

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LAND DIVISION**  
**AT MOSHI**

**MISC. LAND APPLICATION NO. 09 OF 2022**

*(Arising from Land Appeal No. 7 of 2017 originating from Land Application No. 54 of 2016 of the District Land and Housing Tribunal of Moshi at Moshi)*

**THE REGISTERED TRUSTEES OF KHOJA SHIA ITHNA ASHER JAMMAT ..... H/HOLDER/ APPLICANT**

*VERSUS*

**ALIASGHER MUKTAR SAAJAN .....J/DEBTOR/ RESPONDENT**

**RULING**

*08/9/2022 & 10/11/2022*

**SIMFUKWE, J.**

The applicant **THE REGISTERED TRUSTEES OF KHOJA SHIA ITHNA ASHER JAMMAT** filed this application under **Order XLIII Rule 35 (1) and (2), section 38 (1), 42 (c), 44(1) and 95 of the Civil Procedure Code, Cap 33 R.E 2019** and any other enabling provisions of the laws, seeking the following orders:

- 1. That, this Honourable Court be pleased to summon the Respondent/Judgment debtor above named in person, and require him to show cause as to why a balance of Tshs 300,000,000/= a*



*decreed sum in Land Case Appeal Number 07 of 2017, should not be settled in full satisfaction of the decree.*

*2. That, in case of disobedience to orders in execution, the said Respondent, Aliasgher Muktar Saajan, be arrested and committed to Prison as Civil Prisoner.*

*3. Costs of this application be provided for.*

*4. Any other reliefs deemed just and fit this honorable court to grant.  
(sic)*

The application was supported by the affidavit deponed by Mr. Ibrahim Haji, the Chairman of Board of Trustees of the applicant. In the said affidavit it has been deponed inter alia that in Land Appeal Case No. 7 of 2017 it was decreed that the respondent should pay the applicant a total sum of Tshs 300,000,000/ being arrears of rent up to and including February 2022 when the disputed premises were handled over to the applicant. That, all efforts have been taken by the applicant to recover the rental arrears in a thin air as the respondent has transferred all of his movable properties to his limited company commonly known as A2Z HealthCare Ltd to avoid the applicant to enjoy fruits of her decree.

It has been deponed further that the applicant is ready, willing and prepared to pay for any costs for keeping the respondent as civil prisoner at any prison that this court will deem fit for him to be detained.

In his counter affidavit, the respondent stated among other things that he is still aggrieved by the first Appellate court's decision and that he has already initiated processes to reinstate the second appeal vide Misc. Land Application No. 11 of 2022. That, the gist of the said application is to



obtain extension of time to lodge notice of appeal to the Court of Appeal of Tanzania against the said Land Appeal No. 7/2017.

Coincidentally, the said Misc. Land Application No. 11 of 2022 was assigned to me which in order to avoid pre-empting it, I had to determine it first. With respect, having found that the respondent had accounted for the delay, leave to file notice of appeal out of time has been granted. Meanwhile, determining this application will be ultra vires and in contravention of the Constitutional right to appeal. **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania** is relevant.

In the circumstances, I hereby strike out this application without costs. The applicant may refile her application after determination of the intended application for leave to appeal to the Court of Appeal and the intended appeal, in case the said matters will be determined in her favour.

It is so ordered.

Dated at Moshi this 10<sup>th</sup> day of November 2022.



  
**S.H. Simfukwe**

**Judge**

**10/11/2022**