



ORARO & COMPANY
ADVOCATES

Oraro & Company's Dispute Resolution Brochure



Introduction to Oraro & Company Advocates

Oraro & Company Advocates is a full-service market-leading African law firm established in 1977 with a strong focus on dispute resolution and corporate & commercial law. With a dedicated team of 10 partners, 4 senior associates, 10 associates, 1 lawyer and 36 support staff, the Firm has been consistently ranked by leading legal directories such as Chambers Global, IFLR 1000 and Legal 500 as a top-tier firm in Kenya.

We provide specialist legal services both locally and regionally in **Arbitration, Asset Tracing & Recoveries, Banking & Finance, Capital Markets, Conveyancing & Real Estate, Corporate & Commercial, Dispute Resolution, Employment & Labour, FinTech, Infrastructure, Projects & PPP, Private Client, Restructuring & Insolvency** and **Tax**. Over the years, we have represented both local and foreign clients, governments, regulators, and not-for-profit organisations from target industry sectors including retail, construction, education, energy, financial services, manufacturing & industries and the public sector.

We provide both local and cross-jurisdictional legal services, either directly or through the extensive relationships that we have established with leading firms across the globe. Oraro & Company Advocates is a full Affiliate of **AB & David Africa**, a Pan-African business law network committed to ensuring that businesses and projects succeed in Africa by helping clients minimize the risks associated with doing business on the continent. This enables us to offer cross-jurisdictional legal advice in a seamless manner while maintaining the highest professional standards.

Oraro & Company Advocates prides itself in its **deeply-rooted client relationships** by providing **quality legal services** through its **partner-led approach, drawing from local knowledge and global perspectives**.

"they do not compromise on the quality of legal representation they offer, no matter the importance of value of a matter."

Chambers Global 2021.

Our Dispute Resolution Heritage

Referred to as a “*Dispute Resolution powerhouse*”, we are well regarded for our in-depth understanding of the judicial process and our extensive experience to find innovative solutions to the most challenging problems whenever they occur. Our litigators have a long history of handling cutting-edge litigation matters, including many of the most significant disputes in the country. We are called upon to play a central role in high stakes and high-profile matters such as representing the Kenya National Union of Teachers (**KNUT**) (one of Kenya’s biggest trade unions) in a high-profile pay dispute between teachers and their employer – the Teachers Service Commission.

A tight-knit group of 16 lawyers (6 Partners and 10 Associates), the largest dispute resolution team in Kenya, we approach each matter with intensity, thoroughness and creativity and build teams appropriate to the circumstances. We handle all aspects of contentious matters, from the strategic and tactical to the practical and procedural. We represent clients in tribunals in areas such as tax, environment and public procurements among others.

Our dispute resolution practice area is also highly esteemed for its **international arbitration practice** advising across the full range of domestic and cross-border arbitral proceedings. We have represented clients in local and international arbitration tribunals including the International Centre for Settlement of Investment Disputes (**ICSID**) and the International Chambers of Commerce (**ICC**) and the London Court of International Arbitration (**LCIA**).

Occasionally, we work with market-leading firms from around the world as a single united team. We build specific teams according to the issues and requirements in question and increase effectiveness by having the right minds in the right place at the right time, whilst always providing value for money.

"As far as litigation is concerned, I think they're one of those firms where you sleep soundly."

Chambers Global 2020.

Our Key Competencies

Our practice area encompasses the full spectrum of contentious matters including:

- arbitration/international arbitration
- complex banking litigation
- constitutional law
- election petitions
- employment and labour law
- environmental litigation
- family law
- highly complex commercial disputes
- insolvency
- investigations
- property disputes
- projects, infrastructure and energy disputes
- public procurement
- tax

"They're very impressive. Oraro is the team we turn to for our most important litigation and arbitration."

Chambers Global 2019.

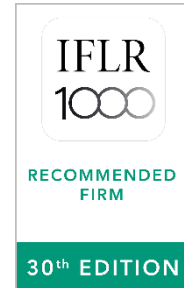
Our Market Recognition

“The firm continues to lead the way and has great litigators.”

Chambers Global 2018.



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Our Experience

ARBITRATION

Our Arbitration practice has been at the forefront of the International Arbitration practice in Kenya. The practice area has represented clients before both local and international arbitral tribunals such as ICSID, LCIA and the ICC. The firm has advised clients in various sectors including, construction, banking & financial services, manufacturing and energy.

