

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(CORAM: GICHERU, SHAH, J.J.A. & BOSIRE, AG.J.A.)

CRIMINAL APPEAL NO. 6 OF 1994

BETWEEN

FLORA CHERUBET TALAM APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a Sentence of the High Court of Kenya at Eldoret
(Justice Aganyanya) dated 7th April, 1992**

in

H.C.CR.C. NO. 24 OF 1992)

JUDGMENT OF THE COURT

The appellant was married when she was 15 years old to one Talam and had a difficult marriage relationship with him.

Together with her husband they had five children of the marriage. Because of the difficult marriage relationship which resulted in various fights and her frequent returning to her father's home or friends to seek refuge, she on the 4th April, 1990 after a fight with her husband decided to leave him. She on that day therefore took all her five children in the hope of going to seek refuge elsewhere. As she crossed a nearby river with her five children she was overwhelmed by emotions on recalling how often she had crossed that river as a result of frequent quarrels with her husband who seemed no longer to have any need for her and the children. As a result she tied all the five children with a "leso" and dropped them into the river and she too attempted to drown herself but survived. The five children, however, did not survive but died of asphyxia due to drowning. When the appellant was arraigned in the superior Court for the offence of manslaughter she pleaded guilty and was sentenced to 10 years imprisonment. It is against that sentence that she now appeals to this Court. She tell us that she is now 30 years old and has served over 5 years of her term of imprisonment besides having been previously in custody since 5th April, 1990. In the circumstances attendant to the commission of the offence for which she was convicted and sentenced to 10 years imprisonment together with her long period of incarceration, we think that the sentence of 10 years imprisonment was slightly on the higher side. We in the circumstances allow her appeal against sentence and reduce the same to a term that will lead to her immediate release from custody unless otherwise lawfully held.

Dated and delivered at Nakuru this 25th day of September, 1997.

J.E. GICHERU

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

S.E.O. BOSIRE

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AG. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR