right over a property. it is not subject to the right of another person. Because he is the owner, he has the full and final right of alienation, transfer or disposition of the property, and he exercises his right of alienation and disposition without seeking the consent of another party because as a matter of law and fact there is no other party's right over the property that is higher than that of his and it is final; 'the owner of a property can use it for any purpose; material, immaterial, substantial, non-substantial, valuable, invaluable, beneficial or even for a purpose detrimental to his personal or proprietary interest. In so far as the property is his and inures in him nobody can say anything. He is the

Alpha and Omega of the property. The property begins with him and ends with him. Unless he transfers his ownership over the property to a third party, he remains the undisputable owner". What can be ascertained from the definition and illustration given by the judicial authority is that an owner has superior title far above other persons and his use, management, disposal and preservation of the property in question cannot be disputed or challenged by anyone. He holds the property absolutely and not temporal. He does not seek any permission whatsoever before he alienates it. If the owner alienates the property, the receiver acquires a good title free from encumbrances. Sir Frederick Pollock describe owner as a right of control of a property, such right being recognised and protected by law. Such an owner holds title that is absolute and also be passed to another. The right of ownership can be absolute and original, in which case the title owner must gotten the title by conquest or settlement. Where the owner's title is derivative, he had gotten his title by transfer from a absolute title holder, in which case the transferor must surrender all his interest in the property.

Title may be absolute or restricted. When title is absolute it is synonymous with title where it is restricted, the person is only entitled to occupational or possessory right and not title. Though, occupational right is also enforceable right, but less in quality to absolute title, a subtraction from it and capable of existing with absolute title on the same parcel of land.

1. Possession as it applies to land

Possession is a term that connotes being in physical control of a property over a period of time. The person in physical control or possession is presumed the owner and as such he can ward off any other person who tires to trespass on the land. Even a person with a superior title comes around the property the person in possession has the right to initially ward him, until and unless the superior title holder goes to court of competent jurisdiction to establish his superior title and in that process the superior title holder will be able to displace the person who is in mere possession. A in possession may also be the true owner. In other words, both ownership and possessions can be established in one person, and it can also be separated. An owner of a property may lease it to another person who takes possession and still recognizes the true owner at all times. When a possession had taking a long and the true owner fails to show up and show his ownership title, the possessory right may metamorphose into full title due to abandonment or laches and acquiescence. The person in possession need not be physically present. he can show that he is in possession by planting on the land. He may make a demarcation by pegging or fencing, it is sufficient. It is not a must that the person in possession must build to show possession; fencing and other physical demarcation will suffice. It shows exclusive control and right to move in and the right to disposed off the property. It is advisable that the true owner of a property continuously demand rent renewal from the person in possession to present the possessory right transforming into owner due to presumed abandonment of the land following lapse of time

Ways of proving title to the landed property in Nigeria

It is a trite or settled law that there are five different ways, and if one proves just one way it is sufficient to establish the

proof ownership of landed property in the country called Nigeria. In any dispute as to title, a Claimant must establish any of the below five ways of proving title to landed property, if he wishes to succeed

1. By traditional evidence. This involves a claimant calling family witnesses to prove traditionally by evidence that the Claimant is actually the owner of the property. Member of the family will trace route of ownership from first settler or original owners before it got to the hand of present person claiming ownership of land. This route of title may establish that the land was acquired by a party's forefathers through settlement or conquest before the title now passed to the person via derivative title of inheritance.
2. By production of document of title duly authenticated unless they are documents of twenty (20) years old or more produced from proper custody.
3. By act of possession in and over the land in dispute extending over a sufficient length of time, numerous and positive enough as to warrant the inference that the persons in possession are the true owner.
4. By acts of long possession and enjoyment of other land so situated and connected similarity that the presumption under section 46 of the evidence Act applies and the inference can be drawn that what to be true of the other piece of land is likely to be true of the other piece of land.
5. By proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner to the land in dispute

1. Ways of proving title or ownership to land in the Nigerian courts

It is the high court that has jurisdiction to entertain or hear land disputes. It is wrong to go to the police to determine who own a piece of land in dispute, except there is violence or threatened breach of peace, in which case the police is invited to restore law and order, after which the parties would be advised to consult a lawyer for instituting action for declaration of title.