Some of our recent arbitration work highlights include:

- Successfully represented a Pan-African Bank in a USD 25 million claim brought by a Zambian borrower who claims he never authorised the bank to disburse funds to the borrower. It was an ICC administered arbitration and the seat was in London.
- Represented a Canadian-based energy company as co-counsel in the ICSID proceedings brought against the Government of Kenya in respect to the unlawful revocation of the company's geothermal licence worth USD 312.7 million.
- Advising and representing an international civil engineering company to enforce an international arbitral award of USD 13 million in Kenya issued under an ICC arbitration with its seat in London.
- Advised a major American private equity fund on their legal options and remedies against former directors and shareholders of a leading East African civil engineering and construction company with a view of recovering an arbitral award of USD 23.2 million from the LCIA.
- Representing an English Investment Company and an energy company involved in methane gas production in an arbitration matter where the Claimants brought arbitration proceedings against the Respondent at the ICC for breach of contract. The ICC entered an award in favour of the Claimants in an Arbitral Award of USD 12.8 million rendered on 9th August 2017. The firm was thereafter engaged by the Claimants in having the arbitral award recorded as a judgment of the High Court of Kenya before enforcements proceedings can be commenced against the Respondent, which is a company registered in Kenya.
- Successfully represented a Japanese electrical equipment company (the "Company") in a construction dispute suit filed by a leading engineering and construction company in East and Central Africa, seeking interim measures of protection pending referral of the matter to the ICC by restraining the Company from appointing a third-party contractor to replace it in the construction of a geothermal power plant in Olkaria, Kenya.

- Acting for a privately owned limited-by-liability company registered and incorporated in South Sudan, Kenya and Ethiopia that deals in construction, logistics and supply-chain services, in a domestic arbitration based on a claim by the contractor against the employer for the payment of the development costs of a university campus complex constructed by the Claimant, running into the hundreds of millions of shillings.
- Acting for an Insurance Company in a potential claim of approximately USD 12 million for impaired assets against three insolvent companies, where it invested in notes and commercial paper.
- Acting for a leading international company in the construction industry in an arbitration where the Contractor has been sued for approximately USD 4.75 million for an alleged breach of a Construction Agreement. Our Client has been sued for negligent construction of a building and poor workmanship. Representing a leading local building contractor in an arbitration seeking a USD 6.4 million claim for a breach of building contracts under the East African Institute of Architects.
- Representing a landlord in a claim in excess of USD 1 million arising from the termination of a lease agreement and incidental license agreements.
- Currently advising a US-based law firm in relation to a post-acquisition dispute involving former shareholders of a Kenyan security company. The matter is before a tribunal appointed by the LCIA.
- Acting for an Insurance Company in a domestic arbitration seeking the recovery of approximately USD 770,000 being outstanding premiums claimed by the Client against the Judiciary of Kenya under a Group Medical Insurance Cover.
- Acting for a leading alcoholic drink manufacturer in Kenya in a construction arbitration where the claimant seeks approximately USD 1.67 million arising from a dispute in the construction of a new spirit line brewery plant in Kisumu.
- Acting as a Legal Expert Witness in an international arbitration dispute before the LCIA, on the specific Kenyan employment and labour relations law applicable to the dispute.

BANKING & FINANCE

Our Banking & Finance practice area is well-known for its years of experience in advising clients in banking & finance law in contentious matters. The team advises high-profile clients including local and regional banks, regulators and international financial institutions on complex transactional banking and financing matters. Moreover, the practice area is well-known for its expertise in handling complex banking litigation, debt recovery and asset tracing.

