

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA - A.D. 2018

CORAM: ANSAH, JSC (PRESIDING)
YEBOAH, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/28/2017

23RD MAY, 2018

THE REPUBLIC

VRS

THE JUDICIAL COMMITTEE OF THE ASOGLI TRADITIONAL COUNCIL, HO

EX-PARTE: CHRISTIAN LETSU AVEVOR & 6 OTHERS

DEFENDANTS/APPLICANTS/

RESPONDENTS/

APPELLANTS

AND

EMMANUEL AZAMETI & 3 OTHERS INTERESTED

PARTIES/PESPONDENTS

JUDGMENT

APPAU, JSC:-

The facts that gave rise to this appeal are quite straightforward and not in dispute whatsoever between the parties. On 29th March 2011, the interested

parties/respondents herein summoned the appellants herein before the Asogli Traditional Council seeking certain declarations which fell within the jurisdiction of the Council. A judicial committee was put in place to determine the matter between the parties. On the 9th of May 2013, the judicial committee that heard the matter delivered judgment in favour of the interested parties/respondents. The appellants appealed against the decision of the judicial committee to the Volta Regional House of Chiefs, Ho but their appeal was struck-out by the judicial committee of the Regional House as having been filed out of time. Appellants thereafter, filed a judicial review application before the High Court, Ho, pursuant to an extension of time granted them by the trial High Court, praying for an order of certiorari to quash the decision of the judicial committee of the Asogli Traditional Council on the following grounds:

- 1. The Chiefs who attended the meeting of the Asogli Traditional Council on 22nd January 2012 at which meeting the pool of eleven (11) chiefs were nominated by the Council from which the members of the Judicial Committee of the Council that sat on the parties case were selected or appointed did not have their names registered or entered in the Chieftaincy bulletin to clothe them with authority to so act.*
- 2. The meeting at which the pool of chiefs was selected from which the judicial committee members were appointed, lacked the requisite forum of more than half the total membership of the Council at the time it purported to selected the pool of chiefs.*
- 3. The judicial committee exceeded its jurisdiction when it appointed a Stool Father for the Eho Stool when there was no claim before the Judicial Committee for the appointment of a Stool Father.*

In their submissions before the trial High Court, the appellants did not limit their arguments to the grounds re-called above. They also canvassed a legal point that there was no meeting of the Asogli Traditional Council to appoint the three-member judicial committee that heard their case. The judicial committee was therefore not appointed by the Asogli Traditional Council in compliance with the provisions of section 29 (2) of the Chieftaincy Act, [Act 759]. The trial High Court did not consider this last argument in its judgment but nevertheless granted the judicial review application and quashed the decision of the judicial committee of the Asogli Traditional Council. The reason for granting the application was that the chiefs who constituted the judicial committee did not have their names gazetted and registered in the Register of the National House of Chiefs. The judicial committee was therefore not properly constituted to hear the matter.

The interested parties/respondents appealed against the decision of the trial High Court to the Court of Appeal on two grounds and succeeded. The two grounds of appeal were that: 1. *The learned trial judge erred in holding that the members of the judicial committee of the Asogli Traditional Council which heard and determined the chieftaincy dispute between the parties did not have their names gazetted and registered in the Register of the National House of Chiefs* and 2. *The learned trial judge erred in relying on exhibits C, D and D1 to determine the gazetting and registration requirement of the members of the said judicial committee.* The decision of the trial High Court was accordingly set aside wherein the Court of Appeal proceeded to dismiss the Certiorari application as having no merits whatsoever.

My Lords, it is this decision of the Court of Appeal which declared appellants' certiorari application unmeritorious that has brought the parties further to this Court. The appellants contested only one ground of appeal and it is the omnibus or general ground that the judgment of the Court of Appeal was against the weight of evidence. Interestingly the appellants canvassed only one legal point in their three-page statement of case filed on 8th March 2017 in support of this general ground. The first page of appellants' statement of case filed on 8th March 2017 correctly captures the central issue that this Court has been called upon to determine. It is therefore deserving that I quote in full this part of appellant's statement of case.

"...this is an appeal against the judgment of the Court of Appeal, Koforidua dated 21st July, 2015, which the appellants contend was erroneous since it was based on a misconstruction of the jurisdictional section 29 (2) of the Chieftaincy Act, 2008 [Act 759].

The central issue in the Court of Appeal was the constitution of the Judicial Committee of the Asogli Traditional Council which was to try the cause or matter affecting chieftaincy between the instant appellants and the respondents.

The appellants contended in the Court of Appeal that: section 29 (2), on its true construction required that the Traditional Council should itself directly appoint 3 or 5 chiefs from among its membership to try any particular cause or matter pending before it. Contrariwise, the respondents contended that: it was enough under section 29 (2) for the Traditional Council to appoint from its membership, a general pool or group from which a trial judicial

committee of 3 or 5 chiefs would be selected to try any pending cause or matter...

I do not find anything wrong with the appellants canvassing only one legal point in this appeal when their only ground of appeal was the omnibus or general ground that the judgment was against the weight of evidence. We have settled on this issue in our judgments in **ATTORNEY-GENERAL v FAROE ATLANTIC [2005-2006] SCGLR 271** and **OWUSU-DOMENA v AMOAH [2015-2016] 1 SCGLR 790** that; *“when an appeal is based on the omnibus ground that the judgment is against the weight of evidence, both factual and legal arguments could be made...”* In the *Faroe Atlantic* case (supra) Wood, JSC (as she then was) expressed her opinion, and correctly so, in the following words: *“It seems to me that in strictness this common ground of appeal is one of law, for in essence, what it means, inter alia, is that, having regards to the facts available, the conclusion reached, which invariably is the legal result drawn from the concluded facts, is incorrect. The general ground of appeal is therefore not limited exclusively to issues of fact. Legal issues are within its purview”*.

As a matter of fact, there is no divergence of opinion on the issues of fact in the appeal before us. I agree with the appellant that the central issue that surfaces for determination by this Court is the construction of section 29 (2) of Act 759]. How is a judicial committee of a Traditional Council constituted as provided under section 29 (2) of Act 759? Is it appropriate for the Traditional Council to meet and appoint a pool or body of chiefs as those qualified to sit as judicial committee members from which either the President of the Council acting alone or the Registrar of the Council or both the President and the Registrar of the Council could select three (3) or five (5) chiefs to constitute a judicial committee anytime the need arises for a judicial committee to be appointed, as happened in this case? Or, does the law envisage that every judicial committee appointed to determine a chieftaincy matter must or should be appointed by the Council as a whole sitting at a meeting for that purpose?

In its judgment, the Court of Appeal concluded that there was no evidence on record to support the trial judge’s conclusion that members of the judicial committee of the Asogli Traditional Council who sat on the parties’ case did not have their names gazetted or registered in the Chieftaincy Bulletin and therefore could not perform any statutory function like sitting as judicial committee members. According to the Court of Appeal, the Exhibits that the trial court relied on to come to that conclusion did not say that the three

chiefs who constituted the judicial committee did not have their names registered in the Chieftaincy Bulletin or the National House of Chiefs so the trial court erred in granting the certiorari application. After allowing the appeal on the above note, the Court of Appeal went obiter to dilate on who a chief is under Act 759 and a chief who qualifies to perform statutory functions under the Act. The Court of Appeal again expounded on the grounds upon which certiorari would lie and why it would not lie in this case.

I do not begrudge the Court of Appeal on the reasons it advanced in allowing the appeal by setting aside the quashing orders of the trial High Court. The Court of Appeal was right in what it said as clearly there was no evidence to support the fact that the three chiefs who constituted the judicial committee in question did not have their names gazetted in the Chieftaincy Bulletin or registered in the National Register of Chiefs. But the Court of Appeal missed one very important point that was prominent in the arguments canvassed by the appellants herein (then respondents before them) in both their submissions before the High Court and the Court of Appeal as the records clearly show. Aside of the arguments that the judicial committee members did not have their names registered in the Chieftaincy Bulletin, which the Court of Appeal relied on to allow the appeal and to dismiss the certiorari application because it was not supported by the evidence on record, the appellants herein again argued strongly in their submissions before the Court of Appeal that the judicial committee that sat on the chieftaincy matter between the parties was wrongly constituted because it was not appointed by the Traditional Council as a whole. It appeared the Court of Appeal ignored those arguments as it never commented on this leg of the appellants' submissions in its judgment. I find those legal arguments so germane in the determination of the appeal before the Court of Appeal that it was erroneous for the Court of Appeal to have ignored them, having elected to rehear the case on the principle that an appeal is by way of rehearing. For a better appreciation of the issue at stake, it is better to quote that part of appellants' (then respondents) written submissions filed before the Court of Appeal in answer to that of the then appellant (now respondent herein), which appears at pp. 116, 123 and 124 of the record of appeal (RoA): -

“The reason for the want or excess of jurisdiction on the part of the Judicial Committee was given as follows: -

- 1. The meeting of the Asogli Traditional Council which appointed a pool of 11 members from which the three member judicial**

committee was selected was held in clear violation of the Chieftaincy Act. The particulars of the said violation were given as follows: -

Chiefs whose names had not been entered in the National Register of Chiefs participated in the meeting to appoint the 11 member team to constitute the Judicial Committee.

- a. The meeting lacked quorum to transact any business.
- b. There was no other meeting of the Asogli Traditional Council to appoint the three member judicial committee which heard the case involving the respondents from the pool of 11 members earlier appointed. The three member judicial committee was therefore not appointed by the Asogli Traditional Council in compliance with the Chieftaincy Act. {Emphasis added}
- c. Some chiefs whose names had not been entered in the National Register of chiefs failed to attend the said meeting but delegated their power to appoint to other chiefs or persons who also did not have their names entered in the National Register of Chiefs...

The judicial Committee was not validly constituted and therefore lacked jurisdiction to hear the matter.

S. 29 (1) and (2) of the Chieftaincy Act provide as follows: -

'(1) Subject to this Act, a Traditional Council has exclusive jurisdiction to hear and determine a cause or matter affecting chieftaincy which arises within its area, not being one to which the Asantehene or a paramount chief is part.

(2) The jurisdiction of a Traditional Council shall be exercised by a Judicial Committee comprising three or five members appointed by the Council from their members.'

The combined effect of the two provisions is that even though exclusive jurisdiction is granted to the Asogli Traditional Council (hereinafter referred to as the Traditional Council) to hear causes or matters affecting chieftaincy within its traditional area, the Traditional Council is mandated to perform that function through a judicial committee comprising of three or five members. The appointment must be made by the Traditional Council. It is important to underscore that the judicial committee comprising of

either three members or five members must be appointed by the Traditional Council.

Exhibit 'C' shows that two groups of chiefs were appointed by the Asogli Traditional Council. The total number of chiefs in the two groups was eleven (11). It is to be noted that the three-member judicial committee that heard the case involving the applicants was drawn from the two groups of chiefs. Thus Togbe Dadzawa III and Togbe Kwaku Agbi III were from group 'A' while Togbe Kwami Dogli II was from group 'B'. There was no other meeting by the Asogli Traditional Council to constitute the three member panel which heard the case in issue. The claim by the respondents that there was no other meeting to select or appoint this judicial committee to hear the case was not challenged by the Asogli Traditional Council. Presumably, the panel of the three judicial committee members was appointed by the President or the Registrar.

It is a violation of the Chieftaincy Act for the Asogli Traditional Council to appoint a pool of chiefs from which either the president, registrar or anybody would draw a team of three or five to constitute a judicial committee to hear the cause or matter affecting chieftaincy. The appointment of the judicial committee of three or five is a function vested in the Asogli Traditional Council and not in any officer of it. For this reason also, it is submitted the judicial committee was not properly constituted."

So clearly, aside of the argument that the chiefs who constituted the judicial committee did not have their names registered in the Chieftaincy Bulletin, the appellants again challenged the competence and legality of the judicial committee that sat on their case on the ground that it was not appointed by the Traditional Council as a whole as envisaged under section 29 (2). However, the Court of Appeal failed to consider this submission in its judgment under impeachment before us and the appellants have raised the same argument, which is the bedrock of the appeal before us.