2. Claimant must have a reasonable cause of action and locus standi to institute an action for title to land.

A Claimant claim must disclose a reasonable cause of action by establishing his *locus standi* before he can succeed in claim of title to land. A claimant must possess and tender any of these documents stated below during the trial linking the claimant to landed property before he can succeed in claim of title

- Irrevocable Power of Attorney or ordinary power of attorney
- Deed of gift
- Deed of Assignment
- Purchase Receipt.
- Letter of Administration.
- WILL
- Family receipt

Without any of the above document, claim of title will not disclose reasonable cause of action; hence there will be no locus standi to institute a claim for title to land.

Who controls and manages a community land in Nigeria?

The position of the traditional Ruler over the Community Land

Land is said to be communal land when a parcel of land belongs to no particular member of the community. It also implies that the land is jointly owned by every member of that community and every member is entitled to any benefits or profits that arise out any exploitation or sale of part of that community land. Usually such land that became a community land must have been acquired by conquest and displacing the previous occupants of the land. The land may also be acquired by being the first settlers, that is, that land becomes a community land to the first settlers and not that of a member of the community no matter how influential such a member may be. The Privy Council had this to say in *Amodu Tijani v Secretary, Southern Nigeria* Coussey J.A (as he then was) said: "there can be no quarrel with that statement of customary tenure. As a general principle it has been applied in numerous cases and in postulating, as the learned judge did, that the land belongs to the community and then, in deciding on the evidence in this case, that it belonged to the *Nze* community, he was not departing from the principles of Native Customary tenure".

The chief or the traditional ruler is the man, under native law and custom, in charge of the community land. He oversees to the management and allocation of the part of the land to anybody or individual who desires the land for any purposes. The chief is the custodian of the customary practices as far as the community land is affected. He is not the owner of the land and does not take instruction from the community as the community is not his principal even though he can be loosely be regarded as the agent of the community in the true sense of agency relationship. The chief is not rewarded by the community as his principal. The community is not his principal. The traditional Ruler may be likened to a trustee but still he is not a trustee in the true sense of trusteeship under the English law. There is no known beneficiary under community land trusteeship, because the traditional Ruler himself is also a beneficiary in the land and never a legal owner of the land. The land is jointly owned, the chief being an inclusive owner. However under the English law trustee is a legal owner, whereas the chief is not the legal owner, but he controls the land and directs how it could be used for the benefit of the community at large. In some parlance the chief or the head of the community is seen as a taker of the community land, but term may not be correct because the care taker takes instructions from an owner, whereas the traditional Ruler does not take instructions from the community in managing the community land. He has wider powers far above an ordinary caretaker. A caretaker cannot treat a property as his own but the traditional Ruler can do so and there is nothing opprobrium about it as his conduct. A caretaker is not necessarily the head of the family but the traditional Ruler is the head of the community. The West African court of Appeal restated this rule on headship of the traditional Ruler to a community land in the Ghanaian case of *Rutterman v Rutterman*. The traditional Ruler is not the owner of the community land but the management of the land rest on him and truly he exercises the right of ownership. No part of the community land can be alienated without the active consent and endorsement of the traditional Ruler of the community. In *Agblo v. Sappor*, the court made it clear that the only

person that can transfer title to a part of the community land is the head of the community, which is the King or Chief. Any alienation of part of a community by any person other than the traditional Ruler, such a transaction is void and of no effect whatsoever. In any law suit against the community land, it is the Chief who is legally bound to stand for the community and if any compensation is paid, it is also he who is entitled to collect tributes, rents, proceeds of sale and compensation for community lands on behalf of the entire community and there is no controversy about this assertion. In *Odunsi v. Ojora* the Supreme Court held that it is the inherent prerogative of a head of family who has been appointed or capped in accordance with native law and custom to manage its property and that it is not competent for the family to divest him thereof without his consent and transfer it to somebody. It was also restated in *Amodu Tijani v. Secretary of Southern Nigeria* that the chief is the man who must by law represent the community in any action since he is legally in custody of the community land for the benefit of the community. Truly it is the chief that can sue on behalf of the community otherwise such an action will be incompetent.