Some of our banking and finance experience includes:

- Representing a leading Kenyan commercial bank under receivership in a claim that seeks the tracing and recovery of approximately USD 340 million which was fraudulently siphoned from a Bank. We obtained a mareva injunction/freezing order, which is currently in force to preserve the subject matter of the suit. We also successfully defended the client against a claim by the shareholders seeking to be enjoined in this suit despite stiff opposition.
- Acting for an Investment Bank in a USD 557,000 suit in which a customer alleges that the Bank failed to act in accordance with his instructions, with respect to a sale order on Safaricom shares that he had purchased.
- Representing a Kenya government corporation (receiver manager for a mid-sized Kenyan bank) as lead counsel in a recovery action of assets worth USD 220 million as well as the tracing and recovery of assets from individuals and companies alleged to have defrauded the bank, leading up to its receivership.
- Successfully represented a commercial bank in Kenya, in a rare application seeking to have the Court of Appeal re-open, re-examine and set aside its decision. In addition, we sought to have the Court of Appeal declare its earlier decision a nullity and direct that the appeal be heard afresh. The matter value is USD 2.1 million with an interest growth of 14% per annum.
- Representing a Kenya government corporation in negotiating the recovery of depositor's USD 200 million from a debtor.
- Advised and represented various Lenders in an insolvency claim in the sum of USD 150 million and a challenge to the placing of a Company (In Administration).
- Representing a Kenyan commercial bank ("the **Bank**") as a secured creditor in an insolvency petition against a leading cables manufacturer in East Africa ("the **Company**"). We also successfully represented the Bank in an application by the Company which sought orders to restrain the Bank from enforcing its debentures by appointing a receiver over specific fixed assets given as security for the advancement of various credit facilities to the Company.
- Representing the Kenyan and Nigerian subsidiaries of a Pan-Africa bank in a claim worth USD 52 million arising from a facility of USD 300 million advanced to a Lebanese engineering firm to fund the construction of the Nairobi-Mombasa oil pipeline.
- Representing a Kenya government corporation (the receiver manager for a mid-sized Kenyan banks) as lead counsel. We also obtained a mareva injunction/freezing order, which is currently in force to preserve the subject matter of the suit. This is a recovery

action as well as the tracing and recovery of assets worth USD 70 million from individuals and companies alleged to have defrauded the bank leading up to its receivership.

- Representing a Kenya government corporation in a claim brought on behalf of depositors and account holders of a mid-sized Kenyan bank against the corporation for alleged negligence thus perpetrating fraud, dishonesty, deceit, unscrupulousness, corruption, massive mismanagement and concealment of financial improbity and imprudence that lead to the collapse of the Bank.
- Acting as Lead Counsel for a leading Africa-focused bank in a claim by a borrower in an appeal challenging a ruling that was entered on admission by the said borrower. The borrower had approached the bank for various facilities and when he defaulted, the bank moved to appoint a receiver, but the borrower rushed to court. The lender in mid proceedings filed an application for judgment on admission stating that the borrower had expressly admitted owing the money and even gave a repayment proposal.
- Represented the Central Bank of Kenya in a Petition before the High Court challenging its decision to issue a gazette notice demonetizing the 1000 Kenya Shilling note on the grounds that the notice was illegal as it contravened the law. Further, the Petition also challenged the design of the print of the new notes on the grounds that they contravened the Constitution by bearing a picture of a person, contrary to the constitution.
- Representing the Receiver Manager of a Pan-African bank appointed under debenture held by the Bank as security for borrowings by a limited liability company (in receivership). The borrower filed a suit before the High Court against the Bank and the Receiver Manager challenging the Receiver Manager's attempt to exercise of power of sale over various securities held by the Bank.
- Successfully represented various Lenders in an insolvency claim in the sum of over USD 70 million) and a challenge to a Receiver appointed by the Lenders.

EMPLOYMENT & LABOUR RELATIONS

The Employment & Labour team has been recognised as the “go-to” practice by both Chambers Global and Legal 500. The practice advises local and international clients such as the Government of Kenya (**GoK**), international research organisations, NGO's, banks and hospitals on contentious matters involving redundancy, unfair terminations disputes, employment contracts, pensions and collective bargaining support. Over the years, we have been retained by Kenya's leading trade union, Kenya National Union of Teachers, in a long-standing dispute with one of the biggest employers in the country, Teachers Service Commission.