The interested parties/respondents have responded to this argument in their statement of case filed on 29th March 2017. Their initial charge in their statement of case was that the appellants' appeal before us was not made bona fide because they only resorted to the judicial review application after their appeal against the decision of the Asogli Traditional Council to the Volta Regional House of Chiefs had been struck-out by the judicial committee of

the Regional House as incompetent, having been filed out of time. And that if their appeal had succeeded, they would not have resorted to Order 55 of the High Court Civil Procedure Rules [C.I. 47] in the nature of certiorari. I do not find this charge tenable because this Court has held that a party can resort to both avenues of redress; i.e. appeal and certiorari simultaneously. In the case of **REPUBLIC v HIGH COURT, CAPE COAST; EX-PARTE GHANA COCOA BOARD (APOTOI III - INTERESTED PARTY) [2009] SCGLR 603**, this Court held that: *“The right to appeal from the High Court to the Court of Appeal and the right to apply for the exercise of the supervisory jurisdiction of the Supreme Court were both constitutional rights. There was nothing in the constitutional provisions governing those rights that made them mutually exclusive. The exercise of the Supreme Court’s supervisory jurisdiction under article 132 of the 1992 Constitution was not expressly made subject to an applicant not having previously lodged an appeal in respect of the same matter. So long as the separate requirements of an appeal and of an application for the exercise of the supervisory jurisdiction have been complied with, a party should be able to avail himself or herself with either avenue of redress at the same time”*. So the fact that the appellants resorted to Order 55 of C.I. 47 after their appeal to the Regional House had suffered a technical hitch of having been filed out of time did not entail any bad faith on their part as they are constitutionally permitted to do so.

In their main submissions, the interested parties/respondents admitted that it was not the Asogli Traditional Council that directly appointed the three-member judicial committee that heard the chieftaincy case involving the parties. They contended that there was nothing wrong with the approach adopted by the Asogli Traditional Council in selecting a pool or group of eleven (11) chiefs from which either the President or the Registrar of the Council hand-picked the three chiefs to constitute the judicial committee that heard the case involving the parties. They argued that the Registrar of the Traditional Council was the administrative head of the Council and therefore by extension, the Registrar performs administrative functions on behalf of the Council. Any act or omission on the part of the Registrar in the discharge of his duties could not be subjected to the supervisory jurisdiction of the High Court. Equally, the President of the Traditional Council performs administrative functions for the Council and his acts are not amenable to the supervisory jurisdiction of the High Court. Again, the President of a Traditional Council is clothed with authority to perform statutory administrative duties such as empanelling members of the judicial committee to sit on a particular case. They added that it was the function of

the President of the Traditional Council or a House of Chiefs to constitute members of a judicial committee as long as he remains in office and that it is not the intendment of section 29 (2) that the Council as a whole must meet to appoint three or five members to constitute a judicial committee any time a cause or matter affecting chieftaincy is brought before it. Respondents relied on the authorities of **AKUFFO ADDO v QUARSHIE IDUN [1968] GLR 667** and the decision of this Court in **THE REPUBLIC v HIGH COURT, DENU; EX-PARTE KUMAPLEY [2003-2004] 2 SCGLR 719**, per Dr. Seth Twum, JSC.

My Lords, the sole issue we are confronted with in this appeal, judging from the submissions of the parties as recalled above is: ***Whether or not under section 29 (2) of Act 759, a Traditional Council can select a pool of chiefs from among its members from which the President alone or the Registrar of the Traditional Council or both, could hand pick members to form a judicial committee as envisaged under the Act or the appointment of a judicial committee is the function of the Council as a whole at a meeting.***