Power of Governor under the Land Use Act 1978 in Nigeria

The Land Use Act puts all lands in the urban area in any state in Nigeria under the control of the Governor of that state. The Governor holds the land in trust for the citizens, and will in turn allocate land to the citizens or organisations for residential, commercial, agricultural and any other purposes for the development of the state and the benefit of the citizens. The Governor, upon allocation of land to anybody must issue a Certificate of Occupancy (C of O) as document of perfection of title to such allottee. The Local Government Chairman has similar power over land subject to rural area jurisdiction. This position of the Governor was confirmed by the Nigerian Supreme Court in *Adisa v Oyinwola*. Notwithstanding this privilege the Governor enjoys in land allocation, the privilege is not absolute. No wonder the Court of Appeal restored the right of the common citizen when it held in *Lemboye v Ogunsuji* that the provision of section 47 of the Land Use Act was inconsistent with section 1, 4 (2), 4 (8) and section 6 of constitution of Nigeria. This decision implies that the right to own, dispose and enjoy immovable property cannot be taken away unjustly by the Governor for public purposes without due payment of compensations.

The purpose and theme of this research

The purpose of conducting this research as can be seen from the discussion is to bring out the true position of land ownership and perfection of title in Nigeria tracing the rules of title from traditional point of ownership to the modern day position of the Land Use Act with almost veto power of the Governor enshrined in the Land Use Act. The importance of disseminating information about the difficulties of land acquisition and difficulties encountered by citizens in the bid to perfect their title through application of the Certificate of Occupancy (C of O) has resulted in frequent incidence of conflicts of title, and this article proffers solutions to the overlord position of the Governor of state in land matters. There is a need to expose the reasons why people find it difficulty in perfecting title to land in Nigeria. Delay in obtaining Governor's consent or

Certificate of Occupancy leads to frustrations. Bearing all these challenges in mind, it is necessary to conduct research into ways of making perfection of title easy free of corruption. The novelty of this research on espousing the challenges of the right to ownership of land in Nigeria can be seen in the suggestions put forward at the recommendations sections, which if implemented, will remove or reduce corruption and favoritism and delay encountered by applicants in trying to perfect title to land in Nigeria. Information and knowledge is power; hence, this paper is meant to fill the gap in the area of information and for legislature to rise to the task of amending the law on title to land.

Suggestions For reforms in land Management in Nigeria

Despite the lofty objective of passing the Land Use Act 1978, which was meant for easy access to land for developmental purposes, agriculture and residential, the requirement for the Governor's Certificate of Occupancy or Governor's consent in some cases has become a clog in the wheel of progress in the use of land resources in Nigeria. The application for land to the Governor is in many times frustrating as an applicant may be refused allocation despite that sections 5 and 6 of the Act mandate the Governor or the Chairman of a Local Government to grant Governor's Certificate of Occupancy or Customary Right of occupancy. An applicant may fail because he is not known to the Governor or those who work in the Governor's office. By section 47 (6) of the Land Use Act the refusal of the Governor to grant C of O cannot be challenged in court. Further section 47 of the constitution bars an action against any public officer from litigation.

We therefore suggest that the constitution be amended to compel the Governor to grant C of O to any applicant who genuinely makes an application to that effect. Such immunity to litigation should be removed so that public officer including the Governor takes responsibility for their inaction in respect to land matters

The procedure for obtaining the C of O is too complex, time consuming and open to corruption; hence we suggest that C of O should not be the main title document, rather a deed of Assignment duly executed should be sufficient title for transaction in respect of title to land in Nigeria. Ones parties have duly executed a Deed; it should be enough title to land anywhere in Nigeria. The requirement for C of O and Governor's consent be abolished

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