Some of our employment & labour experience includes:

- Representing a publicly listed commercial bank against three separate class action claims in the Employment and Labour Relations Court (**ELRC**), for the retabulation of terminal benefits arising from voluntary early retirement taken by the claimants. The claimants are praying for additional payments based on redundancy. The claims arose from the bank's transformation agenda which changed the bank's business model resulting in a human resource re-organisation.
- Successfully represented a Kenyan government corporation in a Petition brought by members of a mid-sized Kenyan bank's Employee Share Ownership Plan (**ESOP**). The Petition sought a declaration that the Separation and Disposal Agreement be set aside on grounds that members of the ESOP were entitled to a stake equivalent to 7.3% equity acquired by a Mauritius bank, by virtue of the fact that they were "shareholders" in Chase Bank.
- Representing a railways corporation in a claim brought by its former employees to enforce an award made by the Industrial Court and a claim for unfair dismissal after a strike which led to their dismissal. This matter is important as allows for the employees to receive their final dues.
- Acting for one of the largest trade unions in Kenya. The matter is a trade dispute against the employer, with respect to the historical 2015/2016 nationwide teachers' strike.
- Representing a Kenyan bank against a claim for constructive dismissal and discrimination of an employee. The award is set at USD 200,000.
- Representing one of Kenya's leading mortgage finance providers in Kenya against a former manager in an employment claim revolving around unfair termination. Our client is seeking an order restraining any publication of the matter (a gagging order) which had been widely reported.
- Representing one of Nairobi's top five-star luxury hotels in two employment claims of unfair termination and fraud allegations against the employees. We also advised the hotel on its internal HR policies and contracts.
- Representing a Kenyan commercial bank in a case involving alleged wrongful dismissal and malicious prosecution (claim value USD 600, 000, excluding the interest).
- Representing the Honourable Attorney General of the Republic of Kenya in various Petitions filed before the Employment & Labour Relations Court challenging section 85 of the Finance Act, 2018 which introduced Section 31A to the Employment Act which seeks to introduce a mandatory deduction of 1.5% of the gross salaries of all employees towards the implementation of the Affordable Housing Project by the Government.

COMMERCIAL DISPUTES

Our dispute resolution practice is well regarded representing corporates in highly complex commercial-related disputes such as disputes between shareholders, breach of contract and damages claims resulting from the breach of terms of agreements.

Some of our recent commercial disputes include:

- Representing a corporation in a dispute arising from a collapsed share purchase agreement. The prospective purchaser has sued the shareholder for USD 12 million alleging the sum of the damage covered as a result of the loss incurred.
- Advising and acting for a Kenyan solar technology firm in a Judicial Review application under the Fair Administrative Actions Act, 2013 against the Kenya Revenue Authority.
- Acting for the authorized distributor and service provider of an automotive brand in a class action product liability claim with respect to its HINO FC 500 motor vehicles. The Plaintiffs allege that the motor vehicles were sold with patent manufacturer's defects, and that their consumer protection rights under the Constitution were violated.
- Represented a multi-media organisation in a commercial dispute against the Kisumu Municipal (now know as the County Government of Kisumu), relating to its advertising rights within the county.
- Representing a distribution subsidiary of a leading cement company in a shareholders dispute regarding the directorship and ownership of a major cement manufacturer in the country. The dispute concerns the acquisition of the shares valued at USD 25 million by a Mauritius-based firm.
- Defending an indigenous company that manufactures aluminum beverage cans in West Africa, in a construction dispute in respect of a manufacturing plant in which a Bill of Quantities was valued at USD 1.5 million is in dispute.
- Representing Kenya's largest electricity distribution company in a matter which seeks to stop an alleged payment of USD 20 billion in respect of power purchase agreements.
- Representing a leading manufacturer of Fast-Moving Consumer Goods in East Africa, in its USD 670,381 claim in Insolvency Proceedings against a leading retail supermarket chain.
- Advising and acting for a technology, media and telecommunications sector-focused venture capital fund manager, investing in the greater Eastern Africa region in an anti-suit injunction application involving the firm where parties not party to a shareholder agreement and management agreement between certain entities and a fund manager threatened to institute suit against the fund manager despite provisions for arbitration.

- Representing an independent government financial regulatory agency in a matter that involves a Stockbroker which is under the statutory management of the Capital Markets Authority in a claim for the recovery of monies converted by the Managing Director. The recovered funds are intended to be used to compensate investors.
- Successfully represented a telecommunications company in a suit seeking injunction orders restraining a storage terminal company from entering and/or interfering with the quiet possession of the telecommunications company with regard to its landing station and the point at which its undersea cables enter the country in Mombasa.
- Providing counsel to an international mining company in a dispute a Kenyan state corporation that has the responsibility of transporting, storing and delivering petroleum products through its pipeline system and oil depot network. The matter is notable because the Court for the first time dealt with the issue as to whether the assignment of the price of Gasoil amounts to direct trading in Gasoil and therefore requires the obtaining of a license in compliance with Section 80 of the Energy Act.