I wish to state that the two cases of *Ex-Parte Kumapley* and *Akuffo-Addo v Quarshie Idun* cited by the respondents and referred to supra are inapplicable in this case. In the *Ex-parte Kumapley* case supra, the judicial review application before the High Court, Denu, which the High Court wrongly granted was for an order of prohibition to prohibit the Anlo Traditional Council from appointing or empanelling new members of the judicial committee to hear a matter before the Traditional Council. The facts in that case are in complete variance with the facts in the instant case as the judicial review application of the appellants herein before the trial High Court had nothing to do with the proceedings of the Asogli Traditional Council held on 22nd January 2012. Neither were the appellants seeking to quash the orders or decisions of either the Registrar or the President of the Asogli Traditional Council. If the issue before the trial High Court in the certiorari application had anything to do with the proceedings of the Asogli Traditional Council dated 22nd January 2012 at which the pool of eleven (11) chiefs to serve as judicial committee members was selected, or with the acts of either the Registrar or President of the Council, then the respondents' argument under the authority of *Ex-parte Kumapley* (supra) would have carried some weight. However, the issue before us is far from that. The issue is: What is the construction to be placed on section 29 (2) of Act 759? Does it imply that; *(i) the traditional council as a body must meet to appoint members of a judicial committee from among its members to sit on a particular case*

always? Or, (ii) the traditional council as a body can select a group or pool of chiefs from among its members from which either the President of the Council or the Registrar of the Council or both could hand-pick any three or five members to constitute a judicial committee anytime the need arises?

I hold the view that there is no need to stretch this point by resorting to rules or canons of interpretation before resolving the issue at stake as the section in question is very clear and unambiguous. The section as it stands, cannot give rise to two rival meanings to generate the controversy currently before us. The section reads: ***“The jurisdiction of a Traditional Council shall be exercised by a judicial committee comprising three or five members appointed by the Council from their members”*** {Emphasis added}. I do not see any ambiguity in this provision.

The Chieftaincy Act, 2008 [Act 759] defines **‘JUDICIAL COMMITTEE’** at section 76 of the act on interpretation as; ***“a committee appointed under sections 25, 28 and 29 of the Act”***. Section 25 is on the Judicial Committee of the National House of Chiefs; section 28 is on the Judicial Committee of the Regional House of Chiefs, while section 29 is on the Judicial Committee of the Traditional Councils. In all these three sections, what the Act described as a **‘Judicial Committee’** is the three or five members appointed as such by the National House of Chiefs, the Regional House of Chiefs, or the Traditional Council as a body, as the case may be, to function as a judicial committee.

Jurisdiction is conferred or bestowed by statute and the body that the Chieftaincy Act calls a ‘judicial committee’ as envisaged under section 29 (2) that is charged with the responsibility to hear chieftaincy disputes is the three or five member committee appointed by the Traditional Council as a body to function as such. There is no doubt to the fact that if a traditional council meets to select a group or pool of chiefs from among its members numbering say eleven or ten or twenty from which judicial committee members are chosen to sit on cases, that pool or group of chiefs so selected could not be described as a ‘judicial committee’ or members of a ‘judicial committee’ as envisaged under the Act. A ‘judicial Committee’ is the three or five members selected or appointed by the Traditional Council as a whole or in quorum, to sit on a particular case, but not the pool or group of chiefs from which the three or five members are selected. Therefore, a judicial Committee made up of chiefs selected or hand-picked from a pool or group of chiefs appointed by the Traditional Council by only the President of the Council or the Registrar of the Council, as was done in the instant case

before us, is not a judicial committee appointed by the Traditional Council as envisaged under section 29 (2) of the Act.

Where the appointment of the judicial committee members contravenes section 29 (2) of the Act, such a committee is said to lack jurisdiction to hear and determine a chieftaincy dispute and any proceedings, orders or decision flowing from such an incompetent committee could be quashed on certiorari as being void for want of jurisdiction. In the case of **REPUBLIC v BUEM TRADITIONAL COUNCIL; EX-PARTE ISUKU II [1991] 1 GLR 455**, the Judicial Committee of the Buem Traditional Council gave judgment against the applicant. He applied for an order of certiorari to quash the proceedings and judgment of the judicial committee on the ground that the judicial committee that heard the case was not appointed in accordance with section 28 (1) of the then Chieftaincy Act [Act 370], which is similar to the current section 29 (2) of Act 759 and then section 3 of L.I. 798. Applicant contended that only six out of the nineteen members of the Traditional Council met to appoint the committee and that contradicted the Act. Respondents on the other hand were of the view that the words; **“appointed by the Traditional Council”**, did not mean that the whole Traditional Council must meet as a body to appoint the judicial committee but that the President of the Council or the Registrar of the Council could appoint the members without the Traditional Council itself meeting or sitting as a body to do so. Respondent contended further, as was done by the respondent in the instant appeal before us that, the appointment of the judicial committee was an administrative act which does not lend itself to a certiorari application.

