



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

PETITION NO. 5 OF 2019

BETWEEN

FSM (Suing as mother

and next friend of FK & JMM).....PETITIONER

AND

JOHNSON MUNYWOKI MWANGANGI.....1ST RESPONDENT

BANK OF AFRICA LIMITED.....2ND RESPONDENT

RULING

The petitioner wishes to appeal against the judgment I delivered on 24th January 2020 dismissing the petition. By the Notice of Motion dated 21st February 2020 she seeks an order for extension of time to lodge a Notice of Appeal under **section 7** of the *Appellate Jurisdiction Act (Chapter 9 of the Laws of Kenya)* against the judgment. The 1st respondent has opposed on the ground that the delay has not been explained.

I have considered the facts and submissions by counsel for the 1st respondent opposing the application and I find as follows:

1. The application for extension of time was filed on 21st February 2020 after a previous application was filed on 5th February 2020 was withdrawn.
2. The reason why counsel for the petitioner withdrew the application of 5th February 2020 is that I drew his attention to the fact that it had not made under the correct provision of the law.
3. At the same time, I granted leave to the petitioner's new advocates to come on record. This explains that why there was a delay in filing the application as the petitioner instructed a new advocate and he explained as much in the application.
4. The application dated 21st February 2020 was indeed allowed but the order set aside on application by the 1st defendant by which time, the Notice of Appeal had been filed.

Taking the totality of circumstances, I do not consider the delay in this matter inordinate or prejudicial to the respondents. The judgment raises constitutional issues from which there is a right of appeal and for the reasons given, I do not think the petitioner should be prevented from pursuing her right of appeal.

Accordingly, the application dated 21st February 2020 is allowed and the Notice of Appeal lodged on 28th February 2020 is deemed as duly filed and served. The costs shall abide by the intended appeal.

DATED and DELIVERED at NAIROBI this 13th day of MARCH 2020.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.