LAND AND PROPERTY DISPUTES

Our dispute resolution team is recognised for an outstanding reputation for handling complex ad hoc and high-profile land and property disputes, acting on pivotal cases for a wide range of clients such as financial institutions, real estate developers and NGOs.

Some of our recent work highlights include:

- Representing an international agricultural research institute in a suit filed by two self-help groups claiming adverse possession over their land (approximately 13,000 acres). The plaintiff seeks to be registered as the proprietors of the land.
- Representing a research station belonging to an international agricultural research institute in a USD 44 million claim by some individuals seeking orders restraining the company from interfering with their peaceful and quiet use and possession of a parcel of land.
- Acted as counsel for the companies in winding-up petitions for a developer and one of the largest coffee growers. The companies were engaged in the development of a modern city in the outskirts of Nairobi.
- Representing a Kenyan telecommunications company (“**the Company**”) in a judicial review application before the High Court challenging the decision of the Ethics and Anti-Corruption Commission directing the Company to provide a list of all its property and suspend and recall all its recent and further sale of property pending investigation.

- Represented a Special Purpose Vehicle created to own Nairobi Business Park against trespass and prevention of ongoing construction on Phase II of Nairobi Business Park by the Kenya Forest Services (the property in dispute was thousands of acres).
- Represented foreign beneficiaries in a local probate and administration matter involving a large estate and protection of the assets in the estate pending hearing and determination of the matter.
- Represented a medical Housing Cooperative Society in a case in which it had purchased land to put up a mega housing project. The case pitted the original owners of the land against the cooperative society and various government departments including the Lands Office and the Company Registry.
- Successfully represented a publicly listed commercial bank in resisting a claim for over USD 150 million touching on a claim for breach of contract and damages arising from a contract for the sale of land.

Our Dispute Resolution Lawyers

George Oraro SC | Founding Partner



George (goraro@oraro.co.ke) is the Founding Partner at Oraro & Company Advocates. With over 44 years of experience, he is held in high esteem for his arbitration, mediation and litigation expertise in Kenya. He specialises in administrative and judicial law, banking & commercial litigation, corporate & commercial law, employment and labour disputes, international trade and tax disputes.

He has practised in the International Criminal Court, LCIA, International Chamber of Commerce, the Supreme Court of Kenya, Court of Appeal, the High Court, the Employment & Labour Court, and various Tribunals.

In 2012, George was conferred with the rank of Senior Counsel for his exemplary service to the legal profession. He was also appointed to serve as a Commissioner of Assize to assist in expediting and determining criminal and civil matters. Similarly, in the Chambers Global 2021 Guide, he retained the prestigious **'Star Individual'** accolade in Dispute Resolution which is accorded to lawyers with exceptional recommendations in their field. George remains the only lawyer ranked in this category in Kenya. He is also ranked a Band 1 lawyer in Dispute Resolution: Arbitrators, receiving a plethora of praise from the Kenyan legal community for being *"one of the best lawyers Kenya has"* and *"without a doubt among the leading individuals in litigation and arbitration."*

In addition, the Legal 500 listed George among Africa's leading arbitration practitioners in its Arbitration Powerlist: Africa 2021.

Aside from his legal practice, George has served as a board member for the Capital Markets Authority in which he was instrumental in the development of the legal and regulatory framework for the Capital Markets in Kenya. He was also a member of the Nairobi Securities Exchange Technical committee. In 2015, George became the first Honorary Consul for the Republic of Lithuania.

Chacha Odera | Senior Partner



Chacha (chacha@oraro.co.ke) is a Senior Partner at Oraro & Company Advocates and practices in the dispute resolution practice group. With over 32 years of experience, he has represented local and international clients in commercial disputes, constitutional law, electoral disputes, employment and labour law, insolvency, and property law.