The High Court dismissed the respondent’s arguments and granted the certiorari application. The High Court held that the words; **“appointed by the Traditional Council”** meant the members of the judicial committee should be appointed by the whole Traditional Council sitting as a body and that the President alone or the Registrar of the Traditional Council had no power under the Act to appoint members of the judicial committee. Though the above decision was by the High Court and therefore does not bind us, the interpretation put on the words; **“appointed by the Traditional Council”** was the correct import of the section in question, which is the same as the current section 29 (2) of Act 759.

Again, in the case of **THE REPUBLIC v KRACHI TRADITIONAL COUNCIL; EX-PARTE ANANE [1975] 1 GLR 276**, which is also a High Court case, the court rightly defined ‘lack of jurisdiction’ to mean; not having authority or incompetent to decide or adjudicate. One of the ways where ‘lack of

jurisdiction' could arise is where the judicial committee that adjudicated on the case is improperly constituted. In that case an alleged judicial committee of the Krachi Traditional Council which sat on a chieftaincy matter and ordered the applicant to hand over some stool paraphernalia was said to lack jurisdiction to do so as there was no existing Krachi Traditional Council clothed with authority to appoint the said judicial committee. The applicant's application was therefore granted and the order of the alleged judicial committee was quashed.

Before a body charged with the determination of a dispute could be given any legitimacy, its composition or set up must conform to the statute or Act that provides for its existence. Section 29 (2) of Act 759 did not say that the Traditional Council should select or appoint a pool or a team of chiefs who qualify to sit as judicial committee members so that anytime there is a chieftaincy dispute either the President or the Registrar of the Council could hand-pick any three or five chiefs or members from the pool or group to constitute the judicial committee to hear or determine the chieftaincy dispute in question. Such a practice is prone to bias or the likelihood of it, nepotism, favouritism and all kinds of manipulation, depending on the whims and caprices of the President or the Registrar who does the hand-picking. What section 29 (2) means and nothing more is that the judicial committee sitting on a particular case must be appointed by the whole traditional council at its meeting to avoid the incidence of bias or the likelihood of it or manipulations of any kind. So where, as was done in the case of the Asogli Traditional Council, there was in place a pool of qualified chiefs to sit as judicial committee members, the appointment of either three or five members from the pool to function as a judicial committee must necessarily be done by the whole Traditional Council sitting as a body or by members of the Traditional Council forming a quorum to act as such.

The judicial committee of the Asogli Traditional Council that heard the case involving the parties, not having been appointed by the Traditional Council as a whole but by the President alone or the Registrar of the Council, was wrongly constituted and therefore lacked jurisdiction to determine the matter that came before it. The proceedings and orders of the said judicial committee were therefore a nullity as they were made without jurisdiction. The trial High Court should have allowed the application on this ground but not on the grounds it relied on. The Court of Appeal also erred when it failed completely to consider the point though it was well made in the submissions filed before it.

Notwithstanding this error on the part of the trial High Court, it is settled law that an appeal court can affirm the decision of a lower court which is correct but is founded on wrong reasons. See the cases of **ABAKAH v AMBRADU [1963] 1 GLR 456 @ 464 - SC; SERAPHIM v AMUA-SAKYI [1971] 2 GLR 132 @ 134 - CA & DUAH v DEBRA [1967] GLR 456 - CA**. In the words of Apaloo, J.A. (as he then was) in the *Seraphim v Amua-Sakyi* case supra; in the appeal court, “no judgment is upset on the ground that it is ratio erroneus if there is another sound basis on which it can be supported”. We accordingly allow the appeal and restore the decision of the trial High Court though on reasons different from what the trial court relied on.

**Y. APPAU
(JUSTICE OF THE SUPREME COURT)**

ANSAH, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

**J. ANSAH
(JUSTICE OF THE SUPREME COURT)**

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

**ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)**

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

**P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)**

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

**G. PWAMANG
(JUSTICE OF THE SUPREME COURT)**

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