Chacha has been ranked by leading international legal directories such as Chambers & Partners and Legal 500 as a leading lawyer in dispute resolution and employment. In the Chambers Global Guide 2021 rankings, Chacha was commended for being a *“fantastic individual”* and *“an extremely able advocate and a gentleman in all manner of the word.”*

Chacha was also recognised as the overall lawyer of the year in 2019 at the Nairobi Legal Awards, hosted by the Law Society of Kenya, Nairobi branch.

Chacha holds a Bachelor of Laws (LLB) from the University of Nairobi, Kenya and a Diploma in Law from the Kenya School of Law. In addition to being an Advocate of the High Court of Kenya, Chacha is a member of the London Court of International Arbitration Users' Councils, a Commissioner for Oaths and Notary Public.

Aside from his legal practice, Chacha is an adjunct lecturer at the Strathmore Law School. He has chaired two adhoc committees of the Law Society of Kenya namely, the Committee for In-house Counsel and the development of a comprehensive Code of Conduct for Advocates. He has also served in various capacities in the Political Parties Disputes Tribunal and the Council of Legal Education.

Chacha is a passionate philanthropist and is currently a honary member of the Rotary Club of Milimani as well as a Paul Harris Fellow. He previously served as a founding trustee of the Matibabu Foundation and Msaada Kenya Trust.

John Mbaluto FCIArb | Deputy Managing Partner



John (john@oraro.co.ke) is the Deputy Managing Partner at Oraro & Company Advocates in the dispute resolution practice group. With over 13 years of experience, John has represented and advised local and international clients particularly in construction law, employment and labour law, pension law, banking and commercial disputes and constitutional law.

John has represented and advised clients in a wide variety of sectors including construction, education, financial services, Insurance and transport & logistics.

Recently, he attained qualification as a Fellow of the Chartered Institute of Arbitrators (FCIArb), a globally recognised standing in arbitration circles.

Additionally, John is proud to steer the firm's publications committee which has to date successfully published 13 issues of Oraro & Company Advocates' flagship newsletter – *Legal & Kenyan*.

John holds an LLB from the University of Warwick, United Kingdom and a Post-graduate Diploma in Law from the Kenya School of Law.

Noella Lubano | Partner



Noella (noella@oraro.co.ke) is a Partner at Oraro & Company Advocates and a recognised dispute resolution and arbitration expert. She specialises in the tracing and recovery of assets, commercial litigation, employment and labour disputes, and shareholder disputes but is well regarded for her international arbitration and insolvency & restructuring expertise.

She is ranked by Chambers Global 2021 in Dispute Resolution with clients lauding her for being “*extremely professional and approachable*,” and others saying, “*her level of subject matter knowledge, especially corporate law matters, is exceptional*”. Legal 500 also recognised her in the 2020 rankings as a Next Generation Partner, with sources saying she is ‘*responsive, conducts very good and well thought out research, and is approachable and witty*.’

Noella was recently recognised as one of “*Africa's 50 Most Promising Young Arbitrators 2020*” by the Association of Young Arbitrators.

Noella is an eloquent speaker. She spoke on various topics around International Arbitration at the International Arbitration Conference in Kigali, Rwanda in 2017, Addis Ababa, Ethiopia in 2018 and Nairobi, Kenya in 2019. She has also shared her legal insights across the globe including in the United Kingdom and Austria.

She holds a Master's degree (**LLM**) from the University of Cape Town and a Bachelor of Law degree from the University of Nairobi, Kenya and a Diploma in Law from the Kenya School of Law.

Daniel Okoth | Partner



Daniel (daniel@oraro.co.ke) is a Partner in the Litigation Department. With over seven years' experience, he has advised both local and international clients in arbitration, banking and commercial litigation, constitutional law, employment and labour law and land disputes.

Daniel has been involved in a number of notable matters including being part of a team that represented a leading telecommunications company in a landmark employment dispute arising from a redundancy of 2,600 employees and further negotiating a settlement worth USD 3.5 million.

In April 2019, Daniel Participated in a three-week EXPLORE placement programme hosted by Slaughter and May at their London Offices. The programme is targeted towards African lawyers in order to provide them with extensive legal training in a leading international law firm as well as cultural excursions and a relationship-building platform.

Daniel holds a Bachelor of Laws an (LLB) from Moi University and a Diploma in Law from the Kenya School of Law.

“Litigation is a very strong area for Oraro & Company. They are very knowledgeable and well respected in this field.”

Chambers Global 2017.



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